

# **Sexual and Relationship Misconduct Policy**

## **Sexual and Relationship Misconduct Policy**

Simpson College is committed to providing a learning environment free from all forms of sexual misconduct including, but not limited to: sexual exploitation, sexual harassment, non-consensual sex acts, non-consensual sexual touching, and knowingly transmitting an STD. The College also is committed to providing a learning environment free from relationship misconduct, including dating violence, domestic violence and stalking. Engaging in, attempting or aiding in the commission of such acts violates this policy and the Simpson College Code of Conduct, as does the possession, use, distribution and/or administration of date rape drugs. Finally, it is a violation of this policy and the Simpson Code of Conduct to engage in retaliation against another for exercising his/her rights under this policy. Any conduct in violation of this policy will be treated in the manner set forth below. Simpson College does not tolerate any of the above conduct in any form (these acts are collectively referred to herein as "Sexual and/or Relationship Misconduct"). The College urges individuals to report any of these acts to campus officials under these administrative provisions. The College also encourages individuals to promptly report any such act that might also constitute a crime to local law enforcement. This policy applies to all students and employees of Simpson College regardless of sexual orientation or sexual identity.

This policy includes definitions of terms, prevention information, procedures, and available resources in the event an individual experiences Sexual and/or Relationship Misconduct. The policy covers conduct that occurs on all Simpson College campuses and at all Simpson sponsored programs and events. The policy also covers student-to-student sexual harassment that initially occurs off-campus when students experience the continuing effects of the off-campus harassment in the educational setting.

Sexual and relationship misconduct within the college community are harmful to both the learning environment and the sense of community the College strives to foster among students, faculty, staff, and administrators and even third parties. All members of the College community and third parties who interact with our community have an obligation to act responsibly in this realm. This includes accepting personal responsibility for choices made about alcohol and drug consumption which might lead to behavior that harms another person[1]. Members of the College are encouraged to recognize and challenge any Sexual and/or Relationship Misconduct and, in the absence of a confidential relationship (as explained below), all employees (including student employees) must report information regarding an allegation of Sexual or Relationship Misconduct involving a student. Employees are required to notify the Title IX Coordinator of names of the parties involved and the details of any report that she/he receives. The Title IX Coordinator at Simpson is the Associate Dean of Students, Rich Ramos. Those employees who are exempt from reporting sexual and relationship misconduct to the Title IX Coordinator include healthcare workers and those who are statutorily barred from reporting information acquired during or in furtherance of their professional services. This includes licensed professional counselors, clergy and individuals who are members of the Simpson Sexual Assault Response Advocate (S.A.R.A.) program. Confidential reporting options and official College

reports are described in more detail in the Procedures for Reporting Sexual and Relationship Misconduct section of this policy.

The purpose of these policies and procedures is to promote compliance with applicable campus, state and federal regulations, to allow for behavior that is inconsistent with the Simpson College Code of Conduct to be appropriately sanctioned, and to educate all members of the College community about implications and consequences of their behavior.

Simpson students are expected to maintain the highest ethical standards of honesty and respect for others. College students, often away from home for the first time, may be unsure of how to handle situations such as rapidly expanding social circles and a lack of parental restrictions. In the context of intimate relationships, the use of alcohol or other drugs can blur the distinction between consent and manipulation. Non-stranger (date/acquaintance) rape happens most frequently at or after parties. Real or perceived power differentials between individuals also may impact whether conduct is welcome or unwelcome under sexual harassment laws. Being under the influence of alcohol or drugs is not an excuse for behavior that fits the definition of sexual and/or relationship misconduct under these procedures. The information that follows is designed to provide a clear understanding of expectations and outcomes regarding sexual conduct at Simpson College.

Through this Policy the College intends to:

- Inform faculty, staff and students of this Sexual and Relationship Misconduct Policy and the procedures for reporting sexual and relationship misconduct within the College.
- Encourage faculty, staff and students to report sexual and relationship misconduct that constitutes a crime to the appropriate law enforcement authorities.
- Educate faculty, staff and students as to common sense practices which may enable them to avoid becoming victims of sexual and relationship misconduct.
- Educate Campus Security and College personnel about their responsibilities, the laws and potential liabilities when sexual and/or relationship misconduct occurs.
- Inform faculty, staff and students of the services available to victims of sexual and relationship misconduct.
- Educate faculty, staff and students to be respectful of the limits expressed or implied by their partners in sexual contacts.

### **Sexual and Relationship Misconduct Includes:**

**Sexual Misconduct**, includes sexual exploitation, sexual harassment, non-consensual sex act, non-consensual sexual touching, and knowingly transmitting STDs (all of which are defined below):

***Sexual Exploitation***: Sexual exploitation happens when a student takes non-consensual sexual advantage of another for the purpose of arousing or satisfying his/her own sexual desires or those of those of a third party.

*Examples of sexual exploitation* include, but are not limited to, prostituting another student, non-consensual video or audio-taping of sexual activity, going beyond the boundaries of consent (such as letting your friends surreptitiously watch you having consensual sex), engaging in Peeping Tommery.

**Sexual Harassment:** Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and/or other unwelcome verbal or written comments or physical acts toward another because of the other person's sex.

*Examples of sexually harassing behavior* may include various types of unwelcome behavior, such as unwelcome: touching, sexually explicit offensive jokes, sexually degrading graphic, verbal or written comments or questions of a sexual nature. sexual innuendo, sexual threats, obscene gestures; inappropriate humor and jokes about gender specific traits or sexual orientation; sexual propositions; sexually suggestive or insulting sounds and actions, including, whistling, leering, and obscene gestures.

**Hostile Educational/Work Environment and Tangible Educational/Job Benefits (associated with Sexual Harassment):** When sexual harassment-

- 1) is made, either explicitly or implicitly, a term or condition of instruction, employment or participation in college activities; or
- 2) is used as a basis for evaluation in making academic or employment decisions affecting an individual; or
- 3) is sufficiently severe or pervasive as to create a hostile educational or work environment and thereby alter the terms or conditions of an individual's educational or work environment,

the harassment may be sanctioned under this policy and the Simpson Code of Conduct. Sexual harassment that does not involve tangible educational/job benefits or create a hostile educational/work environment may be addressed administratively through an informal process.

**Non-consensual Sex Act:** A "sex act" (defined below) where "effective consent" (defined below) is not given by one of the participants.

**Non-consensual Sexual Touching:** Non-consensual "sexual touching" (defined below) where "effective consent" (defined below) is not given.

**Knowing Transmission of STD:** Knowingly transmitting an STD (including HIV) to another student is a violation of this policy.

**Relationship Misconduct includes Dating Violence, Domestic Violence and Stalking, each of which is defined below:**

**Dating Violence:** Violence by a person who has been in a romantic or intimate relationship with the victim. Whether there was such a relationship will be gauged by its length, type, and frequency of interaction.

**Domestic Violence:** An assault (which is defined in §708.2A of the Iowa Code as an intentional or unauthorized act that is intended to cause pain to another or in result in physical contact that is insulting or offensive, coupled with the apparent ability to do the act or to place the victim in fear of any such act, or the intentional and authorized pointing of a firearm or display of a dangerous weapon in a threatening manner) when the assault is between:

- Family or household members who resided together at the time of the assault;
- Family or household members living together at the time of the assault;
- Separated spouses or persons divorced from each other and not residing together at the time of the assault.
- Persons who are parent of the same minor child, regardless of whether they have been married or have lived together at any time.
- Persons who have been family or household members residing together within the past year and not residing together at the time of the assault; or
- Persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault.

**Stalking:** A person commits stalking when all of the following occur:

1. The person purposefully engages in a course of conduct (e.g.,repeatedly maintaining a visual or physical proximity to a person without legitimate purpose or repeatedly conveying oral or written threat, threats implied by conduct, or a combination thereof) directed at or toward a specific person) that would cause a reasonable person to fear bodily injury to, or the death of, that specific person or a member of the specific person's immediate family (spouse, parent, child, sibling, or any other person who regularly resides in the household of a specific person, or who within the prior six months regularly resided in the household of a specific person); and
2. The person has knowledge or should have knowledge that the specific person will be placed in reasonable fear of bodily injury to, or the death of, that specific person or a member of the specific person's immediate family by the course of conduct; and
3. The person's course of conduct induces fear in the specific person of bodily injury to, or the death of, the specific person or a member of the specific person's immediate family.

**Other activities that violate Simpson's Sexual and Relationship Misconduct Policy include:**

**Possession, Use, Distribution and/or Administration of Date Rape Drugs:** Possession, use, distribution and/or administration of date rape drugs of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, as is administering one of these drugs to another student for the purpose of inducing incapacity.

***Attempts to Commit/Aiding in the Commission of Sexual and/or Relationship Misconduct:***  
Attempts to commit sexual or relationship misconduct and aiding in the commission of sexual or relationship misconduct as an accomplice are also prohibited under this policy.

***Retaliation:*** Intimidating, threatening, coercing or taking any other action that has an adverse impact on an individual's grades, class selection or any other matter pertaining to a student's status because she/he has sought guidance, filed a complaint or participated in an investigation under this policy.

### **Definition of Common Terms:**

#### **Sex Act**

A sex act is sexual contact between two or more persons by penetration of the penis into the vagina or anus; contact between the mouth and genitalia or by contact between the genitalia of one person and the genitalia or anus of another person; contact between the finger or hand of one person and the genitalia or anus of another person, or by use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.

#### **Sexual Touching**

Sexual touching is any contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts for the purpose of arousing or satisfying his/her own sexual desires.

#### **Incapacitation/Incapacitated**

Incapacitation or incapacitated means a person is disabled or deprived of ability, as follows:

1. “Mentally incapacitated” means that a person is temporarily incapable of rationally and reasonably understanding the nature and extent of the situation or controlling the person’s own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance. This includes someone whose incapacity results from ingesting anything that falls in the category of a “date-rape drug.” Possession, use and/or distribution of any of these substances, including Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, as is administering one of these drugs to another student for the purpose of inducing incapacity.

2. “Physically helpless” means that a person is unable to communicate an unwillingness to act because the person is unconscious, asleep, or is otherwise physically limited.
3. “Physically incapacitated” means that a person has a bodily impairment or handicap that substantially limits the person’s ability to resist or flee.

## 709.1A Iowa Code

### **Incapacitated Sex**

Being drunk is never an excuse for violation of this policy. To have sex with someone who you know or should know is incapacitated from making a rational, reasonable decision about a sexual situation is a violation of this policy. This includes someone who is incapacitated as the result of ingesting anything that falls in the category of a “date rape drug”. Possession, use and/or distribution of any of these substances, including Roypnon, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student for the purpose of inducing incapacity is an offense of the most serious nature.

### **Effective Consent**

Effective consent is informed, freely and actively given, mutually understandable words or actions which indicate a willingness to participate in mutually agreed upon current sexual activity.

Consent is not effective if it results from the use of fraud, physical force, threats, intimidation, or coercion.

Physical force exists, for example, when someone acts upon you physically, such as hitting, kicking, restraining or otherwise exerting their physical control over you through violence.

Threat exists where a reasonable person would have been compelled by the words or actions of another to give permission to sexual contact they would not otherwise have given, absent the threat. For example, threats to kill you, themselves, or to harm someone you care for are sufficient to constitute threats.

Intimidation exists where someone uses their physical presence to menace you, though no physical contact occurs, or where your knowledge of prior violent behavior by an assailant, coupled with menacing behavior, places you in fear as an implied threat.

Coercion exists when a sexual initiator engages in sexually pressuring and/or oppressive behavior that violates norms of respect in the community, such that the application of such pressure or oppression causes the object of the behavior to engage in unwanted sexual behavior. Coercion may be differentiated from seduction by the repetition of the coercive activity beyond

what is reasonable, the degree of pressure applied, and the initiator's knowledge that the pressure is unwanted.

Effective consent cannot be given by someone who is incapacitated (defined above).

Furthermore, someone under the age of 16 cannot give effective consent to someone over the legal age of consent (18), absent a legally valid marriage or court order. A mentally disabled individual cannot give effective consent to a sexual activity if they cannot appreciate the fact, nature, or extent of the sexual situation in which they find themselves.

Past consent does not imply future consent; consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another; and consent can be withdrawn at any time.

### If Sexual or Relationship Misconduct Occurs

If sexual or relationship misconduct occurs, many survivors do not know where to turn for help or what steps to take after the conduct occurs. Although the choices about which options to explore rest solely with the affected student, Simpson College encourages students to take the following steps:

- Get to a safe place as soon as possible.
- Do not blame yourself. The survivor of sexual or relationship misconduct is **never** at fault. Every attempt will be made to keep the student free from any suggestion that she/he is responsible, was negligent, or assumed the risk of being a survivor of sexual or relationship misconduct.
- If the incident involved a possible crime, contact the local law enforcement (911). If sexual or relationship misconduct occurs on campus, Campus Security should also be notified by calling 515-961-1711, or by activating any of the emergency telephones located around campus. In the event of Sexual Misconduct, you may also call a Sexual Assault Response Advocate (SARA) at 515-962-2899.

If the misconduct involves rape or other sexual assault, also be aware of the following:

- Survivors of sexual and relationship misconduct are strongly encouraged to seek immediate medical attention at an area hospital or medical clinic. If the survivor wishes, they will be assisted in seeking prompt medical attention with a member of the Simpson College staff accompanying the survivor to a local hospital.
- If at all possible, do not change clothes, shower, bathe, douche, or urinate. Emergency room personnel are trained to check for injuries, as well as collect physical evidence. It is important to preserve evidence for the proof of a violation of this Code or of a crime should you decide to pursue charges through law enforcement. Costs for providing and administering the —rape kit are incurred by the Iowa Department of Public Health.
- Please be aware that hospital personnel are obligated to contact proper authorities regarding the assault. Although you are not obligated to do so, survivors of sexual

misconduct are highly encouraged to take advantage of victim's services to help you understand your options for off-campus proceedings and to receive counseling specific to your needs.

The College will do everything reasonably possible to provide a climate that is sensitive to and respectful and supportive of individual needs. The student will have access to existing campus counseling and support services and, when appropriate, adjustments will be made to housing assignments, academic/work schedules, etc.

Supporting a survivor of sexual and/or relationship misconduct is a primary consideration as are explaining options and protecting individual rights. Every report of Sexual and/or Relationship Misconduct will be taken seriously and action will be taken as appropriate.

***Remember: you are not alone.***

The following offices can provide you with the assistance and support you need:

- Counseling Services, 515-961-1332
- Campus Security, 515-961-1711
- Associate Dean of Students - Title IX Coordinator, 515-961-1536
- Sexual Assault Response Advocates (SARA) 515-330-6392
- Student Development Office, 515-961-1592
- College Chaplains' Office, 515-961-1684 or 515-961-1716
- Health Services, 515-961-1604
- Victims Services, 515-286-3535
- Indianola Police Department, 911
- Iowa Methodist Hospital, 515-241-6423
- Iowa Lutheran Hospital, 515-263-5120
- Mercy Medical Center, 515-247-3121

**Timely Warnings:** The Clery Act requires institutions to issue timely warnings to the campus community about crimes that have already occurred but may continue to pose a serious or ongoing threat to students and employees. Timely warnings are only required for Clery-reportable crimes that occur on Clery geography, although institutions are encouraged to issue appropriate warnings regarding other criminal activity that may pose a serious threat as well. Timely warning reports will withhold the names and other identifying information about victim. When determining if a timely warning will be issued, the length of time between when the report of the crime was made and when the crime actually occurred will be taken into account along with other relevant circumstances.

### **Procedures for Reporting a Violation of this Policy**

Incidents of sexual and relationship misconduct are notoriously underreported on college campuses, often because the complainant does not recognize their experience as a criminal

offense and/or a college policy violation or due to their lack of knowledge of and/or discomfort with campus and community resources. By seeking assistance and reporting conduct covered by this policy, you can begin your own healing process and promote the standards of community and respect that are a part of Simpson College. Helping the complainant look at options for reporting and taking care of herself/himself is the focus of this policy. The College encourages victims of sexual and relationship misconduct to talk to somebody about what happened – so victims can get the support they need, and so the College can respond appropriately.

### ***Reporting Options***

Different individuals on campus have different abilities to maintain a victim's confidentiality when they receive a report of prohibited conduct.

- Some are required to maintain near complete confidentiality; talking to them is sometimes called a “privileged communication.” These resources include professional licensed counselors or clergy while they are acting in a confidential role.
- Others may talk to a victim in confidence, and generally only report to the College that an incident occurred without revealing any personally-identifying information. Disclosures to these individuals will not trigger a College investigation into an incident against the victim’s wishes. These resources include health care employees and members of the Simpson Sexual Assault Response Advocate (SARA) when they are acting in a confidential role.
- Employees who do not fit into one of the above categories are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX coordinator. A report to these employees (called “responsible employees”) constitutes a report to the College – and generally obligates the College to investigate the incident and take appropriate steps to address the situation.

Along with the on-campus options described below, Simpson College strongly encourages a survivor of sexual or relationship misconduct to make a report to local law enforcement and to speak with a rape crisis or other counselor, on- or off-campus. Sexual assault and many other types of sexual and relationship misconduct constitute criminal behavior. Law enforcement officers are trained in handling sexual assault and other cases involving sexual and relationship misconduct. An officer can be dispatched to campus to meet with the person calling, to assist the survivor in obtaining medical attention and emotional counseling, and to write a formal report of the incident. The police report and any supporting evidence are turned over to the County Attorney's office, which decides whether there is sufficient evidence to prosecute.

### ***Confidential Reporting Options***

When an individual is affected by an incident involving conduct covered by this policy within or outside of the Simpson College community, s/he can talk to professional/licensed campus

counselors or chaplains who can provide completely confidential advice and assistance. Campus counselors are available free of charge to help students and can be seen on an emergency basis. Students may also receive confidential support from a SARA advocate or a health service nurse who can also provide confidential advice and assistance. These individuals can maintain confidentiality except for statistical reporting (which does not involve identifying the individual) required by the federal government (see below).

Any of the above individuals will listen and explain options to the person who makes a confidential report. They will also supply the reporter with information regarding medical care. This gives the reporter control over decisions pertaining to his/her options[2]. Talking to any of the individuals listed as a confidential reporting option *does not* constitute an *official college report to a responsible employee*, which is explained immediately below.

### ***Anonymous Reporting Option***

### ***Official College Report***

Any individual subjected to conduct covered by this Policy by a Simpson College student (on campus, or in a program or activity under Simpson College jurisdiction), or any Simpson College student who is a victim of such conduct is encouraged to report the incident formally to **the Associate Dean of Students or the Title IX Coordinator**. They will assist in making determinations around requests for confidentiality as explained immediately below and in arranging for a prompt investigation into the report as is explained in the “Investigation” section of this Policy.

### **Reports to “Responsible Employee” other than the Associate Dean of Students or the Title IX Coordinator**

As noted above, an individual who is subjected to conduct covered by this Policy is encouraged to make an official college report directly to the Associate Dean of Students or the Title IX Coordinator. However, a report to another responsible employee of the college will be also addressed by the College. A “responsible employee” is a College employee who has the authority to redress the matter, who has the duty to report such incidents, or who a student could reasonably believe has this authority or duty. At Simpson College all employees (including student employees) are considered “responsible employees” unless the employee is covered by the confidential reporting options listed above. When a complainant tells a responsible employee, other than the Associate Dean of Students or the Title IX Coordinator, about an incident involving conduct covered by this policy, the individual has the right to expect the College to take immediate and appropriate steps to investigate what happened and to resolve the matter promptly and equitably. Consequently any responsible employee must report to the Title IX coordinator all relevant details shared by the complainant concerning conduct covered by this policy, including the names of the complainant and respondent(s), any witnesses, and any other

relevant facts, including the date, time and specific location of the alleged incident. To the extent possible, information reported to any responsible employee will be shared only with people responsible for handling the College's response to the report. A responsible employee should not share information with law enforcement without the victim's consent, unless the victim has also reported the incident to law enforcement.

### ***Requests for Confidentiality***

If the complainant wants to make an official College report, but also maintain confidentiality, the College will consider the request, but cannot guarantee that the College will be able to honor it. Any such request for confidentiality should be reported to the Title IX Coordinator, either by the complainant or by another responsible employee who receives the report. The College will weigh the request for confidentiality against the College's obligation to provide a safe, non-discriminatory environment for all students, including the complainant. If the College honors the request for confidentiality, a complainant must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the respondent(s) may be limited. There may be times when the College may not be able to honor a complainant's request for confidentiality in order to provide a safe, non-discriminatory environment for all students. In cases confidentiality is requested, to the extent it is reasonably possible, a complainant may be provided requested support services such as a change in living or academic/work arrangements, and increased monitoring, supervision or security at locations and activities where the alleged misconduct or violence occurred.

### ***Federal Statistical Reporting Obligations***

The Federal government requires campus security to publish an annual Campus Security Report describing the types of sexual and relationship misconduct that have occurred and their general location (on or off campus or in the surrounding area; no addresses are given). These reports contain statistical information only. All personally-identifiable information is kept confidential. This report helps to ensure greater community safety by providing the community with a clear picture of the nature and extent of campus crime. The College requires that all employees (except professional/licensed counselors and clergy) provide statistical information regarding known sexual misconduct, dating violence, domestic violence and stalking to Campus Security.

### ***Interplay with Criminal Proceedings***

Some conduct covered by this policy may constitute criminal violations and violations of College policy. A person charged with a crime can be prosecuted under the Iowa Criminal Code and *separately* adjudicated by the College for any behavior that also constitutes a violation of this policy. Even if the criminal justice authorities choose not to prosecute, a student charged

with any type of sexual and/or relationship misconduct will be subject to the College disciplinary process. Hearing procedures and disciplinary sanctions are outlined below.

## **College Investigation**

As described above, it is possible for a complainant to initially discuss conduct covered by this policy with a number of different contact points throughout the college community. If, a complainant elects to first exercise a confidential reporting option, and after meeting with any confidential College agent determines that he/she would like to make an official College report, the confidential resource will direct the student to meet with the Title IX Coordinator or the Associate Dean of Students or his/her designee. If the complainant first reports the incident to responsible employee, other than the Associate Dean of Students or the Title IX Coordinator, that responsible employee will convey the information to the Title IX Coordinator, who will arrange for the Associate Dean of Students or his/her designee, to follow up with the complainant.

Once a meeting is arranged, the Associate Dean of Students or his/her designee will outline the options available, including how a conduct hearing will work, along with its possible outcomes. If the complainant decides to participate in the process, the Associate Dean of Students or his/her designee will take a written and/or tape-recorded statement of the complainant's account of the incident (the complainant may give an initial statement directly to Campus Security). The respondent will also be given the opportunity to provide the Associate Dean of Students or his/her designee with a written and/or tape-recorded statement. *It should be noted* that if Campus Security has already taken a written statement from the complainant and/or the respondent, the Associate Dean of Students or his/her designee may review these statements and then determine if a follow up statement should be taken from the party.

The investigation will also generally include interviews and/or written statements from any witnesses, as well as any other evidence relevant to the incident. The complainant and respondent will be permitted to have their counsel or an advocate present during the interviews and the hearing; however these individuals are permitted to participate only in an advisory capacity to the party. They are not permitted to take an active role in either the investigation or hearing process. Absent extenuating circumstances, complainants and respondents utilizing an advocate are expected to use the same advocate throughout the process.

At the conclusion of the investigation the Associate Dean of Students or his/her designee will consider all of the information collected as part of the investigation ("investigatory record") and determine whether in his/her reasonable opinion and based on the investigatory record a hearing panel could reasonably find a violation of this policy occurred. If he/she determines, based on the investigatory record, a hearing panel could not reasonably find a violation of this policy occurred, he/she will notify the complainant and respondent of the finding and the process will be concluded and neither the complainant nor the accused will be subject to disciplinary action. If he/she determines, based on the investigatory record, a hearing panel could reasonably find a violation of this policy occurred; the procedures set forth below will be followed.

## **Notice of Charges and Hearing**

The Associate Dean of Students or his/her designee will provide the complainant and respondent with written notice of the charges (policy violations), the hearing process, the hearing board members being chosen, the date and the location of the hearing.

## **Interim Measures**

If, at any time after being made aware of the complaint, the Associate Dean of Students or his/her designee determines that it is in the best interest of either student for safety or other reasons, the Associate Dean of Students may take whatever interim measures are deemed appropriate under the circumstances. The College will generally initiate these measures only with the complainant's knowledge and consent, but the College reserves the right to take whatever measures are deemed necessary to protect the parties and/or the community. In most instances, both individuals will be instructed to avoid all contact with the other. If these instructions are not heeded, disciplinary action will be taken, including the possibility of immediate suspension from the College and restriction from campus. If requested by the complainant, a change in living or academic/work arrangements will be made to the extent reasonably possible. In cases confidentiality is requested, to the extent it is reasonably possible, a complainant may still be provided requested support services such as a change in living or academic/work arrangements, and increased monitoring, supervision or security at locations and activities where the alleged misconduct or violence occurred.

Note: The charges of misconduct remain allegations until a decision is reached by the Specialized and Relationship Misconduct Review Board.

## **Composition of the Sexual and Relationship Misconduct Review Board**

The Sexual and Relationship Misconduct Review Board is composed of administrators and staff members. Board members are appointed by the Associate Dean of Students. When selected, all members of the board receive comprehensive training about the hearing process and sexual and relationship misconduct. When it is necessary to convene a Sexual and Relationship Misconduct Review Board, the Associate Dean of Students will select three people from the pool of board members to hear any given case. Both men and women will comprise the pool and each convened board. The Associate Dean of Students or his/her designee will serve as an ex-officio member of the Sexual and Relationship Misconduct Review Board without vote and will chair the board during the hearing and provide administrative support and clarifications as needed.

The respondent and complainant will be notified of the names of those who will serve on the board at the time the hearing is scheduled. If either objects to any member or members of the

board, he or she must commit the reasons for the objection to writing within two (2) business days thereafter. The Associate Dean of Students will review the objection and decide whether the hearing board member(s) should or should not be replaced. Removal from the hearing board will occur only if the Associate Dean of Students is convinced that extenuating circumstances exist that would preclude the hearing board member from his/her ability to impartiality adjudicate the incident. Any board member who personally knows either the respondent or the complainant and believes this may impact their impartiality may be excused from the case.

## **Elements of the Hearing**

The hearing will be convened in a private room where there will be no disturbances from other members of the campus community. *The hearing will not be open to the public.* A record of the hearing (audio tape recording and/or written) will be maintained and made available for review on campus to the respondent and complainant if requested, subject to restrictions/conditions established by the College. There will be separate waiting rooms for the witnesses of the respondent and for the witnesses of the complainant. The witnesses should be the same witnesses interviewed as part of the investigation process. The statements from witnesses obtained during the investigation may be submitted in lieu of actual witness testimony in the absence of an objection by the other party. Depending on the circumstances the Review Board may allow for a witness to testify via phone, Skype or other electronic means.

The complainant and the respondent will not be required to be present in the hearing room at the same time nor face one another during the hearing process (physical accommodations of the hearing location will be adapted as necessary); however arrangements will be made for both the complainant and the respondent to have the opportunity to observe the entire hearing. Each may present evidence on their own behalf through their own testimony, exhibits, the presentation of witnesses and/or (absent objection) statements of witnesses. Each may choose a person (which may be legal counsel) to accompany them during the judicial proceedings. However, the accompanying person may serve only in a support or advisory role and may not serve in an advocacy role or actively participate at the hearing.

The complainant will present his or her case first, and be able to testify, present exhibits, call witnesses and/or (absent objection from the respondent) present witness statements. Next, the respondent may present his or her case, testify, present exhibits and call witnesses and/or (absent objection from complainant) present witness statements. There are some situations in which the complainant or respondent cannot or will not present his or her own case. In these situations, the Associate Dean of Students or his/her designee may appoint an administrator to present the case to the Review Board in the complainant's /respondent's stead. The complainant/respondent will be permitted to have input on the selection of that administrator but the Associate Dean of Students retains ultimate authority to appoint the administrator. Under this circumstance, the complainant/respondent still may be present throughout the entire proceeding.

The Review Board members are allowed to ask questions at any point throughout the hearing. Furthermore, the Review Board may recall the complainant, respondent, and any witness at any

point to clarify a point or inquire further about relevant information. Neither the respondent nor the complainant may directly question the other during the hearing. Questions to the other party must be directed to the Review Board chair who will review the questions and determine if they will be posed to the other party, and if so, the chair will ask the party the question. Prior sexual behavior/sexual history of the complainant are not relevant and will not be allowed to be presented during the hearing except with respect to the prior relationship between the complainant and the respondent.

### **The Decision Making Process**

Once the hearing is concluded, the Review Board members will, after meeting in closed session, render a decision within 5 business days as to whether the respondent's actions constitute a violation of this policy. However, if they cannot reach a decision in that time the parties will be so notified and a time-frame will be provided for when the decision will be rendered. If necessary, prior to the decision being rendered, witnesses may be recalled for further questioning by the Review Board.

To find the respondent responsible for a violation of this policy, a majority of the Review Board must decide that a preponderance of the evidence establishes the respondent's behavior constituted a violation of this policy. Preponderance of the evidence means that it is more likely than not that the respondent violated the policy. In the absence of a finding of a policy violation based upon a preponderance of the evidence, neither the complainant nor the respondent will be subject to disciplinary action. Once a decision is made, the Associate Dean of Students or his/her designee will inform the respondent and the complainant, in the form of a letter which will include an explanation of the Board's decision, and any sanctions imposed by the review board.

### **Sanctions for Sexual and/or Relationship Misconduct**

Typical sanctions for the above-referenced policy violations are as follows:

- Any student found responsible of a charge of a non-consensual sex act will face a recommended sanction of suspension or expulsion, depending on the severity of the incident, and taking into account any previous disciplinary infractions.
- Any student found responsible of a charge of any other type of sexual and/or relationship misconduct will receive a recommended sanction ranging from warning to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary infractions.

The Sexual and Relationship Misconduct Review Board reserves the right to broaden, lessen, or alter the range of recommended sanctions in the case of serious mitigating circumstances, egregiously or offensive behavior, or other compelling justifications.

In addition, depending on the decision of the Sexual and Relationship Misconduct Review Board, the Associate Dean of Students may provide remedies/accommodations to the

complainant such as counseling, alternative living/working arrangements and academic accommodations. The Associate Dean of Students may also take certain measures for the benefit of the school community.

Both Title IX and FERPA permit a school to disclose to the complainant information about the sanction imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student.

### **Time Frame**

In most cases the above process will be concluded within sixty (60) days after the date of the official College report. However, if circumstances are such that the process will not be rendered in this time-frame the complainant and the respondent will be so advised and provided a revised time-frame for the conclusion of the process.

### **Appeal**

Either the complainant or respondent may initiate an appeal for the following reasons:

- failure to adhere to proper procedures as outlined in this policy
- unusual conditions or the addition of new, relevant information
- excessive or inconsistent sanctions.

*A student may not appeal based only upon dissatisfaction with an outcome or sanction.* Additional information about the appeals process can be found in the Simpson College Student Handbook.

### **Educational Programs**

Simpson College engages in many programs that promote awareness and prevention of rape and other sexual misconduct. Written information on sexual misconduct will be distributed regularly to all students. The SARA program offers regular programming addressing issues of sexual violence, sexual health and sexual responsibility. Residence Life staff members and campus security staff members receive training in complainant sensitivity and the College's philosophy and procedures in dealing with sexual misconduct. Student Development provides ongoing campus sexual misconduct awareness programs. The Security Department offers several programs to raise security consciousness and overall safety for members of the College community. Faculty members are encouraged to discuss the issue in their classes and residence life staff sponsor programs for residents. Each year sexual assault awareness and prevention is discussed during new student orientation.

[1] Simpson strongly encourages complainants who have been subjected to sexual and/or relationship misconduct after consuming alcohol or drugs and witnesses to such assaults to come forward without fear of disciplinary action by the College.

[2] In addition to College confidential options, students may choose to consult off-campus professional/licensed mental health counselors, certified victim advocate, legal counsel or members of the clergy, who can also maintain confidentiality.