

Skidmore College
Title IX Policy for Faculty (Interim)
2024-2025
August 1, 2024

Table of Contents

I. Notice of Non-Discrimination	3
II. Statement of Institutional Values	5
III. Scope of this Policy	5
IV Statement of Privacy and Confidentiality	6
V Terminology	7
VI. Rights Afforded to Parties	9
VII. Prohibited Conduct (As Defined By Title IX)	11
B: Affirmative Consent	15
To Speak with Someone Confidentially:	17
Supportive Measures	18
College-Imposed Interim Suspension or Administrative Leave	18
IX. Reporting SGBM	19
Reporting to the College	19
Reporting to Law Enforcement	19
Violation of Law and College Sanction/Discipline	19
Timely Warning	20
Order of Protection	20
XI. Investigation & Adjudication Process	23
Filing a Formal Complaint	23
Full Investigation	29
Investigation Process:	29
Sanctions	29
Special Procedures and Rights Legally Recognized Privilege	29
Appeal Process	30
XIII. Liability Information for Employees	31
XIV. Services and Resources	31
On-Campus Resources	31
Off-Campus Confidential Reporting Sources	31
Off-Campus Reporting Sources	32

I. Notice of Non-Discrimination

Skidmore College does not discriminate on the basis of sex in its educational, co-curricular, athletic, or other programs or in the context of admissions or employment. Sex discrimination is prohibited by Title IX of the Education Amendments of 1972, a federal law that provides that:

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.

Skidmore College, as an educational community, will promptly and equitably respond to all reports of sexual and gender-based misconduct in order to eliminate the misconduct, prevent its recurrence, and address its effects on any individual or the community

Please note that the scope of this Policy is limited to forms of sexual and gender-based misconduct (SGBM), specifically Sex Discrimination, which includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity, and Sex-Based Harassment, which includes sexual assault, domestic violence, dating violence, and stalking) as defined in the 2024 final Title IX regulations, 34 CFR Part 106, as released on April 19, 2024 by the United States Department of Education.

While other College policies may govern discrimination, harassment, or other forms of sexual and gender-based misconduct, it is not the responsibility of a Complainant to determine which policy will apply to address an incident of sexual and gender-based misconduct. When any report of any sexual and gender-based misconduct is communicated to the Title IX Coordinator or designee, the report will be reviewed by the Title IX Coordinator or designee. If the report aligns with the definition and jurisdiction of Title IX as defined by the 2024 regulations, the procedures of this policy will be applied. If it does not, then the report will be referred to the appropriate personnel for review under the appropriate faculty policy. To illustrate this, a diagram has been provided in Section III.

Inquiries or complaints about the application of Title IX may be directed to the College's Title IX Coordinator and/or to the U.S. Department of Education's Office for Civil Rights.

Skidmore College's Title IX Coordinator oversees compliance with all aspects of the Title IX policy. The Title IX Coordinator reports directly to the President of the College, and questions about this policy should be directed to the Title IX Coordinator. Anyone wishing to make a report relating to sexual and gender-based misconduct can report to the appropriate individual(s), listed below (*updated August 1, 2024*):

Reports Alleging Sexual & Gender-Based Misconduct (SGBM) Involving a Skidmore Student, Faculty, or Staff Member:

Joel Aure
Title IX Coordinator

Case Center 311
815 North Broadway
Saratoga Springs, NY 12866
518-580-5708
jaure@skidmore.edu

Campus Safety
Jonsson Tower (ground floor)
815 North Broadway
Saratoga Springs, NY 12866
518-580-5566
campus-safety@skidmore.edu

For emergencies or immediate assistance on-campus, please call Campus Safety at x5566

Reports Alleging Sexual & Gender-Based Misconduct Involving a Skidmore Faculty Member:

Janet Casey
Associate Dean of the Faculty for Diversity and Faculty Affairs
Palamountain 416
(518) 580-5705
jcasey@skidmore.edu

Reports Alleging Sexual & Gender-Based Misconduct Involving a Skidmore Faculty/Staff Member:

Jude Klein
Associate Director for Employment and Workforce Diversity
Barrett Center
518-580-5819
jsklein@skidmore.edu

Off Campus:

Saratoga Springs Police Department
518-584-1800

Office of Civil Rights
New York Office for Civil Rights
U.S. Department of Education
32 Old Slip, 26th Floor
New York, NY 10005-2500
Telephone: 646-428-3900
FAX: 646-428-3843
TDD: 800-877-8339
Email: OCR.NewYork@ed.gov

II. Statement of Institutional Values

Skidmore College is committed to promoting a campus environment where sex discrimination, sex-based harassment, sexual assault, domestic violence, dating violence, stalking, retaliation and exploitation are not tolerated, and where every member of the community shares in the responsibility of preventing and addressing sexual and gender based misconduct. The College also is committed to providing survivors and all community members affected by sexual and relationship violence support and avenues of redress as appropriate. Sex discrimination, sex-based harassment, sexual assault, domestic violence, dating violence, and stalking are violations of Skidmore College policy with some also representing violations of criminal law as defined by the State of New York and the Violence Against Women Act.

III. Scope of this Policy

All members of the Skidmore College community have an obligation to act responsibly in the realm of sexuality, gender, and relationships, to recognize and challenge any sexual and gender-based misconduct, and to adhere to College policies and local, state, and federal law.

This policy applies specifically to sex discrimination and sex-based harassment as defined by Title IX occurring on Skidmore College property or at other locations at which the College exercises substantial control over the alleged Respondent(s) and context in which the sex-based harassment occurs, and also includes such conduct occurring at any building owned or controlled by a recognized student organization. This policy also applies when such acts of sex discrimination or sex-based harassment occur away from Skidmore College property and similar locations identified above when they contribute to a hostile environment on Skidmore College property or in any education programs controlled by Skidmore College.

When used in this policy, “Complainant” refers to the individual who is identified as the target of the alleged sexual and gender-based misconduct (ie. sex discrimination and sex-based harassment under Title IX). “Respondent” refers to the individual alleged to have engaged in sexual and gender-based misconduct. A “Third Party” refers to any other participant in the process, including a witness or an individual who makes a report on behalf of a Complainant.

This Policy identifies the rights, options and resources afforded Complainants, Respondents and Third Parties when involved in an incident of sexual and gender-based misconduct.

Title IX sex discrimination and sex-based harassment can be committed by any member of the Skidmore College community, including students, staff, and faculty. Under Title IX, the College has jurisdiction over a Respondent who is a current student or employee. This policy applies to address and resolve reports against a current **Faculty** member.

For information about complaints against other Skidmore community members, please visit www.skidmore.edu/sgbm.

As long as the College has jurisdiction over the Respondent, there is no time limit to invoking this policy in cases of alleged sexual and gender-based misconduct. Nevertheless, persons are encouraged to report alleged sexual and gender-based misconduct as soon as possible in order to maximize the College's ability to respond promptly and effectively.

Complaints against a third party not under the jurisdiction of this Policy will be resolved under appropriate College policies, depending on the identity of the third party and the third party's relationship with the College. Complaints against a third party may not be able to be resolved through the College process. Regardless, all appropriate support resources and measures are still available to the Complainant, and every effort will be made to assist the Complainant in filing a complaint against the Respondent through the appropriate channels (i.e., police, current workplace, current institution they attend, etc.).

Skidmore College strongly encourages reports of any sexual and gender-based misconduct (ie. Title IX sex discrimination and sex-based harassment) and any other form of discrimination and harassment, regardless of who engaged in the conduct. Even if the College does not have jurisdiction over the Respondent, the College will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community and will take all steps feasible to address and remedy the conduct.

Complaints that relate to conduct that occurred prior to adoption of this policy will be evaluated for a policy violation using the behavioral standards and definitions under the policy that was in place at the time the incident allegedly occurred, and the allegations of the complaint will be investigated and adjudicated using the procedures in the policy that is in effect at the time the complaint is made unless the incident is in the jurisdiction of the Title IX Policy for Faculty under the 2020 regulations. In such a case, the policy definitions and procedures from that policy will be followed. The policies and procedures are updated regularly to comply with federal and state law.

IV. Statement of Privacy and Confidentiality

To the extent possible, those handling complaints will endeavor to maintain the confidentiality of all parties involved in the informal and formal process. This confidentiality extends to those seeking assistance, to those filing a complaint, to Respondents, and to those serving as witnesses; confidentiality also extends to those creating or reviewing any documents related to the complaint. Information about the complaint is therefore provided only to those individuals within the College who have a need to know that information in order to investigate and/or resolve the complaint. This requirement of confidentiality does not mean that the details of the complaint will be withheld from the Respondent.

Nevertheless, the College cannot guarantee absolute confidentiality. In order to ensure compliance with College policies and federal and state laws, the College may be required to disclose information about a complaint to agencies or to individuals not involved in the complaint. Moreover, when the complaint involves alleged acts of a criminal nature, the College may be required by law to notify law enforcement authorities. The College may also publicly divulge details of the outcome if one of the parties discloses selective portions of the proceedings or if the Complainant or Respondent contests the findings or results of the College's investigation in the course of a lawsuit.

The Employee Assistance Program (EAP) can provide advice and support to individuals who believe they are experiencing sex-based harassment, who have been accused of sex-based harassment or who are otherwise involved in a sex-based harassment complaint. All information shared with these individuals will remain confidential to the extent permitted by law and college policy. Discussions with representatives from EAP will not be considered a report to the College regarding the problematic behavior and will not, without additional action by the Complainant, result in intervention or corrective action.

V. Terminology

Complainant: An individual who is alleged to be the victim of conduct that could constitute sexual and gender-based misconduct under Title IX.

Respondent: An individual who has been reported to be the perpetrator of conduct that could constitute sexual and gender-based misconduct under Title IX.

Advisor of Choice: Both the Complainant and Respondent may elect to be accompanied by an advisor of their choosing to any meetings, conferences, and interviews pertaining to the investigation or adjudication of the Title IX complaint. In most of these instances, the advisor's role is limited to observing, consulting with, and providing support to the party.

An Advisor of Choice may not speak or communicate on behalf of the Complainant or Respondent. This includes but is not limited to in-person meetings, phone conversations, email, or any other forms of electronic or written communication with College personnel.

Parties have the right to consult with and engage an attorney as their Advisor of Choice, at their own expense with an exception noted below. As with any other Advisor of Choice, an attorney will not be permitted to speak or communicate on behalf of the party.

Any Advisor of Choice who fails to comply with this policy may be asked to leave any such meeting or conversation and is expected to comply with this request. Continued failure to adhere to this policy may result in the Advisor of Choice no longer being allowed to participate in this role.

Formal Complaint: a document filed by a complainant or signed by the Title IX Coordinator alleging sexual and gender-based misconduct against a respondent and requesting that the College investigate the allegation(s). At the time of filing a Formal Complaint, a complainant must be participating in or attempting to participate in an education program or activity of the College.

A Formal Complaint may be filed with the Title IX Coordinator or designee in person, by mail, or by electronic mail, by using the contact information for the Title IX Coordinator set forth above. As used in this paragraph, the phrase "document filed by a complainant" means a document or electronic submission (such as by electronic mail or through the [reference online portal] that contains the complainant's physical or digital signature, or otherwise indicates that the complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a complainant or otherwise a party and must comply with the relevant Title IX requirements.

Notice of Allegations: a document created by the Title IX Coordinator informing the Complainant and Respondent of the sexual and gender-based misconduct alleged against a Respondent. The notice will also include the grievance procedures, identities of the parties involved in the incident(s), the conduct alleged to constitute sexual and gender-based misconduct under Title IX, the date(s) and location(s) of the alleged incident(s), to the extent that information is available, a statement that retaliation is prohibited, and a statement that the parties are entitled to an equal opportunity to access the relevant and not otherwise impermissible evidence.

Supportive Measures: non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter Sex-based harassment.

The College will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures and can be contacted to review the available supportive measures.

Witness: A person or bystander who observes or has information about conduct that is in violation of the Title IX policy. Witnesses must have observed the conduct in question or otherwise have information relevant to the incident.

Investigator: The individual(s) charged with investigating a complaint under this policy. The Investigator(s) will typically be a combination of any of the following: the Deputy Title IX and EEO Coordinator, the Associate Director of Equity and Workforce Diversity or designee, a member of Campus Safety, and/or external investigators designated by the College. Investigators attend, at a minimum, annual Title IX investigator training.

Any investigator shall be a trained, impartial Skidmore employee or external provider without any bias or conflict of interest for or against either the complainant or respondent.

Adjudicator: The individual charged with determining whether there was a violation of this policy after reviewing all of the relevant investigation materials and posing any necessary follow-up questions. This individual would also be responsible for determining any relevant remedies or sanctions that should be imposed if a violation has occurred. The Adjudicator will receive annually Title IX adjudicator training and typically be either the Chief Human Resources Officer (CHRO) or an external adjudicator designated by the College.

Incapacitation: a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (e.g., to understand the "who, what, when, where, why or how" of their sexual interaction).

Incapacitation may occur because of the individual's age. Under New York law, the age of consent is 17 years of age and, therefore, a person under the age of 17 lacks the capacity to provide affirmative consent.

Incapacitation can also occur because of an individual's physical or mental condition or disability that impairs the individual's ability to provide consent. Incapacitation as a result of a physical or mental condition includes, but is not limited to, being: (i) asleep or in a state of unconsciousness; (ii) physically helpless; or (iii) involuntarily restrained. Depending on the degree of intoxication, someone who is under the influence of alcohol or drugs may be incapacitated and unable to consent to sexual activity. Being drunk or intoxicated, however, does not necessarily render someone incapacitated. The impact of alcohol or drugs varies from person to person.

Whether sexual activity with an incapacitated person constitutes gender-based misconduct depends on whether the Respondent knew or should have known of the Complainant's incapacitation. The question of what a Respondent knew or should have known is objectively based on what a reasonable person in the place of the Respondent, sober and exercising good judgment, would have known about the condition of the Complainant.

Appeal Panel: These individuals are responsible for reviewing and determining the outcome of any appeal submitted by any of the parties. The panel will consist of the Dean of Faculty and at least one member from the Faculty Advisory Board.

VI. Rights Afforded to Parties

Throughout the process, Complainant, Respondents, and Witnesses will be afforded the following rights:

The Complainant will have the right to:

- Have an advisor present as an observer during the complaint process;
- Be granted confidentiality throughout the process (as described above);
- Withdraw the complaint at any time during the process (with the understanding that the College may be required to pursue the complaint despite the withdrawal);
- Review and sign their own statement and receive a copy;
- File the complaint with a federal, state, or local agency designated to hear/investigate EEO complaints;
- Make a report to local law enforcement and/or state police;
- Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;
- Make a decision about whether or not to disclose a crime or violation and participate in the conduct process and/or criminal justice process free from pressure by the institution;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- Be free from any suggestion that the Complainant is at fault when these crimes and violations are committed, or should have acted in a different manner to avoid such crimes or violations;

- Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
- Be accompanied by an advisor of choice who may assist and advise a Complainant or Respondent throughout the process including during all meetings and panels related to such process; and
- Be protected from retaliation by the institution, employee, any student, Respondent, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Have a meeting with the Title IX Coordinator or official managing the process;
- Review a copy of the final report and investigation materials;
- Be notified of the outcome
- Access to at least one level of appeal of a determination; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution

The Respondent will have the right to:

- Be presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process
- Have an advisor present as an observer during the complaint process;
- Receive a copy of the written complaint;
- Be granted confidentiality, to the extent possible, throughout the process (as described above);
- Respond to the complaint;
- Review and sign their own statement and receive a copy;
- Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
- Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
- Be accompanied by an advisor of choice who may assist and advise a Complainant or Respondent throughout the process including during all meetings and panels related to such process; and
- Be protected from retaliation by the institution, any student, employee, the Complainant, and/or their friends, family and acquaintances within the jurisdiction of the institution;
- Have a meeting with the Title IX Coordinator or official managing the process
- Review a copy of the final report and investigation materials;
- Be notified of the outcome
- Access to at least one level of appeal of a determination; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution.

Witnesses to the complaint (other than the Complainant or Respondent) will have the right to

- Have a representative (not an attorney) present as an observer during the complaint process;
- Be granted confidentiality, to the extent possible, throughout the process (as described in Section IV above);
- Review and sign their own statements and receive copies; and
- Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution.

VII. Prohibited Conduct (As Defined By Title IX)

The definitions of sex discrimination and sex-based harassment under Title IX are specific terms determined by the Department of Education. Skidmore College categorizes both under “Sexual and Gender-Based Misconduct” or “SGBM”. Included within the Department’s definition of sex discrimination is discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Included within the Department’s definition of sex-based harassment are the Department’s formal definitions for sexual assault, domestic violence, dating violence, and stalking in accordance with the Violence Against Women Act (VAWA).

Sexual and gender-based misconduct may vary in its severity and consists of a range of behaviors. The following descriptions represent sexual behaviors and gender-based misconduct that violate Skidmore’s community standards and values of respect, civility, and personal integrity as well as Title IX. These behaviors are serious violations and represent a threat to the safety of the Skidmore Community. Other forms of sexual behaviors and gender-based misconduct involving faculty that may violate Skidmore’s community standards and values are addressed in part six of the Faculty Handbook.

For purposes of this Policy, SGBM (ie. Title IX sex discrimination and sex-based harassment) includes the following forms of misconduct occurring on Skidmore College property or at other locations within the United States at which the College exercises substantial control over the alleged Respondent(s) and context in which the SGBM occurs, and also includes such conduct occurring at any building owned or controlled by a recognized student organization. Finally, if any such misconduct would occur on property or at location that is not controlled by Skidmore College or a recognized student organization of the College but contributes to a hostile environment of college property, this Policy would also have jurisdiction assuming the College exercises control over the Respondent. It is the policy of Skidmore College to hold individuals accountable for the following acts that violate this policy:

Sex Discrimination

Discrimination on the basis of sex includes discrimination on the basis of sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Sex discrimination is different treatment with respect to an individual’s employment or participation in an education program or activity based, in whole or in part, upon the individual’s actual or perceived sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity. Discrimination also includes allegations of a failure to provide reasonable accommodations or supportive measures as required by law or policy. Sex discrimination can take two primary forms, not including sex-based harassment:

- ***Disparate Treatment***

Any intentional differential treatment of a person or persons that is based on an individual’s actual or perceived sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity and that:

- Excludes an individual from participation in;
- Denies the individual benefits of; or

- Otherwise adversely affects a term or condition of an individual's participation in a Recipient program or activity.
- ***Disparate Impact***
Disparate impact occurs when policies or practices that appear to be neutral unintentionally result in a disproportionate impact on a protected group or person based on that individual's actual or perceived sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity and that:
 - Excludes an individual from participation in;
 - Denies the individual benefits of; or
 - Otherwise adversely affects a term or condition of an individual's participation in a Recipient program or activity.

Sex-Based Harassment:

Conduct on the basis of sex that aligns with one or more of the following conditions as defined by Title IX:

- An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the College's education program or activity (i.e., creates a hostile environment); or
- Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined below as required by the United States Department of Education:

Sexual Assault

Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent described as follows:

- Rape is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
- Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.
- Incest is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
- Statutory Rape is sexual intercourse with a person who is under the statutory age of consent

This definitions above align with the definition of Rape, Fondling, Incest or Statutory Rape as used in the FBI's UCR program as required by the Department of Education under Title IX. In addition, the College incorporates into its definition of Sexual Assault any nonconsensual sexual act prohibited by federal, tribal, or New York State law, including when the victim lacks capacity to affirmatively consent, including sexual touching, disrobing and/or exposure as defined below:

- **Sexual Touching, Disrobing and/or Exposure**

Any intentional sexual touching, however slight, with any object without affirmative consent. Sexual touching includes any bodily contact with the breasts, groin, genitals, mouth or other bodily orifice of another or any other bodily contact in a sexual manner. Any disrobing of another or exposure to another by another without affirmative consent.

Dating Violence

Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—

- Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
- Dating violence does not include acts covered under the definition of domestic violence.

In addition, the College incorporates into its definition of Dating Violence any act of violence or threatened act of violence against a person who is, or has been involved in, a sexual, dating, domestic, or other intimate relationship with that person. It may involve one act or an ongoing pattern of behavior and may encompass a broad range of behavior, including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. Such violence may take the form of threats, assault, property damage, or violence or threat of violence to one's self, one's sexual or romantic partner, or to the family members or friends of the sexual or romantic partner:

- Emotional Abuse may also be a form of Dating Violence and can include, but is not limited to, acts of coercion, threat, intimidation, isolation or other forms of behaviors and communications which, taken together, systematically control, manipulate and/or exploit the other by undermining their confidence, identity, dignity, self-worth, capacity to grow, trust, and/or their emotional stability.

Domestic Violence

A felony or misdemeanor crime of violence committed—

- By a current or former spouse or intimate partner of the victim;
- By a person with whom the victim shares a child in common;
- By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;
- By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;
- By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

Please note that in order for an alleged Domestic Violence incident to be investigated under the policy, the relationship between the Complainant and Respondent must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have a relationship or status as described above.

Individuals who are victims of Domestic Violence in New York may seek a civil Order of Protection through Family Court. Criminal Orders of Protection may be issued if criminal charges are filed and an arrest is made. For more information, refer to Section 9 of this policy and/or see the New York State Law.

Stalking

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for the person's safety or the safety of others; or
- Suffer substantial emotional distress.

For the purposes of this definition:

- *Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.
- *Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.
- *Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

Stalking as defined above may not always be "on the basis of sex" (for example when an individual stalks an athlete due to celebrity worship rather than sex), but when stalking is "on the basis of sex" (for example, when the stalker desires to date the victim) stalking constitutes "Sex-based harassment" for purposes of this policy. Stalking that does not constitute Sex-based harassment because it is not "on the basis of sex" may be addressed under other applicable College policies.

Retaliation

In addition to prohibiting Title IX sex discrimination and sex-based harassment, this Policy also prohibits Retaliation based on an individual who reports, or complains about an alleged violation of, or who otherwise participate in good faith in, the procedures set forth in this Policy. Neither the College nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, or proceeding under this policy. Intimidation, threats, coercion, or discrimination, including charges against an individual for Faculty Handbook violations that do not involve sex discrimination or sex-based harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sex-based harassment, that are undertaken for the purpose of interfering with any right or privilege secured by Title IX or this policy, constitutes retaliation.

The College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sex-

based harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the federal Family Educational Rights and Privacy Act and its implementing regulations (FERPA) or as required by law, or to carry out this policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation related to a Title IX matter may be filed according to the grievance procedures for SGBM as described in this policy.

It is the policy of Skidmore College to hold individuals accountable for all acts that violate this Policy and other forms of sexual, and/or gender-based misconduct covered by other College policies.

Note on Other Policy Violations

After reviewing the report, the Title IX Coordinator and the appropriate Human Resources official or their designee will determine whether other alleged policy violations in addition to the Title IX charges should be applied. This will be reflected in the Formal Complaint and will be provided to both the Complainant and Respondent.

Furthermore, the appropriate Human Resources official or designee will bring the complaint to the attention of the Dean of Faculty's office and, in accordance with the Faculty Handbook or other applicable employee policies, may determine that other policy violation charges should be applied to other parties as well.

If any charges are addressed in and added to the Formal Complaint during the investigation, both parties will be notified and will have an opportunity to address them as well as the original charges prior to a determination. Subsequent or unrelated allegations involving the Complainant and Respondent will be addressed separately under the appropriate policy.

B: Affirmative Consent

Affirmative consent is the basis of this policy because affirmative consent maintains the value that all persons have the right to feel respected, acknowledged, and safe during sexual activity. Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's sex, sexual orientation, gender identity, or gender expression.

- ☐ Consent can be communicated verbally or by action(s). In whatever way consent is communicated, it must be mutually understandable.
- ☐ Consent is mutually understandable when a reasonable person would consider the words and/or actions that you and your partner(s) have expressed to demonstrate a desire to do the same thing, at the same time, in the same way, with one another.
- ☐ In the absence of mutually understandable words or actions, the initiators of sexual contact are responsible for making sure they have obtained affirmative consent from their partner(s). The initiators must fully understand what their partner(s) wants and does not want sexually.

- Consent to any sexual act or prior consensual sexual activity between or with any party does not necessarily constitute consent to any other sexual act. Each new sexual act requires new consent. Affirmative consent has time boundaries.
- Consent is required regardless of whether the person initiating the act is under the influence of drugs and/or alcohol.
- Consent may be initially given but withdrawn at any time.
- Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent (*See “Incapacitation” in the Terminology section above*).
- The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish affirmative consent for future sexual activity.
- Consent is not the absence of resistance.
- Silence is an inactive behavior, and affirmative consent is an active behavior. Therefore, silence alone (absent a non-verbal action clearly demonstrating consent) is not considered affirmative consent. Silent and inactive behavior may indicate that something is wrong and the potential for sexual misconduct exists. If a partner is inactive (for example, silent or physically still) sexual activity must stop until both partners have communicated clearly with each other about what, if any, sexual activity is mutually desired.
- Affirmative consent can never be given by minors (under the age of 17 in New York State), mentally disabled individuals, or by incapacitated persons. A person who is unconscious, unaware, or otherwise physically helpless cannot give affirmative consent to sexual activity.
- Affirmative consent cannot result from force, or threat of harm, coercion, fraud, intimidation, or incapacitation. The use of force to obtain sexual access or to induce consent violates this policy whether the force is physical in nature, violent, or involving threats, intimidation, or coercion.
 - Physical force includes but is not limited to: hitting, kicking, and restraining. Physical force means someone is acting on you physically and exerting control over you through violence.
 - Intimidation is an implied threat. It is not as clear or explicit as an overt threat.
 - Coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual’s will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person’s words or conduct are sufficient to constitute coercion if they wrongfully impair another individual’s freedom of will and ability to choose whether or not to engage in sexual activity. Coercion is evaluated based on the intensity, frequency, and duration of the comments or actions. Examples of coercion include threatening to “out” someone based on sexual orientation, gender identity, or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity.
- Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.
- When consent is withdrawn or can no longer be given, sexual activity must stop.

VIII. Confidential & Support Resources

Skidmore College is committed to creating an environment for individuals to report incidents of SGBM. Members of the Skidmore community are strongly encouraged to seek support and information from available reporting sources. Immediate reporting is essential for the protection of students. All sources will provide the Complainant with information about obtaining support, resources, and the process associated with making a report or a Formal Complaint with the College and/or with a law enforcement agency.

The College will endeavor to respect the wishes of the Complainant regarding how and if to move forward; however, in some circumstances, the College will have to move forward. Under these circumstances, the College will weigh the request for confidentiality or that no further action be taken against the certain factors, including but not limited to those described below in the section of this policy entitled “Requesting Confidentiality/No Further Action.”

All individuals shall have the right to emergency access to the Title IX Coordinator, Campus Safety or other trained official who shall be available upon the first instance of disclosure by a Complainant to provide information regarding options to proceed and, where applicable, the importance of preserving evidence and obtaining a sexual assault forensic examination as soon as possible, as well as other pertinent information.

To Speak with Someone Confidentially:

Confidential resources are those individuals who, by law and/or College policy, are obligated to maintain confidentiality of the allegations of sexual or gender-based misconduct. These individuals are not required to re-disclose information shared with them other than in very extreme and unusual circumstances involving evidence of a serious and imminent threat to the individual making the report or to an identifiable third party. Confidential resources include:

Employee Assistance Program
518-793-9768
<https://www.skidmore.edu/benefits/eap.php>

There are also external, non-Skidmore confidential resources any individual can access:

- **Wellspring Victim Advocate**
A victim advocate from Wellspring (formerly Domestic Violence and Rape Crisis Services of Saratoga County) is on campus and accessible to individuals during set times
 - See <http://www.skidmore.edu/sgbm/contacts.php> for exact times and contact information.
 - 24-hour confidential hotline – 518-584-8188
- ***Saratoga Hospital Emergency Room:** 518-583-8313
- **Saratoga Planned Parenthood/Schenectady Planned Parenthood:** 518-584-0041 or 518-374-5353

- ***NYS Sexual Violence Hotline:**
 - English: 1-800-942-6906
 - Spanish: 1-800-942-6908
 - English TTY: 1-800-818-0656
 - Spanish TTY: 1-800-780-7660

Supportive Measures

Regardless of whether the Complainant wishes to pursue a Formal Complaint, the College will consider the information provided and take such prompt and effective action as is reasonably possible under the circumstances to support and protect the parties involved and protect the College community. Additionally, the College may choose to impose other measures at its discretion to restore or preserve equal access to its education programs or activities without unreasonably burdening the other party, including measures designed to ensure the safety of all parties, the broader College community, and/or the integrity of the process, and/or to deter sex discrimination or sex-based harassment, once again after an individualized analysis as required by Title IX.

The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures and can be contacted to review all available supportive measures. Please note that supportive measures are available at the request of either the Complainant or Respondent, with or without the filing of a Formal Complaint.

All individuals are encouraged to report concerns about failure of another individual to abide by any requirement applied by a supportive measure. The College will take immediate and responsive action to enforce a previously implemented measure.

The College will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the College's ability to provide the supportive measures.

While any supportive measure is in place, a party impacted by the supportive measure has the right to request that the supportive measure be reviewed for modification or rescission. Reviews will be conducted promptly, and modifications will be made as warranted. Requests must be submitted, in writing, to the Title IX Coordinator and should include the basis and any evidence in support of the request.

College-Imposed Interim Suspension or Administrative Leave

- The College reserves the right to remove a Respondent from the College on an emergency basis if an individualized safety and risk analysis determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX-related SGBM to justify the removal. Neither an interim suspension nor an administrative leave assumes a determination of responsibility.
- If such a suspension were to take place, the Respondent would be provided notice and an opportunity to challenge the decision immediately following the suspension.

- Interim suspensions under this policy are imposed after an individualized safety and risk analysis and in consultation with the Title IX Coordinator, Dean of Faculty and the Chief Human Resources Officer.
- For faculty and staff as well as student-employees, the College reserves the right to administer an administrative leave consistent with existing policies outside of the scope of Title IX.
- Any faculty member who is placed on an interim suspension or administrative leave under this policy can challenge this decision immediately after the removal by submitting an appeal to the Dean of the Faculty and Vice President of Academic Affairs.

IX. Reporting SGBM

Reporting to the College

Any Skidmore College community member can report an incident of sexual and gender-based misconduct (SGBM) to the Title IX Coordinator or Campus Safety at any time. For reports specifically alleging SGBM by a faculty member, individuals can also report this to Associate Dean of the Faculty for Diversity and Faculty Affairs in the Dean of Faculty's office in addition. Any Skidmore employee, who is not a Confidential Resource, is required to report any information they receive about an incident of SGBM to the Title IX Coordinator.

If the Respondent is currently a Skidmore student, faculty, or staff member, any person may file a Formal Complaint of sexual and gender-based misconduct with the Title IX Coordinator or designee.

Any supervisor or manager who fails to report sexual and gender-based misconduct (SGBM) or knowingly allows such conduct to continue will also be subject to corrective action, up to and including separation from the College.

Reporting to Law Enforcement

It is the Complainant's decision whether or not to file a criminal report. To report to local law enforcement, Complainants should contact the Saratoga Springs Police Department at 518-584-1800.

Violation of Law and College Sanction/Discipline

While certain acts of SGBM under Title IX may constitute both a violation of College policy and criminal activity, the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, and criminal investigations or reports are not determinative of whether sex discrimination or sex-based harassment as defined by Title IX has occurred under the College's policy. In other words, conduct may constitute sex discrimination or sex-based harassment under the

College's policy even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline or are unable to prosecute.

The filing of a report of sexual or gender-based misconduct with the College is independent of any criminal investigation or proceedings (except that the College's investigation may be delayed temporarily while the criminal investigators gather evidence). The College will not necessarily wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and provide supportive measures to the Complainant and protect the College community as necessary.

Timely Warning

If a report of sexual or gender-based misconduct under this policy or other policies discloses information indicating a serious or continuing threat to the Skidmore community, the College may issue a campus wide timely warning (which can take the form of campus flyers and/or an email/text communication to campus community) to protect the health or safety of the community. The College will make every effort to ensure that a Complainant's name and other identifying information are not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

At no time will the College release the name of the Complainant to the general public without the express consent of the Complainant. The release of the Respondent's name to the general public is guided by Family Educational Rights and Privacy Act (FERPA) and the Clery Act.

All College proceedings are conducted in compliance with the applicable requirements of FERPA, the Clery Act, Title IX, the Violence Against Women Act ("VAWA"), New York's Enough Is Enough law, and other state and federal laws. No information shall be released from such proceedings except as required or permitted by law and College policy.

Order of Protection

Complainants have the right to be assisted by Campus Safety or other official reporting resources in obtaining a court ordered order of protection or, if outside of New York State, an equivalent protective or restraining order. An order of protection can only be issued by a judge if a criminal complaint is made.

If the College receives an order of protection, a copy of the order will be shared with the Complainant or Respondent. Either party will have an opportunity to meet or speak with a College representative, or other appropriate individual, who can explain the order and answer questions about it, including information from the order about the Respondent's responsibility to stay away from the protected person or persons. Consequences for violating these orders may include, but are not limited to, arrest, additional conduct charges, and/or interim suspension.

In the event of a violation of the order of protection, Complainants may receive assistance from Campus Safety in contacting local law enforcement and affecting an arrest.

Additional Information on Obtaining an Order of Protection:

An Order of Protection is a legal document in which a Judge orders someone to follow specific conditions of behavior – that is, tells someone things that they must or must not do.

Police can make immediate arrests if they have good reason to believe those conditions have been violated. The point of an Order of Protection is to maintain peace and provide protection until all the facts have been gathered and the case is heard in Court. The Order remains in effect as written until it is changed or terminated by the Court, or until it expires in accordance with its terms.

Note: Representatives from Wellspring may assist members of the Skidmore community in obtaining orders of protection from Family Court. Likewise, Campus Safety will assist community members with obtaining orders from the Criminal Court via the police.

Orders of Protection may be enforceable on campus and in other jurisdictions in accordance with their terms, including out of state. This becomes particularly important if the requesting party anticipates problems when they are home or elsewhere during class breaks. Most orders are entered into a nationwide database so police will be able to confirm the existence of an order, even if you don't have a hardcopy with you. More information on the NYS Order of Protection Alert System can be found here: <https://oop.nyalert.gov/OOP/Default.aspx>.

X. Requesting Confidentiality/No Further Action

Requesting Confidentiality and No Further Action from the College:

How the College Will Weigh the Request and Respond

Prior to filing a Formal Complaint or transmission of a Notice of Allegations, a Complainant can request that, even though the College has received notice of an incident, no further action be taken by the College and that the incident remains private. The Title IX Coordinator and/or designee will review the information received and decide if that option is available. If this option is available, the incident will remain private and no disciplinary action by the College will be taken, but the College will offer supportive measures to the Complainant. The incident will be kept on file with the Title IX Coordinator and may be considered in the event that a future pattern emerges. The College's response to the incident may be re-evaluated if a pattern does emerge. If the Title IX Coordinator or designee has information indicating that the College has a duty to respond to the behavior, regardless of the Complainant's participation in the process, the Title IX Coordinator may move forward with filing a Formal Complaint

In the event that a Complainant does not wish to proceed with an investigation or adjudication process, the Title IX Coordinator or designee will determine, based on the available information, including any investigative report, whether the investigation or conduct proceedings should nonetheless go forward.

When weighing an individual's request for confidentiality or that no investigation or discipline be pursued, the Title IX Coordinator or designee will consider a range of factors, including, but not limited to, the following:

- The increased risk that the Respondent will commit additional acts of Title IX Sex-based harassment, other forms of sexual and gender-based misconduct or other violence, such as:
 - Whether there have been other sexual and gender-based misconduct complaints about the same Respondent;

- Whether the Respondent has a history of arrests or records from a prior school indicating a history of violence;
- Whether the Respondent threatened further sexual and gender-based misconduct or other violence against the Complainant or others;
- Whether the sexual violence was committed by multiple perpetrators;
- Whether the misconduct was perpetrated with a weapon;
- Whether the victim is a minor;
- Whether the Respondent has admitted to the conduct;
- The extent of prior remedial methods or disciplinary action taken with the Respondent;
- Whether the College possesses other means to obtain relevant evidence of the misconduct (e.g., security cameras or personnel, physical evidence);
- Whether the Complainant's report reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group.
- Whether the incident represents escalation in unlawful conduct on behalf of the Respondent from previously noted behavior; and
- Whether the incident occurred in or impacts the workplace (the College will generally be required to investigate allegations of workplace sex-based harassment).

The presence of one or more of these factors could lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College will likely respect the Complainant's request for confidentiality under this Policy. However, in situations where there is sex-based harassment by any Skidmore community member against an employee, the College reserves the right to investigate and take appropriate disciplinary measures in accordance with this Policy (see below) or other relevant policies.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. The College will assess any barriers to proceeding, including retaliation, and will inform the Complainant that Title IX prohibits retaliation and the College will take strong responsive action to protect the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or designee will communicate with the Complainant about the College's chosen course of action, which may include the Title IX Coordinator filing a Formal Complaint and the College choosing to pursue action against a Respondent on its own behalf. Alternatively, the course of action may also include steps to limit the effects of the alleged misconduct and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

If the College determines that it cannot maintain a Complainant's confidentiality, the College will inform the Complainant prior to starting an investigation.

The College may not require a Complainant or Respondent to participate in any investigation or disciplinary proceeding under this Policy. Because the College is under a continuing obligation to address the issue of sexual and gender-based misconduct campus-wide, reports of sexual and gender-based misconduct (including non-identifying reports) will also prompt the College to consider broader remedial action – such as increased monitoring, supervision or security at locations where the reported sexual and gender-based misconduct occurred; increasing education and prevention efforts, including to targeted

population groups; conducting climate assessments/victimization surveys; and/or revisiting its policies and practices.

If the College determines that it can respect a Complainant's request for confidentiality, the College may nevertheless implement Supportive Measures as necessary to protect the Complainant. If the College honors the request for confidentiality, the Complainant must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent may be limited.

XI. Investigation & Adjudication Process

Initial Inquiry

All concerns or complaints directed to the Title IX Coordinator (TIXC) will include an Initial Inquiry, the purpose of which is to determine whether the alleged conduct constitutes a potential violation of this Policy if substantiated and, if so, whether it is appropriate to allow the report to be resolved informally between the Complainant and Respondent or whether the College or Complainant will proceed with a Formal Complaint process. The Initial Inquiry will be completed within 10 business days, not including any time needed for a potential informal resolution.

The TIXC shall also determine whether interim measures are appropriate (for example, instructing the individual(s) about whom the complaint was made to refrain from communications with the individual(s) who reported the harassment). During this stage, the TIXC or designee will meet separately with the Complainant and the Respondent to review their options, rights, and resources. The TIXC or designee also reserves the right to meet with any other individual or potential witness for the purpose of completing the Initial Inquiry. The TIXC or designee will also review any relevant documentary or other evidence.

At this stage, the Parties will be provided a Notice of Allegations prior to any interview or informal resolution agreement.

Upon completion of the Initial Inquiry, the TIXC will determine whether the matter as reported would constitute a violation of this Policy and/or another College policy has occurred. If the TIXC determines that the matter may constitute a violation of College policy if substantiated, the TIXC or designee will confer officials from Human Resources and the Dean of Faculty's office as appropriate to determine whether the report can be resolved informally or if the College should move forward with a Formal Complaint under the procedures below or referred to the appropriate policy with the proper jurisdiction, such as the Anti-Harassment Policy for Faculty or Staff or other policies in either the Employee Handbook, Faculty Handbook, or Student Handbook. Examples of informal resolution include, but are not limited to: counseling, education and training and/or mediation.

Depending on the nature of the complaint, mediation may be offered as a remedial measure and can be pursued only if all parties and the TIXC agree to proceed with it.

If the parties agree to an informal resolution, it will be documented in an agreement. Both Parties will be given a copy of the agreement, and a copy will be retained with the complaint file by the TIXC. Parties may not appeal an informal resolution.

If no resolution/agreement is reached during the Initial Inquiry or if the matter is not appropriate for informal resolution, the Complainant may proceed with Formal Complaint procedures as described below. Please note that the TIXC on behalf of the College reserves the right under certain circumstances to proceed with Formal Complaint Procedures even if the Complainant is uncertain or elects not to proceed.

Filing a Formal Complaint

After receiving or filing a Formal Complaint, the Title IX Coordinator will determine how to proceed. The options for next steps include:

1. Move forward with a Formal Complaint process under this Policy:

Information collected in the Formal Complaint gives reasonable cause to believe a violation of this policy may have occurred and warrants further investigation. A full investigation will begin.

2. Refer the complaint to the proper office if the Title IX policy does not have jurisdiction.

If one or more allegations alleged in the Formal Complaint:

- Would not constitute SGBM (ie. sex discrimination or sex-based harassment under Title IX as defined in this policy even if proved; OR
- Did not occur in nor influence or affect the College's education program or activity in a way that a hostile environment could be created;

The College may dismiss a complaint of sex discrimination made through its grievance procedures under this section for any of the following reasons:

- The College is unable to identify the Respondent after taking reasonable steps to do so;
- The Respondent is not participating in the education program or activity and is not employed by the College;
- The Complainant voluntarily withdraws any or all of the allegations in the complaint and the Title IX Coordinator declines to initiate a complaint and the College determines that, without the complainant's withdrawn allegations, the conduct that remains alleged in the complaint, if any, would not constitute sex discrimination under Title IX or this part even if proven; or
- The College determines the conduct alleged in the complaint, even if proven, would not constitute sex discrimination under Title IX or this part. Prior to dismissing the complaint under this paragraph, the College must make reasonable efforts to clarify the allegations with the complainant.

Other than for the last reason, a Complainant would still be able to access supportive measures and resources in the event of a complaint dismissal.

In the event a Formal Complaint is dismissed in whole or in part under this policy as described above, both the Complainant and the Respondent may appeal this dismissal and request to have the dismissed allegations reinstated under the Title IX process. Appeals should be sent to the Title IX Coordinator, who

will refer the matter to the appropriate personnel for review. Please review the Appeals section below for further information about the appeals procedure.

Please note that the filing of a Formal Complaint or the initiation of an investigation under this policy is not a presumption that the Respondent is responsible for the alleged conduct.

In accordance with the 2020 and 2024 Title IX regulations, throughout the process, the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

Formal Complaint Procedures

The Formal Complaint, using the information from the Notice of Allegations, will be prepared by the Title IX Coordinator (TIXC), confirmed by the Complainant, and then provided to the Respondent with a complete description of the alleged incident(s) or actions leading to the complaint with sufficient detail to allow the Respondent to prepare a defense to the allegations.

When a faculty or staff member is formally accused of SGBM, the TIXC or designee will assign an Investigator to conduct the investigation independently or in conjunction with another trained professional.

Advisory Panel

When a faculty member is formally accused of harassment or discrimination, the TIXC or designee will still assign an Investigator to conduct the investigation. However, the College's procedures establish opportunities for other faculty members to provide advice to the Investigator to contextualize other relevant faculty policies, procedures and expectations and to support the overall investigation. Such faculty advice will be provided through the Advisory Panel (AP).

After receiving the Formal Complaint against a faculty member, the TIXC will convene the Advisory Panel (AP) to meet with the Investigator.

In the case of complaints by staff members against faculty members, the AP will consist of two tenured faculty members selected by the TIXC from the Faculty Advisory Board (FAB) and two staff members selected by the TIXC from a Staff Advisory Board (SAB). The SAB, established by Human Resources, consists of staff members trained in issues relating to discrimination and harassment. FAB members are also trained in issues relating to discrimination and harassment.

Faculty or staff members from the same department or office as either the Complainant or the Respondent may not serve on the AP. Any panelist with a conflict of interest may not serve. In addition, the Complainant and the Respondent each may request that one of the chosen panelists be replaced. In the event that a two- or four-person AP cannot be selected from these various boards, the VPAA and the Chair of FEC (in the case of faculty) or the Chief Human Resources Officer (in the case of staff) will provide replacements as needed. Any such replacements will receive training appropriate to the complaint.

Investigation & Adjudication

Other than the Notice of Allegations and the initial reporting and intake materials, information gathered or developed during any informal process will not be used in the formal investigation and adjudication of the

Formal Complaint. The TIXC will provide both the Complainant and Respondent with a copy of the Formal Complaint together with a letter to both outlining the investigation process and clarifying the Parties' rights. During the formal process, the Investigator(s) will attempt to interview all relevant witnesses identified by the Complainant and Respondent. All witnesses will receive a letter outlining the role of a witness during the investigation as well as the College's expectation of their participation.

The Complainant and Respondent will be provided:

- the right to an advisor of choice, including an attorney;
- an equal opportunity to present fact witnesses and other inculpatory and exculpatory evidence that are relevant and not otherwise impermissible;
- an equal opportunity to access the evidence that is relevant to the allegations of sex discrimination and not otherwise impermissible; and
- a reasonable opportunity to respond to the evidence or to the accurate description of the evidence.

Witnesses to the complaint (other than the Complainant or Respondent) *will* have the right to:

- have a representative (not an attorney), or a shop steward if a member of a union, present as an observer during the complaint process;
- be granted confidentiality, to the extent possible, throughout the process (as described above); and
- review and sign their own statements and receive copies.

Witnesses to the complaint (other than the Complainant or Respondent) *will not* have the right to:

- have an attorney present;
- use any mechanical device to record the proceedings (in case of disability, the representative may be delegated to take notes);
- ask questions of the Complainant or Respondent;
- review the complete complaint file and all associated documents; or
- receive a copy of the complete complaint file.

Parties who choose to participate are expected to respond in a timely manner to any communication or follow-up from the Investigator(s). The College reserves the right to proceed with the investigation without a party's participation due to a lack of response.

If the complaint involves a faculty member as a Respondent, members of the AP may participate in the interviews, but the Investigator will take the lead in questioning. When a complaint is filed against a staff member, the Investigator or designee will conduct the investigation independently, or in conjunction with another trained professional. The AP will not participate in these types of investigations.

When possible, the investigation will be completed within 20 business days from the date the Formal Complaint is filed unless more time is required by the Investigator or designee. If the investigation will exceed this time limit, the TIXC will provide written notification to the Complainant and the Respondent.

Upon completion of the investigation, the Investigator will develop a file consisting of all relevant documents and evidence gathered during the investigation, along with statements from witnesses and then prepare an Initial Investigation Report. The Investigator will confer with TIXC after providing TIXC with

the report and file. TIXC will then share the report and the evidence file with the Complainant and Respondent, who will have 10 business days to review and submit feedback, responses, and additional questions for the Investigator to consider posing to the relevant Party or witness. The Investigator will incorporate any responses, questions, or follow-up interviews.

Prior to this stage, an Adjudicator, who may be the CHRO or an external provider, will be assigned to adjudicate the complaint. Along with the Parties, the Adjudicator will also receive the Initial Investigation Report and evidence file at this stage to review and provide any relevant questions or follow-up for the Investigator to ask.

The Investigator will share all party-proposed questions with the TIXC and the Adjudicator, who will finalize the list with the Investigator to ensure all questions are both relevant and permissible.

The Investigator will then hold individual meetings with the parties and relevant witnesses to ask the questions posed by the Adjudicator, as well as the questions proposed by the parties that have been deemed relevant and not duplicative, including questions intended to assess credibility. These meetings will be recorded and transcribed.

For any question deemed not relevant or duplicative, the Investigator will provide a rationale for not asking the question, either during the recorded meeting, or in writing (typically as an Appendix to the report).

Typically, within three business days of the last of these meetings, the recordings or transcripts of them will be provided to the Parties for their review. The Parties will then have five business days to review these recordings or transcripts and propose follow-up questions to be asked by the Investigator.

The Investigator will review the proposed questions with the Adjudicator to determine relevance and permissibility as well as provide them to the TIXC. If deemed necessary, the Investigator will then meet individually with the parties or witnesses for whom there are relevant, and not duplicative, follow-up questions. These follow-up meetings will also be recorded, and the parties will receive the recordings or transcripts of these meetings. This final round of questioning is the last such round permitted unless extended by the Adjudicator.

The Investigator will then incorporate any new, relevant evidence and information obtained through the Parties' review of the Initial Investigation Report, the questioning, and follow-up meetings into a Final Investigation Report.

The Investigator will also respond in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report and incorporate relevant elements of the Parties' written responses, additional relevant evidence, and any necessary revisions into the Final Investigation Report. The Investigator may seek assistance or guidance during this stage from the Title IX Coordinator at any time.

The Final Investigation Report and evidence file will then be shared with the Parties and Adjudicator.

The Adjudicator will review the final report, all appendices, and the evidence file. If the record is incomplete, the Adjudicator may direct a re-opening of the investigation, or may direct or conduct any

additional inquiry necessary, including informally meeting with the parties or any witnesses, if needed. Upon reviewing the relevant evidence, the adjudicator may also choose to pose additional questions:

- To the extent credibility is in dispute and relevant to one or more of the allegations, the Adjudicator may meet individually with the Parties and witnesses to question them in order to assess their credibility. These meetings will be recorded and shared with the Parties.
- At their discretion, the Adjudicator may also meet with any party or witness to ask additional relevant questions that will aid the Adjudicator in making their findings. These meetings will be recorded and shared with the Parties.

The Adjudicator will then apply the preponderance of the evidence standard to make a determination on each of the allegations and, if applicable, any attendant sanctions:

- **Timeline:** The Adjudicator's determination process typically takes approximately 10 business days, but this timeframe can vary based on a number of factors and variables, The Parties will be notified of any delays.
- **Impact Statements:** Prior to a determination, the TIXC will also provide the parties an opportunity to submit a written impact and/or mitigation statement. TIXC will review these statements upon receipt to determine whether there are any immediate needs, issues, or concerns, but will otherwise hold them until after the Adjudicator has made determinations on the allegations.

If there are any findings of a Policy violation, the Adjudicator will request the Impact Statements from the TIXC and review them prior to determining sanctions. They will also be exchanged between the Parties at that time.

- If it is later determined that a party or witness intentionally provided false or misleading information, that action could be grounds for re-opening a Resolution Process at any time, and/or referring that information to another process for resolution.

Sanctions

Factors considered by the Adjudicator when determining sanctions and responsive actions may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the Parties
- Any other information deemed relevant by the Adjudicator(s)

The sanctions will be implemented as soon as it is feasible once a determination is final, either upon the outcome of any appeal or the expiration of the window to appeal, without an appeal being requested.

Sanctions may include discussion, recommendation for counseling or mentoring, monitoring of the situation, support for self-help as well as more serious disciplinary actions. These may include (but are not limited to) a letter in the personnel file for a period of time, permanent letter in the personnel file, withholding of salary increases or stipends, removal from the classroom, suspension (with or without pay) or separation from the College.

Notice of Outcome

Within 10 business days of the conclusion of the Final Investigation Report and evidence file being shared with the Adjudicator and any follow-up interviews or question by either the Investigator or Adjudicator, the TIXC will provide the parties with a written outcome notification completed by the Adjudicator. The outcome notification will specify the finding for each alleged Policy violation, any applicable sanctions that the College is permitted to share pursuant to state or federal law, and a detailed rationale, written by the Adjudicator, supporting the findings to the extent the College is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to take to request an appeal, and when the determination is considered final if neither party appeals.

The TIXC will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official Recipient records, or emailed to the parties' College-issued or designated email account. Once mailed, emailed, and/or received in person, the outcome notification is presumptively delivered.

Parties may reach out to the TIXC during this period or any time throughout the process to ask questions regarding their options, rights, and resources as well as any relevant policies or procedures.

Special Procedures and Rights

Legally Recognized Privilege

The Investigator(s) and the Adjudicator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

Student Complainant Rights

For any student Complainant, there may be additional rights and considerations, such as the Alcohol/Drug Amnesty Policy, afforded them through the NY state law, the Student Handbook, and other relevant policies. Any such right and considerations will be communicated to the student Complainant at the onset of the process by the Title IX Coordinator.

Appeal Process

Both parties can appeal, in writing, the determination as well as an earlier dismissal of a Formal Complaint or any allegations therein, within 5 business days of the relevant determination, on the following bases:

- (A) Procedural irregularity that affected the outcome of the matter; and/or
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- (C) The Title IX Coordinator, investigator(s), or adjudicator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
- (D) Sanctions are disproportionate to the nature or severity of the violation or violations, taking into account the totality of the circumstances.

To File an Appeal:

- Submit a written appeal within five (5) business days of the written outcome being made available to the Title IX Coordinator or designee.
- Written appeals will be submitted to the other party for their response, which must be submitted within three (3) business days.

To Respond to an Appeal:

- Parties will be notified of the other party's appeal once it has been received by the Title IX Coordinator or designee.
- All parties will have access to all the written appeals and responses submitted by all parties after the submission deadlines have ended.

If an appeal is filed, the Title IX Coordinator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. An Appeal Panel will be convened, consisting of Dean of Faculty and another panelist. The Appeal Panelists will not include anyone from a convened Advisory Panel nor the investigator or Title IX Coordinator.

If a party submits an appeal, the other party will have an opportunity to submit a response as provided for above. That response will be shared with the party who appealed but will not be subject to an additional response. After review, the Appeals Panel will issue a written decision describing the result of the appeal and the rationale for the result, providing the written decision simultaneously to both parties.

The Appeal Panel will review the appeal and render **a decision within 10 business days after receiving the written appeal and any responses from the Title IX Coordinator, or as soon as practicable thereafter.** The decision of the Appeal Panel is final, subject to any further proceedings ordered by the Appeal Panel.

Nothing in this Policy is intended to limit the rights that Faculty have under the Faculty Handbook.

In the event that an appeal is filed to contest the dismissal of a Formal Complaint or any allegations therein, the Appeal Panel or appropriate official(s) may uphold the dismissal or direct the reinstatement of the Formal Complaint or one or more allegations therein.

XIV. Liability Information for Employees

Skidmore College provides liability protection for employees for their work on behalf of the College, including their work as a panelist, investigator, advisor, advocate, or other relevant role throughout the Title IX process. The liability insurance provided is the Educators' Legal Liability and General Liability policies. The Educators' Legal Liability protects against claims for "wrongful acts", such as harassment or discrimination. General Liability insurance protects against claims for bodily injury or property damage. Both policies are placed with United Educators.

For more information, please contact the Office of Risk Management at 518-580-5812.

XV. Services and Resources

On-Campus Resources

- **Title IX Coordinator**
Joel Aure: 518-580-5708
- **Campus Safety:** 518-580-5566
- **Associate Dean of the Faculty for Diversity and Faculty Affairs**
Janet Casey: 518 580-5705
- **Associate Director for Employment, Compliance and Workforce Diversity**
Jude Klein: 518-580-5819

**indicates availability 24 hours a day/7 days a week*

Off-Campus Confidential Reporting Sources

- **Employee Assistance Program**
518-793-9768
- **Wellspring Advocate (Confidential, Not affiliated with Skidmore College)**
A victim advocate from Wellspring (formerly Domestic Violence and Rape Crisis Services of Saratoga County) is on campus and accessible to individuals during set times
 - See <http://www.skidmore.edu/sgbm/contacts.php> for exact times and contact information.

- ***Saratoga Hospital Emergency Room:** 518-583-8313
- **Saratoga Planned Parenthood/Schenectady Planned Parenthood:** 518-584-0041 or 518-374-5353
- ***NYS Sexual Violence Hotline:**
 - English: 1-800-942-6906
 - Spanish: 1-800-942-6908
 - English TTY: 1-800-818-0656
 - Spanish TTY: 1-800-780-7660

Off-Campus Reporting Sources

- ***Saratoga Springs Police Department:** 518-584-1800
- ***New York State Police Hotline:** 1-844-845-7269 (dedicated 24-hour hotline for sexual assaults occurring on a New York State college campus)
- **Office of Civil Rights**
 New York Office
 Office for Civil Rights
 U.S. Department of Education
 32 Old Slip, 26th Floor
 New York, NY 10005-2500
 Telephone: 646-428-3900
 FAX: 646-428-3843
 TDD: 800-877-8339
 Email: OCR.NewYork@ed.gov

****indicates availability 24 hours a day/7 days a week***

Policy revised in August 2024 (pending approval).