

# 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**

## Title IX Policy for Students

- I. [Notice of Non-Discrimination](#)
- II. [Skidmore College Statement of Sexual Values](#)
- III. [Scope of this Policy](#)
- IV. [Statement of Privacy and Confidentiality](#)
- V. [Terminology](#)
- VI. [Student Bills of Rights](#)
- VII. [Prohibited Conduct \(As Defined By Title IX\)](#)
- VIII. [Confidential & Support Resources](#)
- IX. [Reporting Sexual Harassment](#)
- X. [Requesting Confidentiality/No Further Action](#)
- XI. [Investigation Process](#)
- XII. [Adjudication Hearing](#)

# 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 only addresses forms of Sexual Harassment (including but not limited to Sexual Assault, Domestic Violence, Dating Violence, and Stalking) as defined in the 2020 final Title IX regulations, 34 CFR Part 106, as released on May 6, 2020 by the United States Department of Education (“Title IX Sexual Harassment”).**

**Other forms of sexual harassment or discrimination, including acts of sexual harassment (including but not limited to sexual assault, domestic violence, dating violence, and stalking) not in the jurisdiction of Title IX, are addressed in different policies.**

**While several College policies govern sexual and gender-based misconduct, it is not the responsibility of a Complainant to determine which policy will apply to address an incident of sexual 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 or designee. If the report aligns with the definition and jurisdiction of Title IX as defined by the 2020 regulations, the procedures of this policy will be applied. If it does not, then the report will be referred to the appropriate personnel for review under the applicable student policy, such as the *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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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 26, 2022*):

### **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. 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, including sexual orientation and gender identity, 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 Title IX Sexual Harassment.

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.

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*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/or gender-based misconduct, and to adhere to College policies and local, state, and federal law.

**This policy applies specifically to sexual harassment as defined by Title IX and set forth below, occurring on Skidmore College property or at other locations within the United States at which the College exercises substantial control over the alleged Respondent(s) and context in which the sexual harassment occurs, and also includes such conduct occurring at any building owned or controlled by a recognized student organization. This also includes sexual harassment that occurs online while one or more parties are on campus, including remote learning.**

When used in this policy, "Complainant" refers to the individual who is identified as the target of the alleged Title IX Sexual Harassment. "Respondent" refers to the individual alleged to have engaged in Title IX Sexual Harassment. 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 Title IX Sexual Harassment complaint.

Title IX Sexual Harassment can be committed by any member of the Skidmore College community, including students, staff, and faculty. Under Title IX, the College has jurisdiction over a Respondent who is a current student or employee. This policy applies to address and resolve reports against a current **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 Title IX Sexual Harassment. 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, including Title IX Sexual Harassment, regardless of who engaged in the conduct. Even if the College does not have jurisdiction over the Respondent, the College will take prompt action to provide for the safety and well-being of the Complainant and the broader campus community.

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):

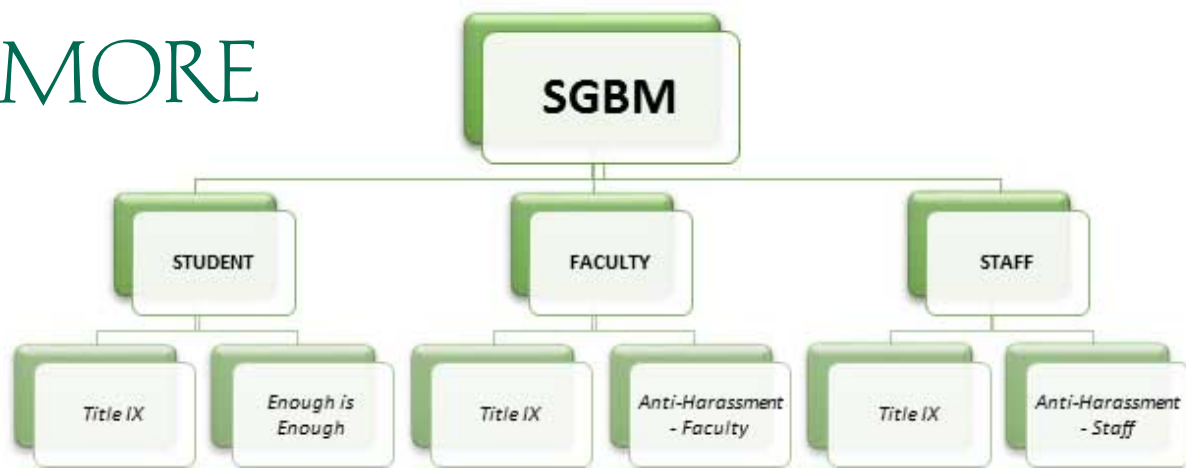


Figure 1 - Policy Jurisdiction Flowchart

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 resources and Victim Advocates who can protect anonymity – are expected to immediately report actual or suspected discrimination, harassment, or sexual and/or 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, and 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 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/or gender-based misconduct with the Title IX Coordinator or designee. The Title IX Coordinator or designee will conduct an initial assessment of the alleged 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 applicable requirements of the Family Educational Rights and Privacy Act (FERPA), the Clery Act, Title IX, the Violence Against Women Act (VAWA), New York's Enough Is Enough law 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.

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

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

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*An Advisor of Choice may not speak or communicate on behalf of the Complainant or Respondent except during the live hearing conducted to adjudicate the allegations to the extent provided in this policy.* Outside of the hearing, this includes but is not limited to in-person meetings, phone conversations, email, or any other forms of electronic or written communication with College personnel.

Parties have the right to consult with and engage an attorney as their Advisor of Choice, at their own expense with an exception noted below. As with any other Advisor of Choice, an attorney will not be permitted to speak or communicate on behalf of the student they are advising as described in the paragraph above except during the hearing.

As described more fully below, at the hearing, each party's Advisor of Choice is permitted to ask the other party or parties and any witnesses all relevant questions and follow-up questions, including those challenging credibility. All such cross-examination questions must be asked in a respectful, non-intimidating and non-abusive fashion. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally. If a party does not have an advisor present at the hearing to conduct cross-examination, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party. Additionally, a party may ask the College to provide them an advisor earlier once the Initial Investigation Report and Evidence Packet are ready for parties to review.

Any Advisor of Choice who fails to comply with this policy may be asked to leave any such meeting, proceeding 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. If an Advisor of Choice fails to comply with this policy's requirement to conduct cross-examination in a respectful, non-intimidating and non-abusive manner or otherwise violates the policy's rules with respect to the advisor's role during the hearing, the Advisor may be required to leave the hearing. In that event the party will be required to obtain a new advisor to conduct cross-examination or, alternatively, the College will provide an advisor for that purpose as described above.

**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 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.**

**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. At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in an education program or activity of the College.

A formal complaint may be filed with the Title IX Coordinator 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.

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

Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College will maintain as confidential any supportive measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures

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

**Investigator:** The individual(s) charged with investigating a complaint under this policy. The Investigator(s) will typically be the Title IX Deputy Coordinator, a members of Campus Safety, and/or external investigators designated by the College. Investigators attend, at a minimum, annual Title IX investigator training.

**Hearing Administrator:** This individual will oversee the scheduling, logistics, and overall execution of the live hearing, including time-keeping and any technology needs related to the recording or accessibility. The Hearing Administrator will not have any role in the determining the relevance or allowance of evidence or testimony. The Title IX Coordinator or appropriate designee will fulfill this role.

### **Hearing Panel:**

The decision about whether there has been a violation of the Title IX Policy will be made by a three-person panel or, in certain instances, a single adjudicator. Panelists and adjudicators will receive specific training regarding subjects including 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 and evidence, including the evaluation of cross-examination questions, the manner of deliberation, and the application of the preponderance of the evidence standard as well as the College's policies and procedures.

Parties will have the opportunity to state whether there is a panelist or adjudicator they feel should not participate in the hearing due to bias or any other reason that would prevent them from making a fair assessment of the information. Any such requests for recusal should be directed to the Title IX Coordinator.

**Adjudicator:** In the event that a panel cannot be convened due to the limited availability or potential conflicts with trained panelists, a single adjudicator will

fulfill the role of the panel in determine whether there has been a violation of the Title IX Policy.

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Hearing Panelists or Adjudicators may be members of the campus community or may be external to the College as determined by the Title IX Coordinator.

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

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

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

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

**Appeal Panel:** These individuals are responsible for reviewing and determining the outcome of any appeal submitted by any of the parties. The panel will consist of the Dean of Students and at least one other panelist.

## VI. STUDENT BILLS OF RIGHTS

Under this 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;

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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 Respondent, 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 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, as required by the Department of Education in the 2020 Title IX regulations, throughout the process, the Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the process.**

### **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.

## VII. PROHIBITED CONDUCT (AS DEFINED BY TITLE IX)

The definition of Title IX Sexual Harassment is a specific term determined by the Department of Education. Included within the Department's definition of Title IX Sexual Harassment are the Department's formal definitions for sexual assault, domestic violence, dating violence, and stalking in accordance with the Violence Against Women Act (VAWA). Sexual and gender-based misconduct may vary in its severity and consists of a range of behaviors. The following descriptions represent sexual behaviors and gender-based misconduct that violate Skidmore's community standards and values of respect, civility, and personal integrity as well as Title IX. These behaviors are serious violations and represent a threat to the safety of the Skidmore Community. Other forms of sexual behaviors and gender-based misconduct that violate Skidmore's community standards and values are addressed in the *Enough is Enough* policy.

For purposes of this Policy, Title IX Sexual Harassment includes the following forms of misconduct occurring on Skidmore College property or at other locations within the United States at which the College exercises substantial control over the alleged Respondent(s) and context in which the sexual harassment occurs, and also includes such conduct occurring at any building owned or controlled by a recognized student organization. It is the policy of Skidmore College to hold individuals accountable for all acts that violate this policy:

### **Sexual Harassment:**

Conduct on the basis of sex, including sexual orientation and gender identity, that aligns with one or more of the following conditions as defined by Title IX:

1. An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;<sup>[1]</sup>
2. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
3. Sexual Assault, Dating Violence, Domestic Violence, and Stalking as defined below as required by the United States Department of Education:

## Sexual Assault

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

**Rape** is the penetration, no matter how slight, of the vagina or anus, with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**Fondling** is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

**Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent. The age of consent in New York is 17, but this varies by state.

This definition aligns with the definition of Rape, Fondling, Incest or Statutory Rape as used in the FBI's UCR program as required by the Department of Education under Title IX.

## Dating Violence

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

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

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

## Domestic Violence

A felony or misdemeanor crime of violence committed—

By a current or former spouse or intimate partner of the victim;

By a person with whom the victim shares a child in common;



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By a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred;

By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

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

### **Stalking**

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

Fear for the person's safety or the safety of others; or

Suffer substantial emotional distress.

For the purposes of this definition:

*Course of conduct* means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

*Reasonable person* means a reasonable person under similar circumstances and with similar identities to the Complainant.

*Substantial emotional distress* means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

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

## Retaliation

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In addition to prohibiting Title IX Sexual Harassment, this Policy also prohibits Retaliation based on an individual who reports or complains about an alleged violation of, or who otherwise participates in good faith in the procedures set forth in, this Policy. Neither the College nor any other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for Student Code of Social Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, that are undertaken for the purpose of interfering with any right or privilege secured by Title IX or this policy, constitute retaliation.

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.

The College will keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the federal Family Educational Rights and Privacy Act and its implementing regulations (FERPA) or as required by law, or to carry out this policy, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation related to a Title IX matter may be filed according to the procedures detailed in Section XI of this policy ("Filing a Formal Complaint").

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

### **Note on Other Policy Violations**

After reviewing the report, the Title IX Coordinator or designee and Student Conduct administrator will determine whether other alleged policy violations in addition to the Title IX charges should be applied in the instances when other violations may arise out of the same or closely related incident(s). These will be included in the

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Formal Complaint and will be provided to both the Complainant and Respondent. All alleged policy violations, including the Student Conduct violations, in the Title IX Formal Complaint will be investigated and adjudicated under the Title IX policy.

Furthermore, the Student Conduct administrator in accordance with the policies of the Student Code of Social Conduct may determine that other policy violation charges should be applied to other parties as well separate from the Title IX complaint.

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

## Affirmative Consent

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

Consent can be communicated verbally or by action(s). In whatever way consent is communicated, it must be mutually understandable.

Consent is mutually understandable when a reasonable person would consider the words and/or actions that you and your partner(s) have expressed to demonstrate a desire to do the same thing, at the same time, in the same way, with one another.

In the absence of mutually understandable words or actions, the initiators of sexual contact are responsible for making sure they have obtained affirmative consent from their partner(s). The initiators must fully understand what their partner(s) want(s) and do(es) 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.

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Consent may be initially given but withdrawn at any time.

Consent cannot be given when a person is incapacitated, which occurs when an individual lacks the ability to knowingly choose to participate in sexual activity. Incapacitation may be caused by the lack of consciousness or being asleep, being involuntarily restrained, or if an individual otherwise cannot consent. Depending on the degree of intoxication, someone who is under the influence of alcohol, drugs, or other intoxicants may be incapacitated and therefore unable to consent (*See "Incapacitation" in the Terminology section above*).

The existence of a dating/romantic relationship between the persons involved or the fact of a previous sexual relationship does not automatically establish affirmative consent for future sexual activity.

Consent is not the absence of resistance.

Silence is an inactive behavior, and affirmative consent is an active behavior. Therefore, silence alone (absent a non-verbal action clearly demonstrating consent) is not considered affirmative consent. Silent and inactive behavior may indicate that something is wrong and the potential for sexual misconduct exists. If a partner is inactive (for example, silent or physically still) sexual activity must stop until both partners have communicated clearly with each other about what, if any, sexual activity is mutually desired.

Affirmative consent can never be given by minors (under the age of 17 in New York State), mentally disabled individuals, or by incapacitated persons. A person who is unconscious, unaware, or otherwise physically helpless cannot give affirmative consent to sexual activity.

Affirmative consent cannot result from force, or threat of harm, coercion, fraud, intimidation, or incapacitation. The use of force to obtain sexual access or to induce consent violates this policy whether the force is physical in nature, violent, or involving threats, intimidation, or coercion.

Physical force includes but is not limited to: hitting, kicking, and restraining. Physical force means someone is acting on you physically and exerting control over you through violence.

Intimidation is an implied threat. It is not as clear or explicit as an overt threat.

Coercion is the use of pressure to compel another individual to initiate or continue sexual activity against an individual's will. Coercion can include a wide range of behaviors, including intimidation, manipulation, threats, and blackmail. A person's words or conduct are sufficient to constitute coercion if they wrongfully impair another individual's freedom of will and ability to choose whether or not to engage in sexual activity. Coercion is evaluated based on the intensity, frequency, and duration of the comments or actions. Examples of coercion include threatening to "out" someone based on sexual

orientation, gender identity, or gender expression, and threatening to harm oneself if the other party does not engage in the sexual activity.

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Threatening someone to obtain consent for a sexual act is a violation of this policy. Threats exist where a reasonable person would have been compelled by the words or actions of another to give permission to sexual activity to which they otherwise would not have consented.

When consent is withdrawn or can no longer be given, sexual activity must stop.

## **VIII. CONFIDENTIAL & SUPPORT RESOURCES**

Skidmore College is committed to creating an environment for individuals to report incidents of gender based or sexual misconduct. 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 certain factors, including but not limited to those described below in the section of this policy entitled "Requesting Confidentiality/No Further Action."

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

### **1. To Speak with Someone Confidentially:**

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

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

SKIDMORE 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
- Campus Safety
- Trained SGBM Support Specialists

### 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. 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

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 Supportive Measures

Regardless of whether the Complainant wishes to pursue a Formal Complaint, the College will consider the information provided and take such prompt and effective action as is reasonably possible under the circumstances to support and protect the parties involved and protect the College community. This may include taking appropriate steps before the final outcome of the process, potentially including the emergency removal of the Respondent, after an individualized safety and risk analysis as described below. Additionally, the College may choose to impose other measures at its discretion to restore or preserve equal access to its education programs or activities without unreasonably burdening the other party, including measures designed to ensure the safety of all parties, the broader College community, and/or the integrity of the process, and/or to deter sexual harassment, once again after an individualized analysis as required by Title IX.

Supportive measures may include, but are not limited to:

Access to counseling and health services;

Restrictions on contact between the parties;

Campus escorts;

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.);

Assistance 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

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

Please note that supportive measures are available at the request of either the Complainant or Respondent, with or without the filing of a Formal Complaint.

All individuals are encouraged to report concerns about failure of another individual to abide by any requirement applied by a supportive measure, such as a mutually applied No Contact Order. The College will take immediate and responsive action to enforce a previously implemented measure.

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

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

## 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 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 generally 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 order 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.

In certain instances, as determined on a case-by-case basis after an individualized assessment, proximity restrictions could be added to a standard NCO. Such restrictions may include but are not limited to:

SKIDMORE 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.

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

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 cause 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 a 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.

To report a violation of a NCO, Contact Campus Safety at 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 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 potentially relevant factors, the College reserves the right to apply additional violations under the Code of Social Conduct or the *Enough is Enough* 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 Emergency Removal or Administrative Leave**

**SKIDMORE** The College reserves the right to remove a Respondent from the College on an emergency basis if an individualized safety and risk analysis determines that there is an immediate threat to the physical health or safety of any student or other individual arising from the allegations of Title IX Sexual Harassment to justify the removal. An Emergency Removal does not assume that the removed student is responsible for the alleged violations.

If such a removal were to take place, the Respondent would be provided notice and an opportunity to challenge the decision immediately following the removal.

Emergency Removals are imposed after an individualized safety and risk analysis and in consultation with the Title IX Coordinator and the Vice President of Student Affairs and Dean of Students.

For faculty and staff as well as student-employees, the College reserves the right to administer an administrative leave consistent with existing policies outside of the scope of Title IX. However, for student-employees, such an administrative leave cannot be punitive or disciplinary, such as the loss of wages, salary, or other forms of compensation, pending the outcome of the process.

## **IX. REPORTING SGBM**

### Reporting to the College

Any Skidmore College community member can report an incident of Title IX Sexual Harassment or any other sexual and/or gender-based misconduct to the Title IX Coordinator or Campus Safety at any time. For reports specifically alleging Title IX Sexual Harassment 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

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 Sanction/Discipline

While sexual harassment under Title IX may constitute both a violation of College policy and criminal activity, the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, and criminal investigations or reports are not determinative of whether sexual harassment as defined by Title IX has occurred under the College's policy. In other words, conduct may constitute sexual harassment under the College's policy even if it is not a crime or law enforcement agencies lack sufficient evidence of a crime and therefore decline or are unable to prosecute.

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

## Timely Warning

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

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

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

### **Order of Protection**

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

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

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

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

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

## X. REQUESTING CONFIDENTIALITY/NO FURTHER ACTION

### **Requesting Confidentiality and No Further Action from the College: How the College Will Weigh the Request and Respond**

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



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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 from previously noted behavior; and

Whether the incident occurred in the workplace (the College will generally be required to investigate allegations of workplace sexual harassment).

The presence of one or more of these factors could lead the College to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the College will likely respect the Complainant's request for confidentiality.

The College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation, but its ability to do so may be limited based on the nature of the request by the Complainant. The College will assess any barriers to proceeding,

including retaliation, and will inform the Complainant that Title IX prohibits retaliation and the College will take strong responsive action to protect the Complainant. Where the College is unable to take action consistent with the request of the Complainant, the Title IX Coordinator or designee will communicate with the Complainant about the College's chosen course of action, which may include the Title IX Coordinator filing a Formal Complaint and the College choosing to pursue action against a Respondent on its own behalf. Alternatively, the course of action may also include steps to limit the effects of the alleged misconduct and prevent its recurrence that do not involve formal disciplinary action against a Respondent or revealing the identity of the Complainant.

**If the College determines that it cannot maintain a Complainant's confidentiality,** the College will inform the Complainant prior to starting an investigation and will, to the extent possible, only share information with people responsible for handling the College's response.

The College may not require a Complainant or Respondent 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 may nevertheless implement Supportive Measures as necessary to protect the Complainant. If the College honors the request for confidentiality, the Complainant must understand that the College's ability to meaningfully investigate the incident and pursue disciplinary action against the Respondent may be limited.

## XI. INVESTIGATION PROCESS

### Filing a Formal Complaint

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

1. **Move forward with a Formal Complaint process under this policy:**  
Information collected in the Formal Complaint gives reasonable cause to

believe a violation of this policy may have occurred and warrants further investigation. A full investigation will begin.

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2. **Refer the complaint to the proper office if the Title IX policy does not have jurisdiction.** If the one or more allegations alleged in the Formal Complaint:

would not constitute Title IX Sexual Harassment as defined in this policy even if proved;

did not occur in the College's education program or activity; OR

did not occur against a person in the United States,

then the College is required to dismiss those allegations for purposes of sexual harassment under Title IX and this policy, but may refer the allegations to the appropriate office for a review under any applicable policy as previously noted.

The Title IX Coordinator also may (but is not necessarily required to) dismiss a Formal Complaint or any of its allegations if at any time during the investigation or hearing (a) the Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any specific allegation; (b) the Respondent is no longer enrolled or employed by the College; or (c) specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the Formal Complaint or one or more of its allegations.

In the event a Formal Complaint is dismissed in whole or in part under this policy as described above, both the Complainant and the Respondent may appeal this dismissal and request to have the dismissed allegations reinstated under the Title IX process. Appeals should be sent to the Title IX Coordinator, who will refer the matter to the appropriate personnel for review. Please review the Appeals section below for further information about the appeals procedure.

Please note that the filing 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.

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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.

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 the College's Title IX 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

Limitations on participating in clubs, activities, sports teams, SGA, or other College programs

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).

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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* and Skidmore's SGBM policy.

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.

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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.

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, Dating Violence, and Domestic 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

In all cases of alleged Title IX Sexual Harassment, the College will respond to the report in a prompt, impartial, procedurally fair, and effective manner. Upon submission of a Formal Complaint, the College will strive to complete the investigation and adjudication processes (excluding the appeal process) within sixty 60-90 calendar days. This time frame and other time frames in this policy may be extended due to circumstances including but not limited to unavailability of one or more parties or advisors due to unanticipated events or circumstances, the timing of academic breaks or holidays, concurrent law enforcement activity, or other extenuating circumstances. Delays due to concurrent law enforcement activity should not exceed ten calendar days except when law enforcement authorities specifically request and justify a longer delay. The parties will be notified of the reasons for such extensions.

Throughout the investigation and adjudication process, a Complainant and Respondent may be accompanied by their Advisor of Choice to all meetings, investigation interviews, and/or hearings pertaining to the complaint. Additionally, the Complainant and Respondent may be accompanied by a SGBM Support Specialist, and/or an Advisor of their choosing to all meetings, investigation interviews, and/or hearings pertaining to the complaint.

Please keep in mind that any advisor or support specialist is not permitted to speak on behalf of the party they are supporting, as described on page 9 under the definition of Advisor of Choice, other than at the hearing specific to the cross-

An investigation into whether a violation of this policy has occurred will begin after a Formal Complaint has been filed.

The Title IX Coordinator or designee will then reach out to the parties to provide them Written Notice of the Formal Complaint, including (to the extent known) the identities of the involved parties; the date, time, and location of the alleged misconduct; the factual allegations then known allegedly constituting a violation; the policy provisions allegedly violated; potential sanctions; and their right to

an Advisor of their Choice, who may be, but is not required to be, an attorney; their right to inspect and review evidence in accordance with this policy; notice that knowingly making false statements or knowingly submitting false information is prohibited under this policy among others; and that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the process.

This information will be provided in sufficient detail and with sufficient time to prepare a response before any initial interview. If, in the course of the investigation, the College decides to investigate allegations that are not included in the notice initially provided to the parties, the Title IX Coordinator or designee will provide notice of the additional allegations to the parties.

Throughout the investigation and adjudication, the College assumes the responsibility for gathering evidence, and it is not the responsibility of the parties to conduct their own investigation. Parties will also maintain the following rights throughout the investigation:

An equal opportunity to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

Not be restricted to discuss the allegations under investigation or to gather and present relevant evidence;

The same opportunities to have others present during any proceeding, including the opportunity to be accompanied to any related meeting or proceeding by their Advisor of Choice, who may be, but is not required to be, an attorney.

Written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;



Equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation;

Access to the evidence prior to completion of the investigative report for inspection and review in an electronic format or a hard copy;

A minimum of 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report;

Access to all such evidence (along with their advisor) subject to the parties' inspection and review as described above at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and

An investigative report that fairly summarizes relevant evidence, that will be provided to the parties and their advisors a minimum of 10 days prior to a hearing in an electronic format or a hard copy, for their review and written response.

**Please note that any evidence, including a party or witness interview, that was reasonably available during the investigation but was not provided during the investigative stage will NOT be permitted to be introduced at the hearing. Any proposed exception will be reviewed by a designated member of the Hearing Panel or single adjudicator and determined on a case-by case basis.**

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.

Once the investigation report is final, it is turned over to the Hearing Administrator to begin the adjudication process along with any responses from the Complainant and Respondent.

## XII. ADJUDICATION HEARING

Once the final investigation report is complete and responses have been collected (or the time to submit responses has expired), the Hearing Administrator will provide the report and responses to the Hearing Panel or Adjudicator to review. Hearing Panelists or Adjudicators may be members of the campus community or may be external to the College as determined by the Title IX Coordinator.

The Complainant and Respondent have a right to petition that the Adjudicator or a Hearing Panelist be removed on the basis of knowledge of one or more of the participants in the case that may impair – or may be perceived to impair – their ability to review and determine a case impartially, or on the basis of any other conflict of interest or bias for or against complainants or respondents generally or the Complainant(s) or Respondent(s) in the case. An Adjudicator or Panelist is also encouraged to remove themselves from the process if they have any knowledge of circumstances or information 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 Complainant and Respondent will be informed in writing of the date and time of the hearing no later than 10 days before it takes place. Requests to alter the date/time of the hearing must be submitted to Title IX Coordinator within 48 hours of the time the parties are informed of the proposed date and time of the hearing. **If a party or their advisor is not available during the proposed hearing date/time, they can request for it to be rescheduled, but a hearing will only be delayed up to 5 business days due to party/advisor availability.** If the party's advisor is not available within the five business days referenced, then the party must either find a new advisor or have one assigned to them by the College. Requests for exceptions due to special circumstances will be reviewed and addressed on a case-by-case basis.

The Complainant and Respondent may be accompanied by one Advisor of Choice to conduct cross-examination during the hearing and a secondary Advisor of Choice who is limited to advising and consulting with their respective party and may not speak on their party's behalf during the hearing.

Pursuant to Title IX, at the live hearing the parties are provided the following rights and procedures:

After the Hearing Panel or Adjudicator has an opportunity to pose questions to a party or witness, the Hearing Panel or Adjudicator will permit each party's Advisor of Choice to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility; provided that

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Such cross-examination must be conducted directly, orally, and in real time by the party's Advisor of Choice and never by a party personally.

At the request of either party or the decision of the College, parties may be located in separate rooms with technology enabling the Hearing Panel or Adjudicator and parties to simultaneously see and hear the party or the witness answering questions.

Only relevant cross-examination questions may be asked of a party or witness.

Before a Complainant, Respondent, or witness answers a cross-examination question, the Hearing Panel or Adjudicator will first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

If a party does not have an advisor present at the hearing, the College will provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct cross-examination on behalf of that party.

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior:

- are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or

- concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Previously, per the 2020 Title IX regulations, if a party or witness did not submit to cross-examination at the live hearing or did not attend the hearing, the Hearing Panel or Adjudicator would not be allowed to rely on any statement of that party or witness in reaching a determination regarding responsibility. Additionally, the Hearing Panel or Adjudicator would not be permitted to draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

*However, a recent federal court case (VRLC et. al. v. Cardona) invalidated the provision (above) in the Title IX regulations that stated that if a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination and the decision-maker cannot draw on inference about the*

**SKIDMORE** *determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions (Section 106.45(b)(6)(i)). As a result, Skidmore will not strictly enforce these provisions in its policy.*

*Parties and witnesses are encouraged to participate in a hearing and submit to cross-examination in order to ensure all relevant evidence is clearly understood and considered. In the event that a party or witness does not participate in a hearing and/or submit to cross-examination, the Hearing Panel or Adjudicator will consider that when weighing any statements made by such person and submitted as evidence.*

Live hearings may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants simultaneously to see and hear each other.

The College will create an audio or audiovisual recording, or transcript, of the hearing and make it available to the parties for inspection and review. Any other recording during the hearing is strictly prohibited. Any party, witness or employee who creates an unauthorized recording of the hearing 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.

Formal rules of evidence will not apply at the hearing. Except as otherwise expressly prohibited by this policy, any information that the Hearing Panel or Adjudicator determines is relevant may be considered, including hearsay, history and information indicating a pattern of behavior, and character evidence. The Hearing Panel or Adjudicator will address any concerns regarding the consideration of information prior to and/or during the hearing and may exclude irrelevant information. Subject to the terms of this policy, the Hearing Panel or Adjudicator will have discretionary authority to determine all questions of procedure, to determine whether particular questions, evidence or information will be accepted or considered, to call breaks or temporary adjournments of the hearing, and/or to recall parties or witnesses for additional questions as the Hearing Panel or Adjudicator deems necessary or appropriate. The Hearing Panel or Adjudicator may impose additional ground rules as the Hearing Panel or Adjudicator may deem necessary or appropriate for the orderly and efficient conduct of the hearing, which will apply equally to both parties.

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Following conclusion of the hearing, the parties and their advisors will depart and the Hearing Panel or Adjudicator will determine whether or not the Respondent violated the Title IX policy as alleged in the Formal Complaint by finding either: “Responsible” or “Not Responsible” with respect to each allegation, using the Preponderance of the Evidence standard. A preponderance of the evidence exists when a reasonable person, after a careful balancing of available information, would conclude that it is “more likely than not” a violation has occurred and the Respondent is responsible for the violation.

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

## Determination Regarding Responsibility

The Hearing Panel or Adjudicator will issue a written determination. The written determination will include the following:

- A. Identification of the allegations potentially constituting Title IX Sexual Harassment
- B. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- C. Findings of fact supporting the determination;
- D. Conclusions regarding the application of the College’s Title IX policy and Student Code of Social Conduct to the facts;
- E. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the College will be provided to the Complainant; and
- F. The College’s procedures and permissible bases for the Complainant and Respondent to appeal.

The Hearing Administrator will provide the written determination to the parties simultaneously within 10 business days after the hearing or as soon thereafter as practicable.

The Title IX Coordinator is responsible for coordinating effective implementation of any remedies.

## 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 responsible for sexual and gender-based misconduct offenses involving penetration regardless of the genders of the parties involved 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 Hearing Panel or Adjudicator will consider the following 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 to assign include, but are not limited to the following:

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**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 Hearing Panel or Adjudicator 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 was found responsible. Students may be required to complete a workshop, online education courses, research or a reflection paper articulating the harm caused by their actions and/or strategies they may adopt to prevent further disruptive behavior.

**Specific Restriction(s):** The Hearing Panel or Adjudicator 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 Hearing Panel or Adjudicator 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 Hearing Panel or Adjudicator 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 the Hearing Panel or Adjudicator 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 Hearing Panel or Adjudicator 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 appropriate personnel. The Hearing Panel or Adjudicator may also assign specific sanctions, such as a

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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. In the event of a suspension the College follows the refund practices for personal leaves. Further information may be found on the [Bursar's Office website](#). 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 Hearing Panel or Adjudicator 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 Enough is Enough 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 Hearing Panel or Adjudicator may recommend expulsion to the DoS/VPSA. 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/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.

**Degree Revocation:** In the event of serious misconduct committed while still enrolled, but for which the Respondent is 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

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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) for which a Respondent is found responsible and assessed a sanction of suspension or expulsion, Skidmore shall make a notation on the transcript of the Respondent 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 conduct charges for such offenses are pending, and declines to complete the disciplinary process, Skidmore shall make a notation on the transcript of the Respondent that they “withdrew with conduct charges pending.” Students who are suspended after a finding of responsibility for an offense as described above 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 or gender-based misconduct. Complaints made in good faith that are not substantiated through the processes described in this policy 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 or 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. **Past Title IX Violations, Past Conduct Violations, and Legally Recognized Privilege**

1. If, in the past, a Respondent was found to have violated this policy or others (“Past Violation”), the information related to the Past Violation may be shared by the Hearing Administrator and considered by the Hearing Panel or Adjudicator prior to determining responsibility and sanctions, if:

- a. The previous violation was substantially similar to the present complaint and therefore relevant; and
  - b. The previous violation indicates a relevant pattern of behavior and substantial conformity with that pattern by the Respondent.
2. Past Violations that were not substantially similar or other student misconduct (ex. Alcohol and other drug violations) may be shared by the Hearing Administrator after the Hearing Panel of Adjudicator has determined responsibility but prior to determining sanctions.
  3. The Investigator(s) and Hearing Panel or Adjudicator will not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege

## Appeal Process

Both parties can appeal the determination as well as an earlier dismissal of a Formal Complaint or any allegations therein, within 3 days of the relevant determination, on the following bases:

- A. Procedural irregularity that affected the outcome of the matter; and/or
- B. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and/or
- C. The Title IX Coordinator, investigator(s), or Hearing Panel or Adjudicator had a conflict of interest or bias for or against complainants or respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; and/or
- D. 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 to the Hearing Administrator, or designee, within three (3) business days of the relevant determination being made available.

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: SKIDMORE

Parties will be notified of the other party's appeal once it has been received by the Hearing Administrator or designee.

All parties will have access to all the written appeals and responses submitted by all parties after the submission deadlines have ended.

If an appeal is filed, the Hearing Administrator will notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties. For an appeal of a finding and/or sanction by a Hearing Panel or Adjudicator, an Appeal Panel will be convened, consisting of the Dean of Students and another panelist. The Appeal Panelists will not include the Adjudicator or any of the Hearing Panelists (as applicable), the investigator or the Title IX Coordinator.

For an appeal of a complaint dismissal, the Title IX Coordinator in consultation with the Dean of Students will designate an appropriate staff member. In the event that an appeal is filed to contest the dismissal of a Formal Complaint or any allegations therein, the designee may uphold the dismissal or direct the reinstatement of the Formal Complaint or one or more allegations therein.

The Complainant and Respondent have a right to petition that an Appeal Panelist be removed on the basis of knowledge of one or more of the participants in the case that may impair – or may be perceived to impair – their ability to review and determine an appeal impartially, or on the basis of any other conflict of interest or bias for or against complainants or respondents generally or the Complainant(s) or Respondent(s) in the case. Appeal Panelists are also encouraged to remove themselves from the appeal process if they have any knowledge of circumstances or information that may impair – or may be perceived to impair – their ability to review and determine an appeal impartially, and to recuse themselves if their participation might compromise the integrity of the appeal process.

Both parties will have a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome. If a party submits an appeal, the other party will have an opportunity to submit a response. That response will be shared with the party who appealed but will not be subject to an additional response. After review, the Appeals Panel will issue a written decision describing the result of the appeal and the rationale for the result, providing the written decision simultaneously to both parties.

The Appeal Panel will review the appeal and render a decision within 10 business days after receiving the written appeal and any responses from the Hearing Administrator, or as soon as practicable thereafter. The decision of the Appeal Panel

is final, subject to any further proceedings ordered by the Appeal Panel.

## SKIDMORE Potential Appeal Outcomes

The Appeal Panel will meet in private to review all available case material, including (as applicable) the full investigation report, submitted impact statements, outcome letters (with written rationale), appeal statements and the recording or transcript of the hearing. 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,

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

Implement a new Hearing Panel or Adjudicator to decide the case de novo, or

Make a final determination either upholding or altering the outcome of the hearing, 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 Adjudicator/Hearing Panel's finding(s)

- Alteration of deadlines related to sanction completion

In the event that the sanction determined by the Hearing Panel or Adjudicator 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 Title IX process. The liability insurance provided is the Educators' Legal Liability and General Liability policies. The Educators' Legal Liability protects against claims for "wrongful acts", such as harassment or discrimination. General Liability insurance protects against claims for bodily injury or property damage. Both policies are placed with United Educators.

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

## XIV. 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)**

Jen McDonald, Director of Health Promotion: [518-580-5684](tel:518-580-5684)

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/contacts.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

**\*Administrator ON-CALL: 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 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**

**\*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*

**SKIDMORE**

*Policy revised in August 2022.*

*This policy may be amended, in writing, by Title IX Coordinator in consultation with the Vice President of Student Affairs and Dean of Students.*

[<sup>1</sup>] For complaints against employees, the relevant faculty or staff SGBM policy would apply. Please visit [www.skidmore.edu/sgbm](http://www.skidmore.edu/sgbm) for more.