

**WITTENBERG UNIVERSITY**

**POLICIES AND PROCEDURES**  
**CONCERNING SEXUAL**  
**HARASSMENT AND MISCONDUCT**

## INTRODUCTION

Sexual harassment and misconduct undermine the mission of the university and threaten the careers, educational experience and well-being of students, faculty, staff and visitors to the campus. Therefore, it is the policy and goal of Wittenberg University that all students, faculty, staff and guests be free from sexual harassment and sexual misconduct. Although founded on and guided by the laws of the United State and of the State of Ohio, the university's policy against sexual harassment and misconduct is not limited to these laws as the policy is an expression of the academic, residential, and professional standards of the Wittenberg community. The university reserves the right to investigate circumstances that may involve sexual harassment or misconduct in situations where no complaint has been filed.

In accordance with the University's mission and values, and in compliance with Title IX and related legislation, Wittenberg University seeks to proactively prevent sexual harassment and sexual misconduct. The University is also committed to responding promptly to concerns or allegations of harassment and assault. Such response includes, but is not limited to, providing support and counseling for any individual requiring or requesting it; taking adequate steps to immediately eliminate the harassment or threat of harassment, preventing its recurrence and providing fair, adequate and equitable resolution of complaints brought to the University's attention.

As a recipient of Federal funds, the University is required to comply with Title IX of the Higher Education Amendments of 1972, 20 U.S.C. § 1681 et seq., which prohibits discrimination on the basis of sex in education programs or activities. Sexual harassment and misconduct as defined in this policy are forms of sex discrimination prohibited under Title IX. Wittenberg University is committed to providing programs, activities, and an educational environment free from sex discrimination. Questions related to Title IX can be directed to the Director of Human Resources/Title IX Co-Coordinator, Dean of Students/Title IX Co-Coordinator or the Office of Civil Rights.

This policy applies to all faculty, staff, and students. All community members are expected to abide by this policy, whether on campus or away from campus, when engaged in activities sponsored by the university or which otherwise related to the university or its business. This policy also applies to activities of recognized student organizations. Those who contract to use Wittenberg's campus, conduct business on campus or visit the university are expected to adhere to the principles established by this policy.

## Resources for Individuals Who May be Victims of Sexual Misconduct

The health, safety, and well-being of all Wittenberg community members are the University's primary concern. If you or someone you know may be the victim of any form of sexual misconduct, you are strongly urged to seek immediate assistance. Assistance can be obtained 24 hours a day, seven day a week, from:

### On Campus:

- Campus Emergencies, 327-6363
- Wittenberg Police 327-6231
- Wittenberg Health and Counseling Center, 327-7811
- Student Development, 327-7800
- GLBT & Ally Office, William A. McClain Center for Diversity  
[gsa-information@wittenberg.edu](mailto:gsa-information@wittenberg.edu)
- University Pastor, 327-7411
- Escort Service, 327-7900

### Off Campus:

- Police Emergency, 911
- Springfield Police Department, 324-7680
- Clark County Sheriff's Department, 328-2560
- Springfield Regional Medical Center, 328-9372
  - Sexual Assault Nurse Examiner (SANE) available
- Project Woman, 937-325-3737 (Emergency)
  - Non-emergency 328-5308
- Talk One2One Telephone Counseling
  - After-hours support, 1-800-756-3124
  - Available when Health and Counseling Center is closed
- National Sexual Assault Hotline, 1-800-656-HOPE
- Clark County Health Department 390-5600
  - STD/HIV Testing

### Other:

<http://www.rainn.org>  
<http://www.wittenberg.edu/administration/security/harassment.html>  
<http://www.onestudent.org>

Further information about Title IX and sex discrimination in education is available from the Office of Civil rights, 400 Maryland Avenue, SW, Washington, DC, 20202-1100 (by Customer Service Hotline: 800-427-3481; fax: 202-453-6012; TDD: 877-521-2172; email: [OCR@ed.gov](mailto:OCR@ed.gov); or on the web, at <http://www.ed.gov/ocr>).

For non-emergency assistance during Business Hours (8:00 a.m. to 5:00 p.m., Monday through Friday):

**Faculty and staff** are strongly urged to contact the Director of Human Resources/Title IX Co-Coordinator, Kevin Evans at 327-7517 or e-mail [kgevans](mailto:kgevans).

*Students* are strongly urged to contact the Dean of Students/Title IX Co-Coordinator, Casey Gill at 327-7801, email [gillc@wittenberg.edu](mailto:gillc@wittenberg.edu) or the Director of Student Conduct, Krystal Reeb, who is also the deputy Title IX coordinator for student complaints. She can be reached by telephone 327-7804, email [reebk@wittenberg.edu](mailto:reebk@wittenberg.edu) or in person at the Dietrich House for Student Development (809 Woodlawn Ave.).

All victims of sexual assault should take the following actions:

- Go to a safe place.
- Do not shower, bathe, or douche.
- Do not urinate, if possible.
- Do not eat, drink liquids, smoke, or brush teeth if oral contact took place.
- Keep the clothes worn during the offense. If clothes are change, place in a paper bag (evidence deteriorates in plastic).
- Get prompt medical attention.
- Do not destroy the physical evidence that may be found in the vicinity of the crime. If the crime occurred in the victim's home, the victim should not clean or straighten until the police have had an opportunity to collect evidence.
- Write down all details remembered as soon as possible.

This policy covers complaints of alleged sexual misconduct by University members (student, faculty, and staff). Additionally, procedures within this policy will cover complaints of alleged domestic violence, dating violence and stalking by University members (students, faculty and staff).

# POLICY

## Responsible Parties

All members of the university community are responsible for knowing and understanding the university's policy prohibiting sexual harassment and misconduct. Students who do not understand the policy should contact the Office of Student Development. Faculty and staff who do not understand the policy should contact their department chair or supervisor or the Office of Human Resources. Department chairs or supervisors who need assistance in understanding, interpreting, or applying the policy should contact the Director of Human Resources.

In the event that a member of the faculty or staff learns of sexual harassment or a sexual misconduct complaint, written or unwritten, that faculty or staff member is required to notify a Title IX Coordinator. Supervisors have a special responsibility for monitoring adherence to this policy. Supervisors are expected to model good behavior and to act promptly to correct any harassing behavior to ensure there is not reprisal.

## Definitions:

*Coercion* - Unreasonable pressure or persuasion, duress, cajoling and/or compulsion to engage in unwanted sexual activity. Can be confused with romance or seduction but can be identified by the following factors: intensity, frequency, duration and/or isolation.

*Complainant* - Any member of the Wittenberg community who reports or files a sexual harassment or misconduct complaint.

*Confidentiality* - The university aspires to treat with discretion all inquiries and complaints about sexual harassment or misconduct. Although the university gives no assurance of confidentiality to any party or witness who participates in any proceeding under this policy, it is committed to informing only those who need to be involved with a complaint. In the interest of protecting confidentiality to the extent possible, as well as pursuing an effective investigation, all parties and witnesses are expected to limit the sharing of information to those with a need to know. In particular, the specifics of an investigation or investigatory interview should not be discussed with any person who does not have a legitimate need to know such information. Undue sharing of information could also be considered harassment or retaliation by the other party. Such harassment or retaliation may result in disciplinary action by the University. This expectation of confidentiality is not intended to limit either party's actions when sharing information for the purpose of obtaining support or counsel.

*Dating Violence*- Violence committed by a person— (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship.

*Day(s)* - For purposes of this policy, all references to days are considered working days.

*Domestic Violence*- Includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. *Effective Consent* – Words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective consent cannot be gained by force, by ignoring or acting in spite of the objections of another, or by taking advantage of the incapacitation of another, where the respondent knows or reasonably should have known of such incapacitation. Effective consent is also absent when the activity in question exceeds the scope of prior effective consent. In the State of Ohio, persons 16 years of age or younger cannot give effective consent.

*Facilitator* – A University employee or designee who facilitates resolution of a complaint.

*Force* – Physical force, violence, threat, intimidation or coercion.

*Hearing Advisers* - Current or former members of the Sexual Conduct Grievance Board. The Title IX Coordinator assigns a hearing adviser to the complainant and one to the respondent. The advisers can provide information about the grievance board process and offer assistance as to help prepare a complainant or respondent to testify, question, rebut and make closings statements. The advisers do not prepare statements, question witnesses, or provide testimony during the hearing. The advisers are not counselors or legal advisers. They can help guide each party in his or her thought process by asking clarifying questions and offering advice regarding the presentation of information. However, advisers cannot present or advocate the case. Each party is responsible for establishing the validity of a complaint or presenting a defense.

*Hearing Panel* - The Hearing Panel is composed of members of the Sexual Complaint Grievance Board as empanelled by its chair. The panel conducts hearings on complaints of sexual harassment or sexual misconduct.

*Hostile Environment* – Per the Office of Civil Rights, a hostile environment as it relates to students is one in which the harassing conduct is sufficiently serious that it interferes with or limits a student's ability to participate in or benefit from the school's program.

*Incapacitation* – The physical and/or mental inability to make informed rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks.

Where alcohol [or other drug] is involved, one does not have to be intoxicated or drunk to be considered incapacitated. Rather, incapacitation is determined by how the alcohol consumed impacts a person's decision-making capacity, awareness of consequences, and ability to make informed judgments... Because incapacitation may be difficult to discern, students are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give effective consent.

Being intoxicated or drunk is never a defense to a complaint of sexual harassment or misconduct under this policy. A factor considered during sexual complaint hearings is whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the complainant was incapacitated

*Intake Officers* – Designated University personnel trained as first responders to provide counsel and support to anyone who may have been subjected to sexual harassment or misconduct.

*Investigative Officer* – Designated and trained University personnel responsible for obtaining all of the facts of a sexual misconduct incident and for presenting the Hearing Panel with a written report.

*Non-Consensual Sexual Contact* – Any form of sexual contact that occurs without effective consent.

*Non-Consensual Sexual Intercourse* – Any genital or oral penetration, however, slight, by a part of the respondent's body or by an object that occurs without effective consent.

*Office of Record* - Department of Human Resources.

*Respondent* - A person named as an offender in a harassment/misconduct complaint.

*Retaliation*- Any acts of intimidation, threats, coercion or other behaviors against persons who files complaints or expresses concerns about sexual harassment or misconduct.

*Sexual Complaint Grievance Board* – Standing group of students, faculty and staff appointed by the President to hear complaints of sexual misconduct that require adjudication. The board will be composed of at least four faculty members, four staff members, and the eight students of the Student Conduct Hearing Board. The President will appoint the faculty and staff to three (3)-year staggered terms. Incumbent board members may be reappointed.

In making appointments, the President will be guided by considerations of continuity, experience, and sensitivity to the concerns of students, faculty, and staff. If necessary, the President may make a temporary appointment to the board. To the extent possible, the board will be gender-balanced. No faculty member shall serve simultaneously on the SCGB and on the Faculty Hearing Board on Academic Freedom and Tenure.

The President will designate one of the faculty members as chair of the SCGB and one of the staff members as vice chair.

*Sexual Contact* – Deliberate touching of a person’s intimate parts (including genitalia, groin, breast, buttocks, or clothing covering any of those areas), or using force to cause a person to touch his or her own or another person’s intimate parts.

*Sexual Exploitation* – Taking sexual advantage of another person without effective consent, and includes, without limitation, causing or attempting to cause the incapacitation of another person in order to gain sexual advantage over such other person. Such actions include, but are not limited to causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or intimate parts (including genitalia, groin, breast, or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexual transmitted infection, including HIV.

*Sexual Harassment* - Sexual harassment may be verbal, visual or involve physical contact. It can range from abusive remarks about individual persons to sexual misconduct including serious criminal abuses such as assault. It can be overt, such as a professor’s suggestion that a person could get a higher grade or a supervisor’s offer to an employee for a higher salary in return for submission to sexual advances. The suggestion or advance need not be direct or explicit—it may be implied by the conduct, circumstances and relationship of the individuals involved. Sexual harassment can also consist of persistent, unwanted attempts to change a professional or educational relationship to a sexual one.

A person does not have to be the target of sexual harassment to be sexually harassed. The harassment of others can be so offensive, demeaning or disruptive as to constitute a hostile work or academic environment, even though the harassment is not specifically directed at the observer.

Although no exhaustive listing of behaviors that constitute sexual harassment is possible, some examples include: unwelcome sexual flirtations or advances; repeated sexually oriented kidding, teasing, joking and flirting; verbal abuse of a sexual nature; graphic commentary about an individual's body, sexual prowess or presumed sexual deficiencies; derogatory or demeaning comments directed to one's gender; derogatory or demeaning comments about sexual orientation; leering, whistling, touching, pinching or brushing against another's body; touching of an erogenous zone, offensive, crude language; displaying of pornographic materials on



personal computers; and displaying objects or pictures that are sexual in nature. All such conduct can be threatening and coercive and may create a hostile or offensive working environment that is not conducive to teaching, learning and working.

Sexual harassment also may consist of patterns or episodes of speech or other behavior that creates a hostile or offensive environment for individuals based on their gender or sexual orientation; it may or may not involve unwanted sexual attention.

The university will determine that a behavior or series of behaviors constitutes sexual harassment when one of the following four criteria exists:

- (1) Submission to such behavior is made either explicitly or implicitly a term or condition of a person's employment or education; is used as the basis for academic or employment decisions affecting the person; or is a condition to participate in a university activity;
- (2) The behavior has the purpose or effect of creating a threatening, hostile or offensive environment;
- (3) The behavior unreasonably interferes with an individual's work, academic performance or living environment or otherwise interferes with required tasks, career opportunities or learning;
- (4) The behavior causes a person to engage in a sexual act through force, threat of force, or without the person's consent.

*Sexual Misconduct* – A broad term encompassing Sexual Exploitation, Sexual Harassment, Non-Consensual Sexual Contact, and Non-Consensual Sexual Intercourse, as defined in this policy. Sexual misconduct may occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex.

*Stalking*- Engaging in a course of conduct directed at a specific person that would cause a reasonable person to— (A) fear for his or her safety or the safety of others; or (B) suffer substantial emotional distress.

## **PROCEDURES**

### **PART 1: INCLUDING SEXUAL MISCONDUCT, DOMESTIC VIOLENCE, DATING VIOLENCE AND STALKING**

#### **A. Timing**

There is no time limit to invoking this policy in responding to complaints of alleged sexual harassment and misconduct. Nevertheless, student, faculty, and staff are encourage to report alleged sexual misconduct immediately in order to maximize the

University's ability to obtain evidence, and conduct a thorough, impartial, and reliable investigation. Failure to promptly report may result in the loss of relevant evidence and witness testimony, and may impair the University's ability to enforce this policy.

#### B. False Reporting

Persons who make false allegations or testimony will be subject to disciplinary action. Failure to substantiate an allegation of sexual misconduct in the course of a hearing, however, is not sufficient proof that the charges are intentionally false.

#### C. Confidentiality

If a person wishes to ensure that a discussion about sexual harassment remains confidential and that no action is taken, it is essential that the person making the inquiry not disclose information sufficient to identify the accused. This is necessary because the university may be legally obligated to investigate an incident, even without the inquirer's consent, once it is informed that harassment has occurred or may be occurring. Exception: The university counselor and campus pastors are not obligated to report an incident to university officials. To the extent permitted by law, these individuals are permitted to maintain the client privilege of confidentiality.

#### D. Academic Freedom

The use of valid pedagogical materials will not constitute sexual harassment. The university encourages consultation with professional colleagues to determine if the use of the materials chosen may create a hostile or offensive atmosphere within the classroom. The university does not wish to stifle valid academic expression.

#### E. Sanctions

Appropriate sanctions will be imposed upon anyone who violates this policy. Sexual harassment and misconduct may be considered adequate for dismissal of a student or termination of employment, including termination of a tenured faculty appointment.

#### F. Retaliation

The university will not permit retaliation by either party to a complaint, by witnesses or by any other students, staff or faculty. Appropriate sanctions will be imposed on anyone engaged in such activity.

#### G. Criminal Proceedings

Because sexual harassment and misconduct may constitute both a violation of University policy and criminal activity, the University encourages complainants to report alleged sexual harassment and misconduct promptly to law enforcement

agencies. Criminal investigations may be useful in the gathering of relevant evidence, particularly forensic evidence.

If a law enforcement agency is engaged in investigating the incident, the University will make every effort to ensure its own investigation does not impede that of law enforcement. However, the university will not unreasonably delay its proceedings due to engagement of a law enforcement agency.

There is a difference between the legal proceedings and the University proceedings. The Ohio criminal and civil justice systems and the Wittenberg process for investigation, adjudication and discipline are separate and distinct ways in which to seek redress. The university's investigation of this complaint is an internal process that determines if there has been a violation of the university's policy that all students, faculty, staff, and guests be free from sex discrimination and/or misconduct. The outcome of the legal proceedings does not dictate the outcome of the university's internal proceedings

Because the standards for finding a violation of criminal law are different from the standards for finding a violation of this policy, criminal investigation reports are not the determinative of whether sexual harassment or misconduct has occurred. In other words, conduct may constitute sexual harassment or misconduct under this policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

#### H. Records Retention and Disposal

If the respondent is a faculty or staff member and a violation of university policy is found by the Sexual Complaint Grievance Board, a copy of the hearing panel's report will be placed in the respondent's permanent personnel record. If the respondent is a student, the report will be placed in the respondent's student disciplinary file.

Records of complaints closed by Assisted Resolution or resolved through Adjudication will be retained in the Department of Human Resources for a minimum of six (6) years after the case has been closed. Records will be retained indefinitely if a violation of university policy has occurred.

## **PART II: COMPLAINT AND REPORTING PROCEDURES**

Wittenberg strives to provide an environment that promotes and supports positive, effective resolutions for any kind of complaint or concern. In some cases, it may be appropriate for the individual who believes he or she has been subjected to harassment to communicate, in person or in writing, to the person doing the harassing. This may be done with, or without, notifying a university official of the harassment. Such communication should include a description of the offensive behavior and a request that the behavior stop. However, instances of repeated harassing behaviors or any single incident of unwanted sexual contact should always be reported to a university official.

Any recipient of unwanted behavior has the right to be free from pressure when deciding on a desired course of action. The University will respect the decision of the complainant. However, the University also has a duty to protect that individual and all other members of the community from anyone who may be responsible for unwanted behavior. Toward that end, **if the University is on notice of alleged harassment**, the University may opt to proceed with an investigation and/or hearing whether or not the recipient of the unwanted behavior chooses to participate.

Any individual wishing to make a complaint about sexual harassment or sexual misconduct has the following options under this policy:

### **Informal Complaint**

As described above, assistance from any University official may be requested to resolve complaints of harassing behavior. In cases of repeated harassing behaviors or any incident of unwanted sexual contact, the University encourages the complainant to follow formal complaint procedures.

### **Formal Complaint – *requires submission of a signed written complaint (see below)***

- (a) Assisted Resolution
- (b) Adjudication

### **Seek Assistance outside the University**

Anyone who believes he or she has been sexually harassed or assaulted may also elect to make a complaint outside the university by initiating civil and/or criminal charges against the offending party or parties. If requested, the university will assist the complainant in reporting an assault and filing a criminal charge. The University community is reminded that the Ohio criminal and civil justice systems and the Wittenberg process for investigation, adjudication and discipline are separate and distinct ways in which to seek redress. If any party initiates any civil, criminal or agency proceeding, the University reserves the right to independently initiate, to suspend, to terminate or to continue the internal proceeding within the requirements of the Title IX and other regulatory actions of the Office of Civil Rights.

## **FORMAL COMPLAINT PROCEDURES<sup>1</sup>**

Two mechanisms:

1. Assisted Resolution
2. Adjudication

The university believes that for a variety of reasons including privacy, speed of the resolution and a return to normal relations, it may be in the interest of both the complainant and the respondent to resolve the complaint through Assisted Resolution rather than Adjudication. Thus, unless the complainant or respondent specifically request resolution through adjudication, or unless the severity of the alleged incident is deemed by the university to require adjudication, the university will attempt to resolve formal complaints through Assisted Resolution. Experience has shown that Assisted Resolution is particularly appropriate in situations where there are different perceptions about whether consent was given or where thoughtless or unintentional behavior has caused distress.

### **Initiating the Complaint**

Anyone who wishes to file a formal complaint may do so by contacting any of the following university staff members who are trained to serve as intake officers for complaints:

- Dean of Students/Title IX Co-Coordinator, Director of Student Conduct/Deputy Title IX Coordinator or any other administrative personnel in the department of Student Development (student-initiated complaints)
- Director of Human Resources/Title IX Co-Coordinator (student-, faculty- or staff-initiated complaints)
- Associate Provost or any administrative personnel in the Provost's Office.
- Any Title IX Deputy Coordinator

All formal complaints will be signed and, upon resolution, filed with the Department of Human Resources, which will be the Office of Record for all sexual harassment and misconduct complaints.

The Intake Officer will forward the written complaint to an appropriate university official (which may be the intake officer) and the Title IX Coordinator for further action. When the respondent is a faculty member, the Director of Human Resources/Title IX Co-Coordinator will seek the participation of the respondent's supervisor and/or the Provost when presenting the complaint to the respondent.

### **Interim Measures**

In all complaints of alleged sexual harassment or misconduct, regardless of whether the complainant wishes to pursue formal grievance procedures, the University will undertake an appropriate inquiry and take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the complainant, including taking appropriate interim steps before the final outcome of the investigation and hearing, if any. Accordingly, at or after

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<sup>1</sup>The timetable set within this policy serves as a guideline. It may be modified in consideration of the academic calendar. Wittenberg is committed to resolving complaints in a timely manner but not at the expense of thoroughness or fairness.

the intake meeting, the University may impose a “no-contact” order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation, and if applicable, the hearing.

The Title IX Coordinator or designee also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, if any, including, without limitation, directing appropriate University officials to alter a student’s academic schedule, University housing, and/or University employment arrangements. When taking steps to separate the complainant and the accused, the University will seek to minimize unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allow the complainant to safely continue in his or her academic schedule, University housing, and/or University employment arrangements. Violation(s) of the directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action.

### **Resolution of Complaints by Assisted Resolution**

Under appropriate conditions, a university official is appointed as a facilitator to help the complainant and respondent reach a mutually satisfactory resolution. The facilitator does not make a determination about whether the university’s policy has been violated. However, a record of the incident and its resolution is maintained in the files of the Office of Student Development. Generally, the facilitator meets separately with the complainant and respondent. Examples of resolutions include an apology, counseling and education requirements, access restrictions, disciplinary action and/or other affirmative steps to be initiated for dismissal of the complaint.

The Title IX Coordinator or designee will refer complaints seeking Assisted Resolution to one of the following persons, according to the status of those involved:

- If the respondent is a student, to the Director of Student Conduct.
- If the respondent is a faculty member, to the Provost or designee.
- If the respondent is any other employee, to the Director of Human Resources or designee.

The facilitator will contact the complainant and respondent within five (5) days after receiving the complaint. The facilitator is responsible for documenting the facts as presented and will forward this information to the Hearing Panel should resolution by Adjudication become necessary.

If the complaint is resolved by Assisted Resolution, the facilitator will forward a written report of that resolution to the Title IX Coordinator. The complainant and respondent will have signed the report to signify their agreement with the resolution and to forego their rights to an adjudicated hearing for the complaint that they mutually resolved.

If at any point the respondent or complainant rejects the Assisted Resolution process, the complaint will be returned to the Title IX Coordinator or designee for resolution by adjudication. In such a case, the Title IX Coordinator will initiate the investigation and

adjudication process.

### **Resolution of Complaints by Adjudication**

The major steps in the Adjudication Process include Investigation, Hearing Process, Determination and Sanction, and Right to an Appeal

The Adjudication process will be implemented under any of the following conditions:

1. A formal complaint has been filed and the complainant or the respondent decides to bypass the Assisted Resolution process.
2. If the complaint has not been resolved by Assisted Resolution within fifteen (15) days after filing, the intake officer will declare an impasse and send all relevant records to the Title IX Coordinator or designee for resolution by Adjudication.
3. University initiated—Even if the complainant does not wish to pursue a resolution, the university may determine that the issues raised by the complainant are sufficiently serious to initiate the adjudication process.

### **Support for Complainants and Respondents**

Two members of the SCGB, who are not serving on the Hearing Panel, will be appointed to serve as primary hearing advisers. One adviser will be assigned to the complainant, and one will be assigned to the respondent. Hearing Advisers will generally be of the same gender as the individual he/she is supporting. The hearing advisers are available to listen and provide general information about the hearing process. Although the adviser is to be an aid, each party is responsible for establishing the validity of a complaint or presenting a defense. If requested by either party, the respective Hearing Adviser may accompany that individual to any fact-finding or appeals hearing but will not be permitted to speak or participate in the proceedings.

Each party may have only one support person in attendance during any official hearings. However, the complainant and the respondent may opt for a secondary adviser to provide emotional support in any proceeding under this policy and procedure or in the preparation and filing of any complaint. In such cases, the university-appointed Hearing Advisor will not attend any proceedings but continues to be available for support or clarification of the process. If a secondary support person is selected, the complainant or respondent may ask the respective support person to accompany them in any fact-finding or appeals hearing; however, the support person will not be permitted to speak or participate in the proceedings. The complainant and respondent must notify the SCGB chair or designee of the identity of an alternative support person at least 48 hours in advance of the hearing, absent good cause to the contrary. If the chair determines that the selected support person will or may potentially cause a conflict of interest, the chair may require that another support person be chosen. For example, the presence of witnesses, girlfriends, boyfriends, or parents present an inherent conflict and will not normally be permitted to attend the hearing. Such decisions are at the sole discretion of the SCGB Chair or Title IX Coordinator or designee.

In no case, may a Hearing Advisor or other support person attend investigatory interviews.

## **Investigation**

The Title IX Coordinator or designee will designate an investigative officer(s) who will be responsible for obtaining all of the facts of the case. This may include gathering documents and conducting interviews with all individuals reasonably believed to have relevant information, including the complainant, the respondent, witnesses and individuals who are alleged to have been the victims of similar conduct. The investigative officer will be designated according to the classification of the respondent:

- If the respondent is a student, an official from the Office of Student Development will be appointed.
- If the respondent is a faculty member, an official from the Provost's Office or designee will be appointed.
- If the respondent is any other employee, an official from the Office of Human Resources will be appointed.

In cases of sexual misconduct, the Wittenberg Chief of Police or the Chief's designee may be asked to support criminal filings.

Within seven (7) days of receiving the complaint, the investigator(s) will consult with the complainant and with the respondent in order to ascertain the facts and views of both parties. The investigator will report his or her findings in writing to the Title IX Coordinator or designee. The investigative findings will be given to the complainant and respondent a minimum of two days in advance of the hearing.

All individuals are expected to cooperate in the investigation and are expected to abide by the university's code of conduct, including honesty. Individuals who obstruct the investigation process or who are dishonest and hinder the institution's ability to conduct a prompt and thorough investigation of allegations will be subject to discipline.

## **Hearing Panel**

Complaints will be heard by an impartial hearing panel. Any person who has a significant conflict of interest regarding the case may not serve on the hearing panel for that case. A party who believes that a member of a hearing panel may not be impartial may bring that concern to the attention of either the chair of the hearing panel or the Title IX Coordinator or designee who will determine if a member should be excused. The chair of the SCGB will preside over meetings and hearings of the board. The vice-chair will discharge those responsibilities if the chair is unavailable. If both the chair and vice chair are unable to sit as chair, the Title IX Coordinator will designate another member of the board as chair pro tem.

The Title IX Coordinator or designee, in consultation with the chair of the SCGB, will appoint a hearing panel within fourteen (14) days of receiving a complaint that is to be adjudicated. (Exceptions to the 14-day deadline may be authorized for special circumstances.) A hearing panel consists of at least one faculty member, one staff member, and, in cases where the complainant or the respondent is a student, one student member. The chair of the SCGB may choose to impanel additional members of the board.



## **Hearing Procedures**

The Title IX Coordinator or designee will refer all complaints requiring resolution by Adjudication to the chair of the SCGB and to the designated investigator(s). The Title IX Coordinator or designee will also give a copy of the complaint to the respondent.

The hearing panel will hold a formal fact-finding hearing and receive testimony from the designated investigator(s), the complainant, the respondent and other witnesses, as the panel deems necessary. The chair of the hearing panel will exercise discretion in determining which witnesses are necessary to the hearing process.

Although the hearing procedures are designed to respect fundamental standards of fairness, they are not intended to be equivalent to those employed in a civil or criminal judicial process. They are set with an aim of providing the hearing board with the best opportunity for determining the truth of the matter's dispute. Minor deviations from these prescribed procedures will not render a decision invalid or constitute grounds for an appeal unless a matter of fundamental fairness has been violated.

- The hearing panel will convene as promptly as possible but not later than ten (10) days after receiving the investigative officer's report.
- The respondent and complainant will be provided with a written copy of the charges with sufficient specificity to prepare for the hearing, including the names of any witnesses and copies of any documents that will be presented by the complainant and the investigative report.
- Both parties are expected to offer their own testimony. The chair may call witnesses, including expert witnesses, to aid the hearing panel in its consideration of the complaint.
- Members of the hearing panel may make written notes of the testimony. The chair may make an official recording of the testimony, but not of the deliberations, for the sole use of the panel. Any notes or recordings will become part of the official records of the case.

## **Determination and Sanctions<sup>2</sup>**

The hearing panel may choose to reconvene as often as it deems necessary to hear additional information. Within five (5) days after the conclusion of its hearings, the panel will prepare a written report. The report will include a summary of the evidence before the panel, the testimony heard and a statement of its findings of fact and its conclusion as to whether the university's policy has been violated.

The hearing panel will rely on the preponderance of evidence standard when making its determination. This means the determination will rest on whether the evidence indicates it is more likely than not that sexual harassment or misconduct occurred in violation of the institution's policy. This standard is substantially different from the legal standards of either

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<sup>2</sup>The panel does not have authority to determine or recommend sanctions in complaints against faculty or staff.

“clear and compelling” or “beyond a reasonable doubt” which are required for criminal proceedings.

### **For Complaints against Students**

The panel will use the sanctioning guide as stated in the university *Student Handbook* to recommend a sanction. The panel will consult with the Dean of Students or designee to determine if the respondent has prior violations and to ascertain other compliance and/or consistency factors relevant to the case.

The chair of the hearing panel will give a written report of the decision and the sanction to the Title IX Coordinator or designee who, in turn, will supply the report and notification letter to the complainant and respondent. If the report and notification letter cannot be delivered to the complainant and respondent in person, the chair may mail the decision by ordinary United States Mail or may e-mail same. The chair will use the local addresses of the respective parties, and the decision will be deemed delivered upon mailing.

### **For Complaints against Faculty or Staff**

The hearing panel will file the report with the Title IX Coordinator who will forward the report to the Provost if the respondent is a member of the faculty and to the President if the respondent is a member of the President’s Senior Staff; otherwise, the report will be forwarded to the Director of Human Resources.

If the panel has concluded that a violation of university policy has occurred, the Provost or the Director of Human Resources as the case may be, will consult with the hearing panel and thereafter will impose a sanction. If the respondent is a tenured faculty member, the Provost shall observe the procedures set forth in the Bylaws of the Board of Directors. If the respondent is a faculty member, the Provost will impose the sanction. If the respondent is a member of the President's Senior Staff, the President will impose the sanction. Otherwise, the Director of Human Resources will impose the sanction.

The senior administrative officer who received the panel's report will inform the complainant and respondent in writing of the decision and the sanction, if any, and will simultaneously send the report to the Title IX Coordinator. If the university officer is unable to deliver the decision to the complainant and respondent in person, the report may be sent by ordinary United States Mail or may e-mail the same. The officer will use the home addresses of the respective parties, and the decision will be deemed delivered upon mailing.

### **Right to Appeal**

An appeal of a disciplinary decision by the complainant or the respondent must be made in writing to the Title IX Coordinator or designee within seven (7) days after receipt of the decision. In turn, the appeal is forwarded to the appropriate senior administrator for consideration. The right to appeal does not entitle the complainant or respondent to a full rehearing of the entire case. If the senior administrator reviewing the appeal determines that there is new and significant evidence or that the rights to a fair and impartial hearing were

violated, the administrator will either reconvene the hearing panel or appoint a new panel to hear the case. If there is clear reason to believe the sanction is not consistent with the seriousness of the action, the senior administrator will revise the sanction in consultation with the hearing panel. The appeal process does not allow a senior administrator to change the decision of the hearing panel independently. The administrator will issue a written decision on the appeal and provide that decision to the Title IX Coordinator or designee who, in turn, will notify the respondent and the complainant within ten (10) days after the appeal is filed.

At least one of the following three conditions must exist for an appeal to be considered:

- (1) New and significant evidence can be introduced;
- (2) There is clear reason to believe that the sanction is not consistent with the seriousness of the action; or
- (3) The respondent's or complainant's right to a fair and impartial hearing was violated.

#### **For Complaints against Students**

The Title IX Coordinator will send the appeal to the Vice President, Strategic Initiatives for review and determination.

#### **For Complaints against Faculty or Staff**

The Title IX Coordinator will send the appeal to the President or designee for review and determination. If the President has imposed the sanction, a request for reconsideration may be filed with the President. Furthermore, a faculty member may choose to invoke the procedures set forth in the Bylaws of the Board of Directors with respect to the imposition of discipline on faculty.

Any appeal challenging the procedures applied in the formal resolution of a complaint may be directed to the President, or, if a faculty member lodges the appeal, the appeal may be processed under the Faculty Grievance Policy.

### **PART III: USE OF LEGAL COUNSEL**

The University proceedings are not a court of law, and licensed attorneys are not permitted to be present in any investigatory interviews or fact-finding or appeals hearings.

Nevertheless, any person involved in any proceeding under this policy and procedure may be assisted by legal counsel chosen by that person. Any expense associated with retaining legal counsel in internal proceedings under this policy and procedure will be the responsibility of the person engaging such counsel. The Board of Directors of the University has determined that the University will not pay the expense of legal counsel in internal proceedings.

Under the University's indemnification policy, adopted by its board of directors, the University may provide coverage under various indemnification and/or insurance policies for external proceedings, and the board of directors decides such cases on an individual basis.

## **PART IV: SUPPORT SERVICES**

### **For Students**

The university counselor provides counseling services and referrals that are available to the complainant and respondent.

- Students may seek counseling from the university pastors. The university counselor or university pastors are able to maintain the client privilege of confidentiality to the extent that the law permits.
- The Office of Student Development has various educational aids and offers numerous programs to help students understand what they can do if they are harassed/assaulted or aware of another party who has been harassed/assaulted. In addition, the annual security report and the *Student Handbook* contain information on educational programs to promote the awareness of sexual offenses, sanctions for such offenses and the campus disciplinary procedures. Both also identify available counseling and other campus support services.

### **For Faculty and Staff**

The university provides an informal employee assistance program for its faculty and staff. The Department of Human Resources can provide information about community resources and educational programs, and can make appropriate referrals. Eligible employees may receive financial assistance.

Faculty and staff may also seek counseling from the University Pastors. The University Pastors are able to maintain the client privilege of confidentiality to the extent that the law permits.

## **PART V: COMMUNITY NOTIFICATION**

At least annually, the Title IX Coordinator shall submit a report to the President that includes the number of individuals who filed a complaint, the number of cases that were resolved through adjudication, the kinds of behavior that gave rise to complaints and the determinations of the hearing panel.

In addition, all such incidents are included in the annual Campus Security Report which is made available to the campus community and the general public.

## **PART VI: REVIEW OF PROCEDURES**

The Title IX Coordinator will consult with the Director of Student Conduct and Chair of the SCGB to annually evaluate these procedures. Substantive policy changes, if any, will be forwarded to the President and Senior Staff for review. After review by the President and Senior Staff, the changes will be brought to a faculty meeting and to Student Senate before presentation to the board of directors for consideration for adoption. Standard updates on procedures are at the discretion of the initial review team.

All members of the Wittenberg community are encouraged to raise questions about this policy with one of the committee members, and to offer suggestions for policy revision.

### **EFFECTIVE DATE OF POLICY**

This policy will be effective for all matters processed on and after the date that this revised policy is approved by the Board of Directors.

- Adopted by the Board of Directors—Oct. 1994
- Revised by the Board of Directors—June 5, 1995
- Revised by the Board of Directors—May 3, 1996
- Revised by the Board of Directors—May 3, 1997
- Revised by the Board of Directors—May 8, 1999
- Revised by the Board of Directors—May, 2000
- Non-material revisions - August, 2001
- Non-material revisions - August, 2004
- Revised by the Board of Directors—Oct. 2012
- Definitions and Procedural updates – August 2013, March 2014
- Non-material revisions/position updates – March 2014