

# Sexual and Gender-Based Misconduct Resources and Information

If there is immediate risk to health or safety, please contact Campus Safety at [518-580-5566](tel:518-580-5566) or local police at 911

**STUDENTS**

**FACULTY**

**STAFF**

## *Enough is Enough* Policy

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# I. NOTICE OF NON-DISCRIMINATION

Skidmore College does not discriminate on the basis of sex, including sexual orientation and gender identity, 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 following policy addresses sexual and gender-based misconduct, including but not limited to Sexual Harassment, Sexual Assault, Intimate-Partner Violence, and Stalking, outside of the jurisdiction of Title IX.**

**Sexual Harassment as defined in the 2020 Final Title IX regulations (ie. Title IX Sexual Harassment), 34 CFR Part 106, as released on May 6, 2020 by the United States Department of Education (“Title IX Sexual Harassment”) is addressed in the Title IX Policy (Students).**

**While several College policies govern sexual and gender-based misconduct (SGBM), it is not the responsibility of a Complainant to determine which policy will apply to address an incident of sexual or gender-based misconduct. When any report of any sexual or gender-based misconduct is communicated to the Title IX Coordinator or designee, the report will be reviewed by the Title IX Coordinator. If the report aligns with the definition and jurisdiction of Title IX as defined by the 2020 regulations, the procedures of the Title IX Policy will be applied. If it does not, then the report will be referred to the appropriate personnel for review under the applicable student policy, such as this policy (ie. *Enough is Enough* Policy) or Student Code of Conduct, or to the applicable employee policy. To illustrate this, a diagram has been provided in Section III.**

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Please note that in instances when there are alleged Student Conduct or *Enough is Enough* policy violations that are directly related to or arise from an alleged Title IX policy violation, all such alleged violations will be consolidated into the Title IX process and utilize Title IX procedures as determined by the Title IX Coordinator.

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 (*last updated on August 9, 2021*):

### **Reports Alleging Sexual or Gender-Based Misconduct Involving Any 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](mailto:jaure@skidmore.edu)

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

Title IX Deputy Coordinator in Student Affairs - TBA

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

Janet Casey  
**SKIDMORE**  
Associate Dean of the Faculty for Diversity and Faculty Affairs  
Professor of English  
Palamountain 416  
(518) 580-5705  
[jcasey@skidmore.edu](mailto:jcasey@skidmore.edu)

## **Reports Alleging Sexual & Gender-Based Misconduct Involving a Skidmore Faculty or Staff Member:**

Jude Klein  
Assistant Director for Employment, Compliance and Workforce Diversity  
Barrett Center  
518-580-5819  
[jsklein@skidmore.edu](mailto:jsklein@skidmore.edu)

## **Office of the Dean of Students and Vice President for Student Affairs**

Additionally, for any student who is uncertain who to contact about any matter related or unrelated to this policy or if they are unsure if they wish to contact any of the individuals above, they can always contact the Office of the Dean of Students and Vice President for Student Affairs to speak with:

Lorri Riggs  
Assistant Dean of Student Affairs for Student Success  
Case Center 313  
518-580-5788

If student wishes to speak to a confidential or anonymous resource, those are listed in Section VIII of this policy.

## **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](mailto:OCR.NewYork@ed.gov)

## II. SKIDMORE COLLEGE STATEMENT OF SEXUAL VALUES

Skidmore College is committed to providing a learning, working, and living environment that reflects and promotes personal integrity, civility, and mutual respect. Members of the Skidmore community have the right to be free from all forms of abuse, assault, harassment, and coercive conduct, including sexual and gender-based misconduct, as defined in this policy. Skidmore College considers sexual and gender-based misconduct to be one of the most serious violations of the values and standards of the College. Unwelcome sexual contact of any form is a violation of students' personal integrity and their right to a safe environment and therefore violates Skidmore's values. Skidmore College will not tolerate sexual or gender-based misconduct in any form. Sexual and gender-based misconduct is also prohibited by federal regulations. In accordance with Title IX, Skidmore College does not discriminate on the basis of sex in any of its programs and activities.

Skidmore recognizes that part of students' development at the College may include learning and understanding themselves as sexual individuals. Skidmore also respects and upholds the principle that not all students choose to explore their sexual nature or sexuality.

Skidmore therefore aims to provide an environment that is comfortable and respectful for all students and their choices regarding sex and their sexuality. Understanding and applying this policy to the behavior and behavioral expectations of all members of the community helps to ensure Skidmore's goal of being a safe, open community regarding sexuality. Failure to comply with this policy may result in a complaint of sexual and gender-based misconduct.

Skidmore College strives to promote an environment where mutual respect, communication, cultural competency, understanding, and awareness are the basis for any sexual behavior or activity. Mutual respect and communication are keys to maintaining each student's personal integrity when engaging in sexual behavior.

### **Community Expectations**

*Mutual Respect:* Treat others as they would like to be treated. In sexual relations this includes respecting your partner (their desires, boundaries, and body) and having open communication with the person(s) with whom you are engaging in sexual contact so that all those involved are comfortable with the activity that may occur and understand the boundaries and needs of those involved.

**SKIDMORE** *Communication:* Open communication and listening includes understanding one's own needs and desires, discussing these needs and desires with your partner(s), and, in general, creating open communication within the relationship, whether it is for a brief encounter or a longer commitment. Verbal communication in sexual situations is almost always the clearest means to communicate. The College encourages students who choose to engage in sexual behavior to talk with each other clearly about what they want, or do not want, from sex prior to engaging in sexual activity. An environment based on open communication and listening promotes *affirmative consent*, which Skidmore College considers integral to any responsible sexual relationship.

*Cultural Awareness and Respect:* The Skidmore College community is a multicultural educational environment where the customs, values, and identities of each individual are respected. Although the College's standards regarding behavioral expectations and guidelines apply to all individuals, each person should recognize and respect the variations in the cultural expectations of others and demonstrate civility while engaging in open communication regarding sexual desires and boundaries.

### 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 to sexual and gender-based misconduct (SGBM), **as specifically defined in this policy and not within the jurisdiction of the Title IX Policy**, occurring on Skidmore College property or at College-sanctioned events or programs that take place off campus, including study abroad and internship programs. This policy also applies to off-campus conduct that is likely to have a substantial adverse effect on any member of the Skidmore College community or Skidmore College.

When used in this policy, "Complainant" refers to the individual who is identified as the target of the alleged SGBM. "Respondent" refers to the individual alleged to have engaged in the alleged SGBM. A "Third Party" refers to any other participant in the process, including a witness or an individual who makes a report who is not also a Complainant.

This policy identifies the rights, options and resources afforded Complainants, Respondents and Third Parties when involved in a SGBM complaint under this policy.

Sexual and gender-based misconduct can be committed by any member of the Skidmore College community, including students, staff, and faculty. The College has jurisdiction to take disciplinary action against a Respondent who is a current student or employee. This policy (ie. the *Enough is Enough* (EiE) policy) applies to address and resolve reports against a current **Student**.

For information about complaints against other Skidmore community members, please visit [www.skidmore.edu/sgbm](http://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 SGBM. Nevertheless, persons are encouraged to report alleged sexual harassment as soon as possible in order to maximize the College's ability to respond promptly and effectively.

Complaints against a party not under the jurisdiction of this Policy will be resolved under appropriate College policies, depending on the identity of the party and the party's relationship with the College. Complaints against a party not affiliated with the College may not be able to be resolved through a 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 (ie. police, current workplace, current institution they attend, etc.).

Skidmore College strongly encourages reports of any sexual and/or gender-based misconduct 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.

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. The policies and procedures are updated regularly to comply with federal and state law.

The following chart illustrates the policy or policies that may be applied to a complaint specific to whether the Respondent is a student, faculty, or staff member. For questions about this, please contact the Title IX Coordinator at [jaure@skidmore.edu](mailto:jaure@skidmore.edu):

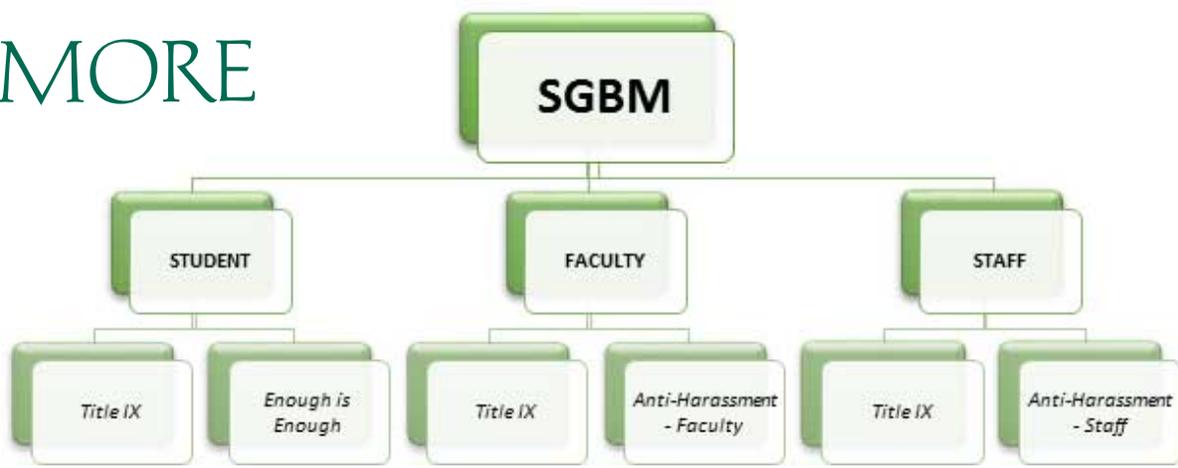


Figure 1- Policy Jurisdiction Flowchart

The Title IX Coordinator has discretionary authority to interpret and construe the scope and applicability of this policy and the other policies referenced above, and any uncertain or disputed aspects of this policy or those other policies.

## IV. STATEMENT OF PRIVACY AND CONFIDENTIALITY

All College employees (faculty, staff, administrator), with the exception of the Counseling Center and Health Services – who are confidential sources and Victim Advocates who can protect anonymity – are expected to immediately report actual or suspected discrimination, harassment, or sexual and gender- based misconduct to appropriate officials.

Skidmore College is committed to protecting the privacy of all individuals involved in a report under this policy. Skidmore also is committed to providing assistance to help Complainants make informed choices. With any report under this policy, Skidmore will make reasonable efforts to protect the privacy interests of the individuals involved in a manner consistent with the need for a careful assessment of the allegation and reasonable steps available to eliminate the reported conduct, prevent its recurrence, and address its effects.

Privacy and confidentiality have distinct meanings under this policy.

**Privacy:** Privacy generally means that information related to a report of misconduct will be shared with a limited circle of individuals who “need to know” in order to assist in the active review, investigation, resolution of the report, and related issues. While not bound by confidentiality, these individuals will be discreet and respect the privacy of all individuals involved in the process. Even Skidmore offices and employees who cannot guarantee confidentiality will maintain Complainants’ privacy

to the greatest extent possible. The information provided to a non-confidential resource will be relayed only as necessary for the Title IX Coordinator, Title IX Deputy Coordinator, or designee to investigate and/or seek a resolution.

**Confidentiality:** Confidentiality means that information shared by an individual with designated campus or community professionals cannot be revealed to any other individual without express permission of the individual, or as otherwise permitted by law. Those campus and community professionals include medical providers, mental health providers, and ordained clergy, all of whom normally have privileged confidentiality that is recognized by the law. These individuals are prohibited from breaking confidentiality unless (i) given permission to do so by the person who disclosed the information; (ii) there is an imminent threat of harm to self or others; (iii) the conduct involves suspected abuse of a minor under the age of 18; or (iv) as otherwise required or permitted by law or court order. While not confidential, Skidmore has also designated Victim Advocates who can protect the anonymity of Complainants.

**Non-Confidential or Not Private:** Any other College employee who is not designated as a confidential resource under this policy is required to share a report of sexual and gender-based misconduct with the Title IX Coordinator or designee. The Title IX Coordinator or designee will conduct an initial assessment of the conduct, the Complainant's desired course of action, and the necessity for any interim remedies or accommodations to protect the safety of the Complainant or the community. The goal is to eliminate any hostile environment.

All College proceedings are conducted in compliance with the requirements of the **Family Educational Rights and Privacy Act (FERPA)**, the **Clery Act, Title IX, Violence Against Women Act (VAWA)**, other state and local laws, and College policy. No information shall be released from such proceedings except as required or permitted by law and College policy.

## V. TERMINOLOGY

**Complainant:** An individual who is alleged to be the victim of conduct that could constitute a violation of this policy (*Enough is Enough* policy).

In some cases (e.g., cases in which a person involved in an incident of alleged sexual and/or gender-based misconduct does not wish to participate in the process but the College decides that the alleged misconduct needs to be investigated), Skidmore College may serve as the Complainant. In these cases, the College may extend the full rights of the Complainant as defined in this policy to affected parties as deemed appropriate by the Title IX Coordinator or Title IX Deputy Coordinator.

**Respondent:** An individual who has been reported to be the perpetrator of conduct that could constitute a violation of the *Enough is Enough* policy.

**Victim Advocate:** For internal victim advocates, as part of their positions at Skidmore College, these individuals work to provide initial support and to consult with victims of sexual and/or gender-based misconduct. Students who have experienced sexual and/or gender-based misconduct can seek help from Victim Advocates knowing that those staff members will not report identifying details about the incident. This status is not legally protected in the same way that disclosures to mental health, health care providers, or college chaplains are.

In the event that an investigation is initiated, internal advocates will refer Complainants to an external, professional victim advocate from Wellspring or Planned Parenthood, who will then serve as a SGBM Support Specialist as defined below for the duration of the process.

**Sexual and Gender-Based Misconduct (SGBM) Support Specialist:** The SGBM Support Specialist is a Skidmore Community staff or faculty member appointed by the Dean of Students and Vice President for Student Affairs who is trained to support the Complainant or Respondent. A current list of trained SGBM Support Specialists is maintained online at: <https://www.skidmore.edu/sgbm/contacts.php>

**Advisor of Choice:** Both the Complainant and Respondent may elect to be accompanied by an advisor of their choosing to any meetings (including the Commenting Session), conferences, and interviews pertaining to the investigation or adjudication of an EiE complaint. In these instances, the advisor's role is limited to observing, consulting with, and providing support to the Complainant or Respondent.

***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.

The Complainant and Respondent have the right to consult with and engage an attorney as their Advisor of Choice at their own expense. As with any Advisor of Choice, an attorney may be present at any investigative or adjudicative meetings, including the Adjudication Panel, when applicable. However, an attorney, as with any Advisor of Choice, will not be permitted to speak or communicate on behalf of the student they are representing as described in the paragraph above.

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. In that event, the party may choose to obtain a new advisor for the remainder of the process.

**Formal Complaint:** A document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the College investigate the allegation of sexual harassment.

A formal complaint may be filed with the Title IX Coordinator 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 some other mechanism that 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.

A formal complaint will contain information about the approximate date/time/location of the reported incidents, the identities of the parties, the policy violations or “charges”, and concise but detailed description of the reported acts that constitute a policy violation if substantiated.

**Witness:** A person or bystander who observes a crime, impending crime, conflict, potentially violent behavior, or conduct that is in violation of this policy. Witnesses must have observed the conduct in question or have information directly relevant to the incident (i.e. first told, etc.) and cannot be called solely to speak about an individual’s character.

**Investigator:** The individual(s) charged with investigating a complaint of sexual or gender-based misconduct. The Investigator(s) will typically be members of Campus Safety, the Title IX Deputy Coordinator, the Assistant Director of Student Conduct, and/or external investigators designated by the College. Investigators attend, at a minimum, annual Title IX investigator training.

**Administrator:** The Director of Student Conduct or designee who will be point of contact in the event that there are Student Code of Conduct Violations relevant to the the Formal Complaint. The Administrator is not a decision maker in the adjudication process.

**Enough is Enough (EiE) Adjudication Panel:** The decision about whether there has been a violation of the *Enough is Enough* Policy will be made by a panel of three faculty and/or staff members. The Panel will be drawn from a pool of staff and faculty who receive specific training regarding the dynamics of sexual and gender-based misconduct, the factors relevant to a determination of credibility, the appropriate manner in which to receive and evaluate sensitive information, the manner of

deliberation, and the application of the preponderance of the evidence standard, as well as the College's policies and procedures. The Complainant and Respondent will have the opportunity to state whether there are those they feel should not participate in the panel review due to bias or any other reason that would prevent them from making a fair assessment of the information. The final decision on any such requests for recusal will be made by the Conduct Administrator.

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.

**Character Evidence:** evidence to describe any testimony or document submitted for the purpose of proving that a person acted in a particular way on a particular occasion based on the character or disposition of that person.

## VI. STUDENT BILL OF RIGHTS

Under the *Enough is Enough* Policy, all students have the right to:

1. Make a report to local law enforcement and/or state police;
2. Have disclosures of domestic violence, dating violence, stalking, and sexual assault treated seriously;

3. 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;
4. Participate in a process that is fair, impartial, and provides adequate notice and a meaningful opportunity to be heard;
5. Be treated with dignity and to receive from the institution courteous, fair, and respectful health care and counseling services, where available;
6. 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;
7. Describe the incident to as few institution representatives as practicable and not be required to unnecessarily repeat a description of the incident;
8. Be protected from retaliation by the institution, any student, the accused and/or the Responding Student, and/or their friends, family and acquaintances within the jurisdiction of the institution;
9. Access to at least one level of appeal of a determination;
10. Be accompanied by an advisor of choice who may assist and advise a Complainant, accused, or Respondent throughout the conduct process including during all meetings and panels related to such process; and
11. Exercise civil rights and practice of religion without interference by the investigative, criminal justice, or conduct process of the institution.

Additionally, throughout the process, the Respondent is not presumed to be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.

## VII. PROHIBITED CONDUCT

Sexual and gender-based misconduct is a broad term encompassing any sexual behavior or gender-based misconduct that was committed without affirmative consent. 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. These behaviors are serious violations and represent a threat to the safety of the Skidmore Community.

Because SGBM often involves multiple violations of affirmative consent, it is the policy of Skidmore College to hold individuals accountable for all acts that violate this policy. This practice can mean that multiple violations of the SGBM policy are

possible within a single incident.

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The Prohibited Conduct defined below are specific to this policy. It is the policy of Skidmore College to hold individuals accountable for all acts that violate this policy:

## 1. Sexual Harassment

Sexual harassment is defined as unwelcome action, language or visual representation of a sexual nature that has the effect of unreasonably interfering with an individual's work or academic performance or that creates a hostile working, educational, or living environment.

A form of sexual harassment (quid pro quo) exists when employment or academic benefits are offered in exchange for submission to unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature. Quid pro quo sexual harassment also exists in those instances when rejection of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature results in adverse educational or employment action, or the threat of such adverse action, or limits or denies an individual's educational or employment access, benefits, or opportunities.

A second form of sexual harassment (hostile work environment) exists when an individual is subjected to unwelcome discriminatory conduct because of their sex or gender that is either severe or pervasive, alters the work or educational conditions of the individual, and creates an abusive environment.

Sexual harassment:

- may be blatant and intentional and involve an overt action, a threat or reprisal, or may be subtle and indirect, with a coercive aspect that is unstated;

- does NOT have to include intent to harm or involve repeated incidents;

- may be committed by anyone, regardless of gender, age, position, or authority. While there is often a power differential between two persons, perhaps due to differences in age, social, educational or employment relationships, harassment can occur in any context;

- may be committed by a stranger, an acquaintance, or someone with whom the individual has an intimate or sexual relationship;

- may be committed by or against an individual or may be a result of the actions of an organization or group;

- may occur by or against an individual of any sex, gender identity, gender expression, or sexual orientation;

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may occur in the classroom, in the workplace, in residential settings, or in any other setting;

may be a one-time event or can be part of a pattern of behavior;

may be committed in the presence of others or when the parties are alone;

may affect the subject of the harassment and/or third parties who witness or observe harassment and are affected by it.

Sexual harassment also includes gender-based harassment, which may include acts of verbal, nonverbal or physical aggression or hostility based on gender, sexuality or sex- or gender-stereotyping, even if those acts do not involve conduct of a sexual nature.

Examples of conduct that may constitute sexual harassment include:

**Physical conduct:**

unwelcome touching, sexual/physical assault, impeding, restraining or blocking movements

unwanted sexual advances

blocking or impeding the use of facilities aligned with an individual's gender identity

**Verbal conduct:**

making or using derogatory comments, epithets, slurs or humor, including those of transphobic or homophobic nature, frequent use of an individual's "deadname" or pronouns by which the individual does NOT identify, not pedagogically appropriate

verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes or invitations, not pedagogically appropriate

objectively offensive comments of a sexual nature, including persistent or pervasive sexually explicit statements, questions, jokes, or anecdotes, which a reasonable peer would find offensive and which are not pedagogically appropriate

**Visual conduct:**

leering, making sexual gestures, displaying of suggestive objects or pictures, cartoon or posters in a public space or forum, not pedagogically appropriate

severe, persistent or pervasive visual displays of suggestive, erotic or degrading sexually oriented images, not pedagogically appropriate

### **Written conduct:**

letters, notes or electronic communications containing comments, words or images described above, not pedagogically appropriate

### **Quid pro quo conduct:**

offering employment benefits in exchange for sexual favors

making submission to sexual advances an actual or implied condition of employment, work status, promotion, grades or letters of recommendation, including subtle pressure for sexual activity, an element of which may be repeated requests for private meetings with no academic or work purpose

making or threatening reprisals after a negative response to sexual advances.

The determination of whether an environment is “hostile” is based on a reasonable person standard, considering all the circumstances. These circumstances could include, but are not limited to:

the frequency or pervasiveness of the speech or conduct;

the nature and severity of the speech or conduct;

whether the conduct was physically threatening;

whether the speech or conduct was humiliating;

the effect of the speech or conduct on the recipient’s mental and/or emotional state;

whether the speech or conduct was directed at more than one person;

whether the speech or conduct arose in the context of other discriminatory conduct;

whether the speech or conduct unreasonably interfered with the recipient’s educational opportunities or performance (including study abroad), college-controlled living environment, work opportunities or performance;

whether a statement is a mere utterance of an epithet which engenders offense in an employee or a student or offends by mere discourtesy or rudeness; and/or

whether the speech or conduct deserves the protections of academic freedom.

## 2. Sexual Assault

Any nonconsensual sexual act prohibited by federal, tribal, or New York State law, including when the victim lacks capacity to affirmatively consent. Sexual assault includes, but is not limited to, sexual penetration and sexual touching, disrobing and/or exposure as defined below:

### **Sexual Penetration**

Any sexual penetration (anal, oral, or vaginal), however slight, with any object or sexual intercourse, *without affirmative consent*. Sexual penetration includes vaginal or anal penetration by a penis, object, tongue, or finger and oral copulation by mouth to genital contact or genital to mouth contact.

### **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.

## 3. Sexual Exploitation

Sexual exploitation occurs when a student takes non-consensual or abusive advantage of another for their own advantage or benefit or from the advantage or benefit of anyone else. Examples of sexual exploitation include, but are not limited to: non-consensual recording (by any means) of sexual activity or nudity without the knowledge and fully informed consent of all parties involved, and voyeurism.

**Voyeurism** is a form of sexual exploitation in which one individual engages in secretive observation of another for personal sexual pleasure or engages in non-consensual video or audio taping of sexual acts. Although the subject of the secretive viewing or taping may be unaware of the observation, this behavior is a form of sexual misconduct and violates the integrity of the unaware student.

## 4. Intimate-Partner Violence

Also referred to as dating violence, domestic violence, and relationship violence, intimate-partner violence includes 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.

Intimate-partner violence can encompass a broad range of behavior, including, but not limited to, physical violence, sexual violence, emotional violence, and economic abuse. Intimate-partner 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. Intimate-partner violence affects individuals of all genders, gender identities, gender expressions, and sexual orientations, and does not discriminate by racial, social, or economic background.

**Emotional Abuse:** Emotional Abuse 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 includes, but is not limited to, felony or misdemeanor crimes of violence committed by the victim's current or former spouse or intimate partner, 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 State of New York, or 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 State of New York.

**Dating Violence:** Dating violence means violence by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. Whether there was such relationship will be determined by the length of the relationship, the type of the relationship, and frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

Dating violence does not include act covered under the definition of domestic violence.

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\*\*](#).

## **5. Stalking**

Stalking is defined as a course of conduct directed at a specific person or persons that would cause a reasonable individual to fear for their own or someone else's safety and/or to suffer substantial emotional distress. Stalking has occurred when any

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person engages in two or more separate acts that involve unwanted attention and/or contact. Examples include, but are not limited to, acts such as: repeated and unwanted phone calls, texts or emails, following or watching from a distance, spying on an individual's contacts, schedule or personally identifying or locating information, and/or damaging or threatening to damage personal property, pets, or any person.

Stalking includes the concept of cyber-stalking, which is a form of stalking utilizing any type of electronic or social media to pursue, harass, threaten or make unwelcome contact with another person.

## **6. Attempted Act**

Attempts to commit sexual or gender-based misconduct are also prohibited under this policy, as is aiding the commission of sexual misconduct as an accomplice.

## **7. Retaliation**

Retaliation is any act or attempted act which would discourage a reasonable person from engaging in any activity protected under this policy, such as opposing or reporting SGBM, seeking services, receiving protective measures and accommodations, supporting a Complainant or a respondent student and/or participating in an investigation or SGBM resolution process, because of their participation in that protected activity. Examples of retaliation include, but are not limited to: threats, intimidation, pressuring, social aggression, damage to property, abuse, violence or maliciously interfering with an individual's academic or professional career or reputation. It can occur in various modes, including in person and through electronic communication.

All individuals and groups who are members of the Skidmore community are prohibited from engaging in retaliation. Any person who retaliates directly or indirectly against a Complainant, Witness, Respondent, or any other person involved in the investigation of a SGBM allegation will be subject to discipline, up to and including termination (if an employee) or expulsion (if a student). Retaliation is a violation of this policy whether or not the underlying SGBM allegation is substantiated.

However, please note that there may be instances in which complaints of Retaliation may be referred to the Office of Student Conduct, which would then utilize the student conduct adjudication process. Whether any such referral should occur will be on a case-by-case basis.

Conduct not typically considered retaliation includes, but may not be limited to, making a good faith allegation of misconduct, filing a complaint under this Policy, and/or seeking or enforcing interim measures or accommodations.

## **Note on Title IX Policy violation and other Code of Social Conduct Violations**

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In the event an incident is reported that aligns with Prohibited Conducts as described above but also with conduct and geography within the jurisdiction of Title IX, the Title IX policy would apply.

Additionally, after reviewing the incident, the Title IX Coordinator or designee and a Conduct Administrator will determine whether other Code of Social Conduct charges in addition to the EiE charges of Prohibited Conduct should be applied. This will be reflected in the Formal Complaint and will be provided to both the Complainant and Respondent.

Furthermore, the Conduct Administrator in accordance with the policies of the Office of Residential Life may determine that Code of Social Conduct charges should be applied to other parties as well.

If any Code of Conduct 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 the Adjudication Phase. Subsequent or unrelated allegations involving the Complainant and Respondent will be addressed separately under the appropriate policy.

## A: Expectations with Respect to Consensual Relationships Involving Non-Student Employees

Sexual relationships between faculty and students and staff and students are problematic due to the inherent power differential. Therefore, sexual or romantic relationships between faculty and students and between staff and students are absolutely prohibited.

## 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.

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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.

**SKIDMORE** 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.

## C: Use of Alcohol or Other Drugs

In general, the College considers sexual contact while under the influence of alcohol or other drugs to be risky behavior. Alcohol and drugs impair a person's decision-making capacity, awareness of consequences, and ability to make informed judgments. It is especially important, therefore, that anyone engaging in sexual activity be aware of the other person's level of intoxication. If there is any doubt as to the level or extent of the other individual's intoxication or impairment, the prudent course of action is to forgo or cease any sexual contact or activity.

The perspective of a reasonable person will be the basis for determining whether a Respondent should have been aware of the extent and amount of the ingestion of alcohol or drugs by the Complainant or of the extent to which the use of alcohol or drugs impacted a Complainant's ability to give consent. For example, an individual who is in a "blackout" may appear to act normally and be giving consent, but may not actually have conscious awareness, the ability to consent, or later recall the

events in question. In determining whether consent has been given, the College will consider both: the extent to which a Complainant affirmatively gives words or actions indicating a willingness to engage in sexual activity; and, whether the Respondent was aware – or reasonably should have known – of the Complainant’s level of alcohol consumption and/or level of impairment.

Being intoxicated or impaired by drugs or alcohol is never an excuse for sexual harassment, sexual violence, stalking, or intimate partner violence, and does not diminish one’s responsibility to obtain affirmative consent.

## D: Capacity to Give Consent

Where alcohol or other drugs are involved, incapacitation is a state beyond drunkenness or intoxication, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. 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. The impact of alcohol and other drugs varies from person to person; however, warning signs that a person may be approaching incapacitation may include slurred speech, vomiting, unsteady gait, odor of alcohol, combativeness, or emotional volatility.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual’s:

- Decision-making ability;
- Awareness of consequences;
- Ability to make informed judgments;
- Capacity to appreciate the nature and the quality of the act; and/or
- Level of consciousness.

In other words, a person may be considered unable to give affirmative consent due to incapacitation if the person cannot understand who, what, where, when, why, or how, with respect to the sexual interaction.

Evaluating incapacitation also requires an assessment of whether a Respondent should have been aware of the Complainant’s incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent’s position.

An individual who engages in sexual activity with someone the individual knows or reasonably should know is incapable of making a rational, reasonable decision about whether to engage in sexual activity is in violation of this policy.

## VIII. OPTIONS FOR SUPPORT AND REPORTING

Skidmore College is committed to creating an environment in which individuals who have experienced an incident of sexual and gender-based misconduct are encouraged to come forward and make a report. 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 following factors among others: the seriousness of the alleged misconduct, any potential threats to community safety, the respective ages and positions of the Complainant and the Respondent, whether there have been other complaints against the Respondent, and the Respondent's right to receive information under applicable law.

Reporting the incident may help the Complainant to gain some control over the situation and make informed decisions using information provided by the reporting source. Prompt reporting will not only benefit and support Complainants, but will also help the College in maintaining a safe community.

All students shall have the right to emergency access to the Title IX Coordinator, Title IX Deputy Coordinator, 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.

If the accused is an employee of the College, the Complainant shall have the right to report the incident to the College's Human Resources Department or may request that a confidential or private employee assist in reporting to the appropriate human resources authority.

Complainants have the right to receive assistance from appropriate institution representatives in initiating legal proceedings in family court or civil court.

# 1. To Speak with Someone Confidentially:

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Confidential resources are those individuals who, by law and/or college policy, are obligated to maintain confidentiality of the disclosure 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:

Counseling Center

Health Services

Wellspring - A victim advocate from Wellspring (formerly Domestic Violence and Rape Crisis Services of Saratoga County) can be quickly accessible to individuals ([contact information and to schedule a meeting](#)).

Planned Parenthood Victim Advocate ([contact information and to schedule a meeting](#)).

## 2. Anonymous Reporting Sources

Anonymous reporting sources have been deemed confidential by the College but are still required to report statistical information to the Title IX Coordinator.

### **Victim Advocates**

While maintaining a victim's anonymity, Victim Advocates must report the nature, date, time, and general location of an incident to the Title IX Coordinator or designee. This limited report – which includes no information that would directly or indirectly identify the victim – helps keep the Title IX Coordinator informed of the general extent and nature of sexual violence on and off campus so the coordinator can track patterns, evaluate the scope of the problem, and formulate appropriate campus-wide responses. Before reporting any information to the Title IX Coordinator, these individuals will consult with the victim to ensure that no personally identifying details are shared with the Title IX Coordinator.

### **Peer Health Educators**

Student Peer Health Educators are mandated to report for statistical purposes all incidents of sexual and gender-based misconduct that are disclosed to them. This report is made to Campus Safety and will not include any information that could identify the Complainant. However, when a Student Peer Health Educator reasonably believes that an individual's safety is at risk, they will discuss the report with members of the Counseling Center and/or Health Promotion staff to determine what information from the report must be shared with administrators

at the College responsible for ensuring campus safety. In these situations, Student Peer Health Educators will make every effort to let the student know in advance and offer to go with the student to help facilitate an appropriate campus response.

The Student Wellness Center, located on the 3rd floor of Case Center, is a student run, administratively affiliated safe space for reporting incidents of sexual and gender-based misconduct and obtaining support after incidents of sexual and gender-based misconduct. Trained Peer Health Educators can help students get help from on and off campus resources. Hours, which vary by semester, are posted on the door to the Wellness Center.

### 3. Private Reporting Sources:

Complainants may speak with a Private Reporting Source if they are considering filing a formal report or complaint. Private Reporting Sources are individuals who are trained to provide students with information and assist with obtaining information and support from available resources at the College and in the Saratoga Springs community. Private Reporting Sources will also provide students with information about the process associated with making a report or a Formal Complaint with the College or with a law enforcement agency. Although these reporting sources will endeavor to maintain the privacy of the matter and the individuals involved, they are required to disclose necessary information that is disclosed to them to the Title IX Coordinator. In some circumstances, Private Reporting Sources may also be responsible for initiating an investigation of the alleged sexual or gender-based misconduct. Private Reporting Sources include:

- Title IX Coordinator

- Title IX Deputy Coordinator

- Dean of Students/Vice President for Student Affairs

- Assistant Director of Student Conduct

- Campus Safety

- Trained Sexual and Gender-Based Misconduct Advisors

### 4. Non-Confidential/Not Private Resources:

Other college resources are individuals who can assist with obtaining campus resources, information and support about available resources at the College. Faculty and Staff members falling under this category are often referred to as Responsible Employees throughout federal mandates. Although these college resources will

endeavor to maintain the privacy of the matter and the individuals involved, they are required to share what is disclosed to them to the Title IX Coordinator. Non-Confidential/Not Private Campus Resources include:

Student Affairs administrative staff (except Counseling Center and Health Services staff who are confidential sources, and Victim Advocates, who can protect anonymity)

Residential Life staff members (Area Coordinator, Assistant Director, Director, etc.)

Resident Assistants

Peer Mentors

Deans

Faculty

Coaches and Athletic Trainers

Student organization faculty/staff advisors

**In addition, a Title IX complaint can be filed with the United States Department of Education, Office of Civil Rights (contact information available in the “Notice of Non-Discrimination” at the beginning of this policy).**

## Accommodations and Interim Measures

Regardless of whether the Complainant wishes to pursue a Formal Report or Complaint, the College will undertake an appropriate inquiry 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. This may include taking appropriate interim measures before the final outcome of the investigation and/or adjudication, including interim suspension of the Respondent. Interim measures are available at the request of either the Complainant or Respondent. Additionally, the College may choose to impose interim measures at its discretion to ensure the safety of all parties, the broader College community, and/or the integrity of the process.

All individuals are encouraged to report concerns about failure of another individual to abide by any restrictions imposed by an interim measure. The College will take immediate and responsive action to enforce a previously implemented measure. Additional interim measures include, but are not limited to:

Access to counseling and health services;

Imposition of a no contact order;

Change of on-campus student housing to different on-campus location;

Rescheduling an academic exam, paper, assignment, etc.;

Taking an incomplete in a class;

Transferring of class sections;

Alternative course completion options;

Employment modification (change of schedule or assignment, etc.);

College-imposed leave or separation;

To seek an Order of Protection from a court of competent jurisdiction; the College will enforce the Order of Protection once notified of its existence and terms (more information on how to obtain an Order of Protection is included in a later section); and/or

Any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

Additionally, if a Complainant does not wish to file a Formal Complaint with the College, they can request a negotiated accommodation as well as a standard No Contact Order (see below).

## No Contact Orders

College administrators may unilaterally or by request issue a No Contact Order (NCO) when there exists a reasonable concern that physical, psychological, and/or emotional harm may result from such contact. The College will consider all facts and circumstances that may be relevant to whether a standard or proximity NCO should be issued, including but not limited to, the following factors:

When there are allegations, threats, or evidence of physical violence by one student against another;

When there are allegations, threats, or evidence of emotional abuse or harassment by one student against another;

When there is a substantial risk of emotional harm from continued contact between students;

When continued contact between students may have a material impact on campus disciplinary proceedings;

When requested or agreed to in good faith by both students involved;

When there are allegations of serious college policy violations; and

Emergency situations, involving an immediate escalation or imminent threat to personal safety, in which the Director of Campus Safety or designee unilaterally (ie. without a request from a student) issues a temporary No Contact Order. In these cases, the Title IX Coordinator or Student Conduct official will review all relevant information to confirm, modify, or rescind, or rescind the temporary NCO within 72 hours.

When at least one of these factors or a closely related factor is present, the College may issue a No Contact Order.

Separate of the criteria above, students may go to Campus Safety at any time to request a temporary No Contact Order. If implemented, a temporary NCO will last up to two weeks from the date issued. If a party wishes to make a temporary NCO a permanent or long-term one, the student should either send the request in writing to the appropriate office (Title IX or Student Conduct) or schedule a meeting to discuss their request with an official from the appropriate office (Title IX or Student Conduct).

### ***Standard No Contact Order***

A standard No Contact Order (NCO) is a written document mutually prohibiting two students from contacting each other. **Students subject to a NCO must:**

Avoid any form of contact with the other party subject to the same NCO. This includes, but is not limited to, (1) calling the other party; (2) sending electronic communication (text message/email/social media) to the other party, (3) sending campus or regular mail to the other party; and/or (3) contacting or communicating with the other party through a third party.

A standard NCO does not restrict a person's movement on campus, and it is mutual, meaning that all parties are expected to abide by the terms. A standard NCO constitutes neither a waiver by any party of the right to file a Formal Complaint, nor does it constitute an admission of responsibility or wrongdoing by any party. Failure to comply with the agreement would result in further conduct charges and sanctions. The terms of the NCO remain in place until the directive expires, or the terms are modified.

### ***Proximity No Contact Order***

A proximity No Contact Order is a written document mutually prohibiting a Complainant and Respondent involved in a Formal Complaint specifically under the EiE policy from communicating each other while also temporarily requiring the

Respondent to leave an area if they were to observe the Complainant in a public place among other areas. Other restrictions may also be applied. **A Complainant and Respondent subject to a proximity NCO must both:**

Avoid any form of contact with the other party subject to the same NCO. This includes, but is not limited to, (1) calling the other party; (2) sending electronic communication (text message/email/social media) to the other party, (3) sending campus or regular mail to the other party; and/or (3) contacting or communicating with the other party through a third party.

**However, the Respondent subject to the proximity NCO must also:**

Abide by any requirements to avoid contact with the Complainant in the Complainant's residence, in academic settings such as classrooms, laboratories, etc., and at any location where the Complainant is scheduled or known to be present, such as a work or internship location, volunteer activity, etc.

Abide by requirements to leave a public place when the Complainant is present as detailed in the NCO. The NCO will indicate whether the Respondent is required to leave all public places where they observe the other party or if there are restrictions related to specific public places and locations.

Other restrictions may include but are not limited to:

- Restricting a student from being in close proximity to the other student in other spaces;
- Restricting a student's access to certain campus locations, including another student's residence hall;
- Restricting the times a student may be present in on-campus dining facilities;
- Requiring that the students not be enrolled in the same academic course(s); and
- Requiring that the students not participate in the same co-curricular or extra-curricular activities.

A proximity NCO can only be implemented when a Formal Complaint of Sexual and Gender-Based Misconduct is made, and it is only in place as an interim measure for the duration of the investigation and adjudication of the alleged sexual and gender-based misconduct (unless there is a finding of responsibility in which case a NCO could be issued as a sanction). A proximity NCO constitutes neither a waiver by any party of the right to file any complaint, nor does it constitute an admission of responsibility or wrongdoing by any party. Failure to comply with the order would result in further conduct charges and sanctions.

## **Reviewing a No Contact Order for Modification or Rescission**

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While any NCO is in place, both students have the right to request that the document be reviewed for modification or rescission. Reviews will be conducted promptly, and modifications to NCOs will be made as needed. Requests must be submitted, in writing, to the Title IX Coordinator or Director of Student Conduct who will then provide the request to a panel of college administrators chaired by the Assistant Vice President for the Residential Experience. The request should include the basis and any evidence supporting the request.

Please note that if one party submits a request for the NCO to be modified or rescinded, the other party subject to the NCO will be notified of the request and be provided an opportunity to submit a response.

### **Enforcement of No Contact Orders**

Intentional violation of a No Contact Order is grounds for conduct charges. All reported potential violations will be investigated and adjudicated under the "Failure to Comply" section of the code of social conduct in the *Student Handbook*.

No Contact Orders are only enforceable by the College and only apply when at least one of the parties subject to the No Contact Order is a student at Skidmore College. Any student subject to No Contact Order issued by the College is required to comply with the order both on and off Skidmore College property.

Violations of a No Contact Order should be reported to Campus Safety. Although the College encourages individuals to report violations of a NCO promptly, safety is always the top priority. Whenever a student is off campus and believes that their safety is at risk, that student should call 911 immediately. Whenever a student is on campus and believes that their safety is at risk, that student should call Campus Safety at [518-580-5566](tel:518-580-5566).

### **On-Campus Violations:**

If safety is at risk: Immediately call Campus Safety at [518-580-5566](tel:518-580-5566).

To report a violation of a NCO, Contact Campus Safety at [518-580-5567](tel:518-580-5567) or in person on the lower level of Jonsson Tower.

### **Off-Campus Violations:**

If safety is at risk: Immediately call 911. Skidmore College is not able to provide immediate assistance in off-campus incidents.

To report a violation of a NCO, Contact Campus Safety at [518-580-5567](tel:518-580-5567) or in person on the lower level of Jonsson Tower.



The existence or alleged violation of a NCO is not a police matter. If you call 911 to report a safety risk, you should tell the police about your NCO, but they will only enforce violations of law, not college policy related to a NCO or violations of a NCO.

## **Determination**

In determining whether a NCO violation has occurred, the Office of Residential Life will consider multiple factors, including but not limited to:

- size and layout of the space where the alleged NCO violation took place;
- any attempted contact or communication by the subject of the NCO;
- duration of time before the student vacated the space;
- frequency and nature of alleged contact; and
- obligation of the subject of the NCO to be present in the space (i.e., place of work, athletic competition, internship location, etc.)

Any reported alleged violation of a NCO will be investigated promptly. Students who fail to comply with the terms of an NCO may be found in violation of the code of social conduct under "Failure to Comply." Alleged violations of proximity NCOs are subject to review by the Title IX Coordinator or Deputy Coordinator. Additionally, depending on the nature, severity and frequency of the alleged NCO violation as well as other potential relevant factors, the College reserves the right to apply additional violations under the Code of Social Conduct or the Sexual and Gender-Based Misconduct policy. These may include but are not limited to retaliation, stalking, attempted act, and other prohibited conduct. Any such alleged violation will be addressed consistent with the appropriate college policy.

## **College Imposed Interim Suspension or Leave**

If either the Title IX Coordinator or Title IX Deputy Coordinator decide at any point that the safety of a student or of any member of the College community is at stake, an interim suspension may be imposed on a student who is suspected of violating the Student Code of Conduct, any rules, regulations, or procedures of the College, or otherwise poses a risk of safety to the campus, until the time student conduct resolution or disciplinary action can be completed. Interim suspensions are imposed in consultation with the Dean of Students/Vice President of Student Affairs. This action assumes no determination of responsibility and the student conduct process will be held as soon as possible.

This action cannot be taken unless the Complainant files a formal report or complaint with the Title IX Coordinator, Title IX Deputy Coordinator, or designee or the Title IX Coordinator determines that a Formal Complaint is required to be filed in accordance with state and federal law even if the Complainant chooses not to file one.

Complainant A student subject to such interim measures may appeal the decision to impose them to the DoS/VPSSA within 3 business days after being notified of the decision.

## IX. REPORTING SGBM

### Reporting to the College

Any Skidmore College community member can report an incident of sexual and/or gender-based misconduct to the Title IX Coordinator or Campus Safety at any time. For reports specifically alleging SGBM by a student, individuals can also report this to the Title IX Deputy Coordinator for Student Affairs. Any Skidmore employee, who is not a Confidential Resource, is required to report any information they receive about an incident of sexual and/or gender-based misconduct harassment to the Title IX Coordinator.

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

### Reporting to Law Enforcement

It is the Complainant's decision whether or not to file a criminal report. The College encourages Complainants to seek out the support system that feels most appropriate and helpful. It is the policy of Skidmore College, and the Saratoga Springs Police Department, to not issue citations or take disciplinary action against victims who are under the legal drinking age or under the influence of illegal substances who report an assault.

In the event an individual chooses to report to law enforcement, they may do so on their own or request assistance from Campus Safety. Saratoga Springs police can come to campus to take a statement and ensure that the Complainant is physically safe. The police will also interview the Complainant about what happened. The interview is conducted in private, but the Complainant can request to have a friend or another supportive person accompany them if they wish. The police will get as much information as possible about the incident and investigate the case further.

Once an investigation is completed, the police refer the case to the District Attorney's Office. The District Attorney's office decides whether or not the case will be prosecuted by considering factors such as the amount of evidence available to prove the charge(s) in court. If the District Attorney decides not to prosecute, this does not mean that the District Attorney doesn't believe that an assault occurred. It means that based on past experience, the District Attorney does not believe that there is sufficient evidence to successfully prosecute the case.

To report to local law enforcement, Complainants should contact the Saratoga Springs Police Department at [518-584-1800](tel:518-584-1800).

## Violation of Law and College Discipline

Because sexual and gender-based misconduct may constitute both a violation of College policy and criminal activity, the College encourages persons to report alleged sexual and gender-based misconduct promptly to Skidmore Campus Safety or local law enforcement agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence.

Because the standards for finding a violation of criminal law are different from the standards for finding a violation of any of the Skidmore College Sexual and Gender-Based Misconduct Policies, criminal investigations or reports are not determinative of whether sexual or gender-based misconduct has occurred under the College's policy. In other words, conduct may constitute sexual or gender-based misconduct under the College policy even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

The filing of a report of sexual and 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), and the College will not wait for the conclusion of any criminal investigation or proceedings to commence its own investigation and take interim measures to protect the Complainant and the College community as necessary.

### **Timely Warning**

If a report of sexual or gender-based misconduct discloses 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 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 is 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 requirements of FERPA, the Clery Act, Title IX, 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 institution 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 an institution 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 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 a Temporary 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.

There are generally two types of Orders of Protection, Family Court Order and Criminal Court Order. For more information, please see

<https://www.nycourts.gov/faq/orderofprotection.shtml#q1>

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 are enforceable on campus and in other jurisdictions, 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, a Complainant can request that, even though the College has received actual notice, 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 action by the College will be taken. The incident will be kept on file with the Title IX Coordinator in the event that a future pattern emerges. The incident may be re-evaluated if a pattern does emerge. If the Title IX Coordinator or designee has enough information indicating that the College has a duty to respond to the behavior, regardless of the Complainant's participation in the process, the College may move forward with filing a Formal Complaint and serving as the Complainant in the absence of the Complainant.

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 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 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 Student from previously noted behavior;

The increased risk that the Respondent Student will commit additional acts of violence.

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.

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 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 student's confidentiality**, the College will inform the Complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the College's response.

The College will remain ever mindful of the Complainant's well-being, and will take ongoing steps to protect them from retaliation or harm and work with the student to create a safety plan. Retaliation against the Complainant, whether by students or College employees, will not be tolerated. The College will also:

- Assist the Complainant in accessing other available victim advocacy, academic support, counseling, disability, health or mental health services, and legal assistance both on and off campus (see portion of policy identifying these);

- Provide other security and support, which could include issuing a no contact order, helping arrange a change of living or working arrangements or course schedules (including for the alleged perpetrator pending the outcome of an investigation) or adjustments for assignments or tests; and

- Inform the Complainant of the right to report a crime to campus or local law enforcement – and provide the Complainant with assistance if they wish to do so.

The College may not require a Complainant to participate in any investigation or disciplinary proceeding. 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 will also take immediate action as necessary to protect and assist 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.

## Filing a Formal Complaint

If the Complainant wishes to file a Formal Complaint, the Title IX Coordinator and/or designee will collect information from the Complainant for the Formal Complaint. After receiving this statement, the Title IX Coordinator will take into consideration the choice/wishes of the Complainant and, as needed, consult certain parties or personnel to determine how to proceed. The options for next steps include:

1. Not enough information presented to move forward with a Formal Complaint.
2. Refer the complaint to the Title IX Policy if Title IX has jurisdiction.
3. **Moving forward with a Formal Complaint under this policy:** Information collected in the formal report gives reasonable cause to believe a violation of the EiE policy may have occurred and warrants further investigation. A full investigation will begin.

Please note that the filing 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.

## Alternative Resolution Process

If the Complainant and Respondent both wish to pursue an alternative resolution, the Title IX Coordinator or designee will facilitate this process. Please note that no party will ever be required to engage in an Alternative Resolution Process, and the process itself does not involve any in-person or face-to-face meetings between the parties.

After a complaint has been filed, all parties will receive a full disclosure of the allegations and a description of the adjudication process from the Title IX Coordinator or designee. The Alternative Resolution Process can be engaged only by mutual agreement by both parties and with the approval of the Title IX Coordinator before or at any time during the investigation and adjudication of the complaint prior to a finding. In either event, all parties must agree in writing to participate before the Alternative Resolution Process can commence.

Once the Alternative Resolution Process has been initiated, a party can elect to end the process at any time. At that point, that process will stop, and the formal investigation and adjudication process will proceed. Anything that is discussed

during the Alternative Resolution Process, but that is not formally agreed to, is not binding on the parties

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If a resolution is reached through the Alternative Resolution Process, it will be formalized by a written agreement and must be signed by both parties and the Title IX Coordinator or designee to implement. Part of the resolution may include an acceptance of responsibility if that is agreed upon by all parties.

**Regardless of whether accepting responsibility is part of the agreement, the agreement must adequately address the rights and concerns of the Complainant, the rights and concerns of the Respondent, and the overall intent of the College to stop, remedy and prevent sexual and gender-based misconduct as outlined in this policy or related policies.**

In the event an agreement cannot be reached through the Alternative Resolution Process, any party's willingness to engage in the Alternative Resolution Process will not be considered as part of the investigation and adjudication throughout the formal process. Neither the Title IX Coordinator nor the parties will disclose to the Adjudication Panel either the fact that the parties had participated in the Alternative Resolution Process or any information learned during that process (including statements made by the parties in the Alternative Resolution Process).

With the approval of all parties, an alternative resolution agreement could include but is not limited to, remedies such as:

Implementing agreed upon measures or sanctions, such as:

No Contact Order (Standard/Proximity)

Counseling and/or Professional Assessment

Voluntary Personal Leave

Change in student housing

Change in on-campus work schedule or job assignment

Change in class schedule or other academic measures (in conjunction with and approval by the appropriate faculty or academic office)

Community Service

Acceptance of responsibility

One-time or recurring meetings with an appropriate administrator

Other specific measures or restrictions, such as

Schedules for when certain buildings/facilities/services can be accessed

Schedules for when certain off-campus buildings, establishments, and other locations can be accessed

Reimbursement for lost or damaged property

A written apology or self-reflection paper from the Respondent

Increasing monitoring or security at specified locations

Other **sanctions** as stated in the Title IX Policy

Any other remedy that can be tailored to the parties to achieve the goals of the Policy.

Please note that any type of monetary offering or settlement would be prohibited in any agreement with the exception of a reimbursement of lost or damaged property related to the complaint.

Agreed upon measures can incorporate suspension or expulsion from the College. If suspension or expulsion are included in the resolution, each party will have up to three business days after the agreement is signed to appeal. The appeal must be submitted in writing to the Title IX Coordinator or designee. It will then be reviewed by the Dean of Students and Vice President for Student Affairs and will be considered on the following grounds:

A procedural error occurred that significantly impacted the outcome of the process (e.g. substantiated bias, material deviation from established procedures, etc.);

The discovery of new information, unavailable to the appealing party during the process, that could substantially impact either of the party's willingness to enter an agreement; or

Sanctions or remedies are disproportionate to the nature or severity of the violation(s), taking into account the totality of the circumstances (including the cumulative conduct record of the Respondent, if any).

An alternative resolution agreement may incorporate a formal Acceptance of Responsibility by the Respondent. Such an acceptance will be considered a formal finding of responsibility and would be indicated on the student's conduct record. If the agreement provides for a suspension, withdrawal, or expulsion of the Respondent from the College, there will be a **transcript notation** in compliance with NY's *Enough is Enough* law and this policy.

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Any agreement reached must be approved by the Title IX Coordinator. Any remedy, stipulation, or sanction requested by any party that is not listed above is subject to review and requires approval from the Title IX Coordinator or designee. The Title IX Coordinator or designee cannot advise any party as to whether they should pursue, agree, or reject an agreement or any proposed remedy, stipulation, or sanction therein.

To initiate this process, all parties are required to review the Permission to Initiate the Alternative Resolution Process Checklist with the Title IX Coordinator or designee. Additionally, each party must consult with an SGBM Support Specialist (including a Victim Advocate). If a party does not wish to consult with an SGBM Support Specialist, the party must submit a written request that identifies an appropriate advisor of choice to the Title IX Coordinator or designee for review and approval. It is recommended that a party work with such an advisor, or a SGBM Support Specialist, throughout the process.

If all parties wish to engage in an Alternative Resolution Process and if both parties agree, the College can postpone the start of its investigation for up to 10 business days as parties attempt to reach an agreement and can extend this period with agreement from both parties. At any point during these initial 10 days or after, either party has the right to cease the Alternative Resolution Process and start (or resume) **the formal investigation and adjudication process.**

If an agreement is reached and signed by all parties and the Title IX Coordinator or designee, the College would end its investigation and adjudication, and the matter would be considered closed. All parties would waive their right to appeal the agreement except for when either suspension or expulsion are part of the agreement. Please note that the agreement would not prohibit any party from pursuing the matter through law enforcement or another external agency.

Unless there is new and significant information (especially if such information was not available at the time of the agreement) neither the College nor the Complainant will be permitted to reopen the complaint. This does not preclude any party's ability to file a complaint in the future regarding a different matter.

Any agreement by all parties and approved by the College is considered to be a directive of the College. Any violation of any of the stipulations would be grounds for misconduct charges. Such allegations will be investigated and adjudicated under the Failure to Comply section of the Code of Social Conduct in the Student Handbook.

A written copy of the agreement will be provided to the Office of the Associate Dean of Residential Life and Student Conduct and also maintained by the Title IX Coordinator for recordkeeping, pattern-tracking, and sharing with College personnel

as needed for implementation.

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The Title IX Coordinator has the right to determine that an Alternative Resolution Process would not be an appropriate option based on the nature and severity of the allegations, especially those involving Sexual Assault or Intimate-Partner Violence, as well as the right to end an Alternative Resolution Process that may already be underway. Any agreement reached is under the purview of Skidmore College and does not affect or preclude any party's ability to pursue a complaint with law enforcement or another external entity.

## Full Investigation

The Title IX Coordinator or designee will determine the most effective method of reviewing the concerns raised by the reported sexual or gender-based misconduct. In all cases, the College will respond to the report in a prompt, impartial, procedurally fair, and effective manner. Upon receipt of a report, the College will strive to complete the investigation and adjudication processes (including the appeal process) within sixty 60-90 calendar days. Throughout the investigation process, a Complainant and Respondent may be accompanied by a trained SGBM Support Specialist and/or an Advisor of Choice to all meetings, investigation interviews, and/or panel reviews pertaining to the complaint. Please keep in mind that an Advisor of Choice is not permitted to speak on behalf of the student they are supporting as described by the aforementioned definition of Advisor of Choice.

### **Investigation Process:**

An investigation into whether or not a violation of the EiE Policy has occurred will begin after a Formal Complaint has been filed and the Complainant has been informed of their rights under this policy.

The Title IX Coordinator or designee will then reach out to the Respondent to provide them the Formal Complaint, including the date, time, location, and factual allegations concerning a violation, the investigation and adjudication process, and their rights under this policy. If the Respondent fails to arrange and meet with the Investigators within an appropriate time frame, the complaint process will proceed in their absence.

The Complainant and Respondent will be kept informed of all developments and will be advised of the procedures that will guide the resolution of the complaint.

The purpose of the investigation is to collect information, through meeting separately with the Complainant (if participating), Respondent, and pertinent witnesses, and reviewing other relevant information. At any time during the course of an investigation, the Complainant, Respondent, or any witnesses may also provide a

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written statement, other supporting materials, or identify other potential witnesses, regarding the matter under review. All information gathered will be used to complete an investigation report to be used during the adjudication process. Individuals who are interviewed may provide information that the Investigators determine is irrelevant to the finding of facts and reserve the right to redact this information from the final investigation report.

The investigation report will be shared with the Complainant and Respondent once it is complete. The Complainant and Respondent each have five business days following the receipt of the report to write a response to it or pose questions to the other parties (including witnesses), if they wish to do so, before the investigation report is considered final. Written responses may also include additional information not previously included in the report that is relevant to the determination of whether or not the EiE Policy has been violated. Submitted questions will be reviewed by the Investigators and if deemed appropriate and unanswered will be asked to the other parties. Investigators will gather answers to the questions asked and responses will be included in the final investigation report. Any new information will be reviewed for relevance by the Investigators prior to becoming part of the final investigation report. Written responses and answers to questions will be included in the official materials sent forward to the Adjudication Panel for review. Once the investigation report is final, it is turned over to the Conduct Administrator to begin the adjudication process. The final investigation report is provided to the Complainant, Respondent, and the Adjudication Panel.

Recordings of investigative interviews or any such meeting throughout the investigative process is strictly prohibited. Any party, witness or employee who creates an unauthorized recording of meetings or interviews related to the complaint will be charged with a policy violation under the applicable policy. Advisors who record on behalf of a party will be expelled from the process, and charges of a policy violation will be applied to the party who was advised by that advisor under the appropriate policy.

## **XII. ADJUDICATION PROCESS**

### Standard of Evidence

The Department of Education's Office of Civil Rights has interpreted Title IX to allow schools to evaluate reports of alleged sexual and gender-based misconduct under a "preponderance of the evidence" standard, and that is the standard adopted by this policy. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude that "more likely than not" a violation has occurred and the student charged is responsible for the violation.

# Adjudication Procedures

The Panel Administrator shall assemble an *Enough is Enough (EiE)* Adjudication Panel of three trained members of Skidmore's staff or faculty to review sexual and gender-based misconduct cases. Gender diversity will be ensured in panel composition. The pool of trained Adjudication Panel Members are staff members who are appointed by the DoS/VPSA and/or the faculty members who serve on the Faculty Advisory Board (FAB) and are appointed by the Faculty Executive Committee (FEC) to serve in over-lapping two-year terms. The Complainant and Respondent have a right to petition that any member of the Adjudication Panel be removed on the basis of knowledge of the participants in the case that may impair – or may be perceived to impair – their ability to review and determine a case impartially. Panel members are also encouraged to remove themselves from a panel if they have knowledge of the participants in the case that may impair – or may be perceived to impair – their ability to review and determine a case impartially, and to recuse themselves if their participation might compromise the integrity of the adjudication process.

The Adjudication Panel will deliberate in private to review the investigation report. The Panel will start its deliberations by reading the statements gathered by the Investigator(s) and the investigation report, along with the responses to the report (if any) from the Complainant and Respondent. After discussion, the Panel will decide whether there are additional questions that need to be asked. If so, the Conduct Administrator will go back to the parties to ask those questions. Any additional information collected will be submitted to the Complainant and Respondent before the panel commenting session.

Following the initial review by the Adjudication Panel, the Respondent and Complainant will be informed in writing of the date and time of the panel review and commenting session. Any scheduling requests must be submitted to the Conduct Administrator to be resolved no later than 48 hours prior to the scheduled date of the commenting session.

The Respondent and Complainant may be accompanied by one Advisor of Choice and one SGBM Support Specialist (which can be a Victim Advocate). The Advisor and Specialist are present to act as counselors and to advise/support the Respondent and Complainant, and to provide advice on procedural matters. The Advisor and Specialist do not have speaking privileges during the Adjudication Panel review. A panel review will not be cancelled or postponed in the event a scheduled Advisor and/or Specialist does not attend. If the scheduled Advisor and/or Specialist is not

able to attend, the Complainant/Respondent is advised to arrange for a substitute. The Respondent and Complainant must notify the Title IX Coordinator or designee of any Advisor and Specialist attending the panel 24-hours prior to the panel review.

Any portion of the panel review not considered private deliberation will be audio-recorded, including the commenting session. A digital file will be made available upon request to the Complainant and/or Respondent in order to prepare a written appeal.

During the Adjudication Panel review, the Complainant and Respondent are invited to address the Panel during a 30-minute commenting session. The commenting session can be used to direct the Panel to review specific sections of the investigation report. The commenting session will not allow for any impact statements to be made. The Panel will not ask any questions during this phase, as all questions have been asked by the Investigators and answered by the appropriate parties. The Complainant and Respondent then leave the room and the Panel by unanimous decision will determine whether or not the Respondent violated the EiE Policy and/or Code of Social Conduct violation as alleged in the Formal Complaint by finding either: "Responsible" or "Not Responsible" using the standard of evidence described above. If the Respondent or Complainant fails to appear at the panel, the panel will move forward in their absence.

If the Panel renders a determination of "Not Responsible", the Panel adjourns. The Complainant and Respondent have the right to appeal this determination. If either party submitted an impact statement, the Conduct Administrator will contact them to pick up the unread statements and they will not remain a part of the case information.

If the Panel renders a determination of "Responsible", the Panel will review any submitted impact statements and information regarding past violations prior to making sanctioning determinations.

**Impact Statement:** The Complainant and Respondent each have the right to prepare and submit, in writing, an Impact Statement to be considered by the Sexual and Gender-Based Misconduct Adjudication Panel while determining sanctions. Impact statements outline the Complainant's or Respondent's thoughts regarding an appropriate sanction. The Panel is not bound by these statements in determining sanctions. Impact statements are optional and are only admissible if a violation is found.

The Panel will then recommend a sanction consistent with those specified in this policy.

The Panel shall have up to five business days following the 30-minute commenting session to render a decision regarding a finding or sanction.

The Conduct Administrator will notify both the Complainant and Respondent simultaneously, in writing via email, of the Panel's decision.

The Complainant and Respondent both have the right to appeal any decision made by the Panel. Appeal procedures can be found in the section below.

The College reserves the right to extend any time periods identified in this policy and both the Complainant and Respondent will be promptly notified of any changes in the procedures.

If a sexual or gender-based misconduct case is also being heard by a civil or criminal court, the College retains the right to hear the case before, after, or during the same time as the civil or criminal case, and to implement appropriate action (such as No Contact Orders, removal from campus residence facilities, removing a student from a class or classes or interim suspension) to maintain the safety of the campus.

The campus conduct process shall be confidential to the extent possible and as allowed by law.

## Notification of Determination

The determination made after an investigation (if there is not sufficient information to proceed with an adjudication process) or at the conclusion of adjudication is part of the education record of the Respondent, and is protected from disclosure under Federal law. However, there are two exceptions as follows:

Complainants shall be informed of the Formal Complaint against the Respondent, the determination made after a panel, and any sanctions imposed.

Information regarding the release of disciplinary records can be found in the Student Handbook.

## Sanctions

Sanctions are designed to stop the harassing behavior, prevent its reoccurrence, and remedy the effects upon the victim and community. Sanctions preserve individual and institutional safety and integrity and, whenever possible and appropriate, help offenders repair the damage to the individual and community for which they have been found responsible. Individuals found to be in violation of sexual and gender-

based misconduct offenses involving penetration regardless of the genders of the parties will likely face a recommended sanction of suspension or expulsion. Individuals found to be in repeat violation of sexual and/or gender-based misconduct offenses will likely face a recommended sanction of suspension or expulsion.

The Title IX Coordinator and Office of Vice President of Student Affairs and Dean of Students maintains a record of all student misconduct and sanctions applied, and these are admissible in subsequent student conduct proceedings involving the student(s) in question. Student misconduct may have an impact on eligibility for academic prizes and honors, eligibility to hold a student leadership position, participation and/or status in the housing selection process, law school applications, security clearances, etc.

When considering appropriate sanctions for the violation, the Panel will consider the following pieces of information (in no particular order):

- a. The nature and violence of the conduct;
- b. The Respondent's prior discipline history;
- c. The impact of the conduct on the Complainant, and their desired sanctions, if known;
- d. The impact of the conduct on the Skidmore community, its members, and/or its property;
- e. How the College has sanctioned similar incidents in the past;
- f. Whether the Respondent has accepted responsibility; and
- g. Any other mitigating or aggravating circumstances, including the College's values.

The sanctions available to the Adjudication Panel assign include, but are not limited to, the following:

**Professional Assessment:** Completion of a professional assessment and ongoing compliance with all recommendations that could help the student or the College ascertain the student's ongoing supervision or support needs to successfully participate in the College community.

**Educational Program:** The Panel may require the Respondent to attend, present, and/or participate in a program related to the violation. It may also be a requirement to sponsor or assist with a program for others on campus to aid them in learning about a specific topic or issue related to the violation for which the student or organization was found responsible. Students may be required to complete a workshop, online education courses, research or reflection paper

articulating the harm caused by their actions and/or strategies they may adopt to prevent further disruptive behavior.

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**Specific Restriction(s):** The Panel may impose specific restrictions on an individual to prevent either access to an area of campus or participation in one or more College or College-recognized or sponsored programs or activities (e.g. commencement).

**No Contact Order:** The Panel may decide to continue and/or impose a prohibition against having any avoidable contact with one or more identified persons, in person or through telephonic, electronic, written or other means. A no contact order may include additional restrictions and terms.

**College Housing Reassignment or Suspension:** The Panel may reassign the student to another College housing facility, or may remove the student from College housing for a specified period of time, including permanent removal.

**Disciplinary Probation:** If determined appropriate by Panel a student may be placed on Disciplinary Probation. In such a case, any subsequent violation of this policy (or other college policy) is likely to result in suspension or expulsion. Note that some campus organizations do not permit their members to serve in leadership positions or hold campus jobs if they are on Disciplinary Probation. Probation may also affect eligibility for study abroad, attending conferences, or representing the College at an official function, event or intercollegiate competition as a player, manager or student coach, etc.

**College Suspension:** The Panel may recommend suspension to the DoS/VPSA. During the suspension period, the student is prohibited from being present on or at College property, functions, events and activities without prior written approval from the CA. The Panel may also assign specific sanctions, such as a professional assessment or community service, for completion during the suspension period. While suspended, students may transfer up to 18 credits taken at another institution, subject to the usual review by the Registrar. The College follows the refund practices for personal leaves. Further information may be found on the Bursar's Office website at

<https://www.skidmore.edu/bursar/withdrawal/index.php>. A decision for suspension constitutes a recommendation to the DoS/VPSA, who will consider whether to accept or modify the recommendation either during the appeal process or during a review if no appeal is submitted. Students wishing to return from a suspension must contact the CA by the date specified in their outcome letter in order to commence the readmission processes.

**College Suspension in Abeyance:** In cases of suspension, the Panel may decide that there are circumstances that mitigate against the immediate separation of the student from the College. For example, they may allow the student to complete the current semester's coursework and begin their suspension period

at the semester's end. However, should the student be found in violation of the Honor Code, the Code of Social Conduct, this policy or the Title IX Policy during the period of abeyance, the abeyance may be lifted and the suspension shall take effect immediately and continue through the originally scheduled expiration date for the suspension (subject to any additional sanctions that may be imposed as a result of the new violation).

**Expulsion:** The Panel may recommend expulsion to the DoS/VP SA. The student is prohibited from being present on or at College property, functions, events or activities. Expulsion is a permanent status. The Respondent must leave the College immediately and cannot register again as a student without going through a full readmission process. A decision for expulsion constitutes a recommendation to the DoS/VP SA, who will consider whether to accept or modify the recommendation either during the appeal process or during a review if no appeal is submitted.

**Degree Revocation:** In the event of serious misconduct committed while still enrolled, but found responsible after the Respondent has graduated, the College may revoke that student's degree. The student will be asked to return the diploma.

A student who fails to comply with assigned sanctions will generally be placed on hold and may receive additional, more substantial sanctions. In the case of graduating seniors, students may not receive diplomas or transcripts or participate in the graduation ceremony until completion of all sanction requirements, unless specifically permitted by the Adjudication Panel.

## Transcript Notation

For crimes of violence, including, but not limited to sexual violence, defined as crimes that meet the reporting requirements pursuant to the federal Clery Act established in 20 U.S.C. § 1092(f)(1)(f)(i)(i)-(viii), Skidmore shall make a notation on the transcript of a Respondent found responsible after a conduct process that they were "suspended after a finding of responsibility for a code of conduct violation" or "expelled after a finding of responsibility for a code of conduct violation." For the Respondent who withdraws from Skidmore while such conduct charges are pending, and declines to complete the disciplinary process Skidmore shall make a notation on the transcript of such students that they "withdrew with conduct charges pending." Students who are suspended after a finding of responsibility for a Code of Conduct violation may submit a written appeal to the Dean of Students/Vice President of Student Affairs requesting that the transcript notation be removed from their transcript. Such a notation may not be removed from a student's transcript prior to one year after

conclusion of the suspension. Notations for expulsion will not be removed. If a finding of responsibility is vacated for any reason, any such transcript notation shall be removed.

## Special Procedures:

### **A. False Reports**

The College will not tolerate false allegations of incidents of sexual and gender-based misconduct. Complaints made in good faith that are found not to constitute harassment or discrimination will not be considered false allegations. It is a violation of the Student Code of Conduct to make an intentionally false report of any policy violation, and it may also violate state criminal statutes and civil defamation laws. Any individual who knowingly, maliciously, or frivolously makes a false allegation of sexual and gender-based misconduct will be subject to disciplinary action up to and including suspension or expulsion. Similarly, any party or witness who is later proven to have intentionally given false information during the course of an investigation or conduct process may be subject to disciplinary action.

### **B. Amnesty for Complainant(s)/Witnesses/Bystanders**

The health and safety of every student at Skidmore College is of utmost importance. Skidmore recognizes that students who have been drinking and/or using drugs (whether such use is voluntary or involuntary) at the time that violence – including but not limited to domestic violence, dating violence, stalking, or sexual assault, or the alleged incident of sexual and gender-based misconduct – occurs may be hesitant to report such incidents due to fear of potential consequences for their own conduct. Skidmore College strongly encourages students to report domestic violence, dating violence, stalking, sexual assault, or sexual and gender-based misconduct to reporting resources listed above. A bystander acting in good faith or a Complainant acting in good faith who discloses any incident of domestic violence, dating violence, stalking, sexual assault, or sexual and gender-based misconduct to College officials or law enforcement will not be subject to Skidmore College Code of Conduct action for violations of alcohol and/or drug use policies occurring at or near the time of the commission of the domestic violence, dating violence, stalking, sexual assault, or incident of sexual and gender-based misconduct.

### **C. Alternative Participation Options**

Complainants or Respondents may request alternative participation options during the commenting period of the panel. Options include placing a privacy screen in the panel review room, or other options that provide a safe space for participation while not depriving the Respondent of their rights in the process. While these options are intended to help make all parties more comfortable in participating in this process, they are not intended to work to the disadvantage of the Respondent.

## D. Past Sexual History, Past Sexual and Gender-Based Misconduct Violations, and Past Conduct Violations

1. The Investigator and the Sexual and Gender-Based Misconduct Adjudication Panel will not consider information concerning the sexual/romantic history or sexual character of either the Complainant or the Respondent, except:
  - a. From either the Complainant or the Respondent regarding their shared sexual history. If either offers such information, the other will have the right to respond; or
  - b. Information regarding the Respondent's sexual history that shows a pattern of behavior by the Respondent. In order to be relevant, the Investigators will strive to gather a description of the similar behavior, a summary of the relevance of the described behavior, and a brief explanation of why this information was not previously investigated and/or the status of the investigation. Whether certain conduct constitutes "similar behavior" is within the discretion of the Adjudication Panel.
2. If, in the past, a Respondent was found to have violated the Sexual and Gender-Based Misconduct Policy ("Past Violation"), the information related to the Past Violation may be shared by the Conduct Administrator and considered by the Adjudication Panel prior to determining responsibility and sanctions, if:
  - a. The previous violation was substantially similar to the present complaint; and
  - b. The previous violation indicates a pattern of behavior and substantial conformity with that pattern by the Respondent.
3. Other violations of the Sexual and Gender-Based Misconduct Policy that were not substantially similar or other student misconduct (ex. Alcohol and other drug violations) may be shared by the Conduct Administrator after the Panel has determined responsibility but prior to determining sanctions.

## Appeal Process

A student involved in the conduct process as a Complainant or a Respondent may file a written appeal of the Adjudication Panel's decision. Appeals will be considered on the following grounds:

- a. A procedural error occurred that significantly impacted the outcome of the process (e.g. substantiated bias, material deviation from established procedures, etc.);

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b. The discovery of new information, unavailable to the appealing party during the original panel or investigation, that could substantially impact the original finding or sanction; or

- c. Sanctions are disproportionate to the nature or severity of the violation or violations, taking into account the totality of the circumstances (including the cumulative conduct record of the Respondent, if any).

## To File an Appeal

Submit a written appeal **within three (3) 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 two (2) 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.

## Potential Appeal Outcomes

The appeal will be reviewed by an Appeal Panel, chaired by the Dean of Students/Vice President for Student Affairs (DoS/VPSA). The Appeal Panel members will be chosen from the same pool of trained Panel members described in the adjudication procedures above. The Complainant and Respondent have a right to petition that any member of the Adjudication Panel be removed on the basis of knowledge of the participants in the case that may impair – or may be perceived to impair – their ability to hear and determine a case impartially. Panel members are also encouraged to remove themselves from a panel if they have knowledge of the participants in the case that may impair – or may be perceived to impair – their ability to hear and determine a case impartially, and to recuse themselves if their participation might compromise the integrity of the adjudication process.

The Appeal Panel will meet in private to review all available written material, including the full investigation report, submitted impact statements, outcome letters (with written rationale), appeal statements and the digital recording of the 30-minute commenting session. After a review of all available information, the Appeal Panel may decide to:

Decline to consider the appeal if it is not based on one or more of the criteria listed above.

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Ask the original Adjudication Panel to reconsider the case based on new information, or

Impanel a new Adjudication Panel to decide the case de novo.

Make a final determination either upholding or altering the outcome of the panel, which may include but is not limited to:

- Adding or removing one or more sanctions

- Increasing or decreasing the duration of one or more sanctions

- Reversal of the finding of Adjudication Panel's finding(s)

- Alteration of deadlines related to sanction completion

The Appeal Panel will review the appeal and render a **decision within ten business days after receiving the written appeal**. The decision of the Appeal Panel is final, subject to any further proceedings ordered by the DoS/VPSA as described above.

In the event that the sanction determined by the Adjudication Panel is suspension or expulsion and no appeal is submitted by any party, the decision will still be reviewed by the Dean of Students and Vice President for Student Affairs (DoS/VPSA). Both parties can submit written statements to be considered by the DoS/VPSA during this review process.

\*The timeline above may change depending on individual circumstances of the case. If there are any changes to the appeal timeline, this will be communicated by the DoS/VPSA or their designee to all parties involved.

\*\*During the appeal process, the DoS/VPSA may implement interim restrictions for sanctions such as suspension or expulsion to allow the Respondent to continue to take classes but protect the safety and well-being of the Complainant.

## XIII. LIABILITY INFORMATION FOR EMPLOYEES

Skidmore College provides liability protection for employees for their work on behalf of the College, including their work as a Hearing Panelist, Adjudicator, Investigator, advisor, advocate, or other relevant role throughout the EiE 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.

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For more information, please contact the Office of Risk Management at [518-580-5812](tel:518-580-5812).

## XIV. SUPPORT SERVICES AND RESOURCES

### On-Campus Resources

**\*Counseling Center (Confidential):** [518-580-5555](tel:518-580-5555)

(9 a.m. - 12 noon, 1 p.m. - 5 p.m. Monday - Friday while school is in session)

**\*Health Services (Confidential):** [518-580-5550](tel:518-580-5550)

(9 a.m. - 12 noon, 1 p.m. - 4:30 p.m. Monday - Friday, and 12 noon - 5 p.m. Sunday while school is in session)

#### **Victim Advocates (Anonymous)**

Kim Golemboski, Director of Health Promotion: [518-580-5484](tel:518-580-5484)

Wendy Walker, Prevention Specialist: [518-580-8256](tel:518-580-8256)

Kristen Corcoran, Health Educator: [518-580-5684](tel:518-580-5684)

#### **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 <https://www.skidmore.edu/sgbm/key-resources.php> for exact times and contact information.

**\*Campus Safety:** [518-580-5566](tel:518-580-5566)

#### **Title IX Coordinator (Private)**

Joel Aure: [518-580-5708](tel:518-580-5708)

#### **Title IX Deputy Coordinator (Private)**

TBA

#### **Dean of Students/Vice President of Student Affairs (Private)**

[518-580-5760](tel:518-580-5760)

**\*Administrator ON-CALL:** [518-580-5566](tel:518-580-5566)

(Call Skidmore Campus Safety to contact "on-call" person)

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

# Off-Campus Confidential Reporting Sources



**\*Wellspring (Victim Advocates) Saratoga Springs 24 Hour Hotline:** 518-584-8188

**\*Saratoga Hospital Emergency Room:** 518-583-8313

**Saratoga Planned Parenthood/Schenectady Planned Parenthood:** 518-584-0041  
or 518-374-5353

**Queensbury Planned Parenthood of Greater New York - Victim Advocacy Services:** 518-792-0994 and [www.ppgreaterny.org](http://www.ppgreaterny.org)

**\*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](mailto:OCR.NewYork@ed.gov)

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

*Policy revised in August 2022.*

*This policy may be amended, in writing, by Title IX Coordinator in consultation with the Dean of Students and Vice President for Student Affairs or the Dean's designee at any time.*

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