

# WITTENBERG UNIVERSITY

## Title IX Policy

### I. PURPOSE AND STATEMENT OF POLICY

Sex discrimination and sexual harassment undermine the mission of Wittenberg 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 the University that all students, faculty, staff and guests be free from sex discrimination and sexual harassment. Although founded on and guided by the laws of the United States and of the State of Ohio, the University's Title IX 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.

In accordance with the University's mission and values, and in compliance with Title IX and related legislation, the 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.

### II. NOTICE OF NON-DISCRIMINATION

The University does not discriminate in its educational programs and activities on the basis of sex, gender, gender identity, sexual orientation, or transgender status. The requirement of non-discrimination in educational programs and activities extends to the following areas: recruitment, admissions, educational programs and activities, housing, access to classes and schools, counseling, financial assistance, employment assistance, health and insurance benefits and services, marital or parental status, and athletics. 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.*

This Policy defines the conduct prohibited by this Policy to include sex discrimination, sexual harassment, sexual assault, dating violence, domestic violence, stalking, harassment on the basis of sex, sexual exploitation, and retaliation. Prohibited Conduct under this Policy is also prohibited under the Clery Act as amended by VAWA, Title VII of the Civil Rights Act of 1964, Ohio Revised Code Chapter 4112, and other applicable statutes, regulations and administrative code provisions. All complaints of Prohibited Conduct should be brought to the Title IX Coordinator for an initial assessment. This Policy includes grievance procedures designed to provide a prompt and equitable resolution of complaints of Prohibited Conduct.

The following persons have been designated and authorized to handle inquiries regarding the non-discrimination policies:

**Title IX Coordinator**

Gwen Owen

Assistant Vice President for Student Development, Interim  
Dean of Students, and Title IX Coordinator  
Shouvlin Center 101- 737 N Fountain Ave.  
937-327-7800  
[oweng@wittenberg.edu](mailto:oweng@wittenberg.edu)

**Title IX Deputy Coordinators**

*For Students*

Kristina Bryant Reed

Director of Student Conduct and Deputy Title IX Coordinator  
Shouvlin Center 101- 737 N Fountain Ave.  
937-327-7804  
[bryantk1@wittenberg.edu](mailto:bryantk1@wittenberg.edu)

*For Faculty and Staff*

Carol Nickoson

Director of Human Resources and Deputy Title IX Coordinator  
Recitation Hall- 3 W Campus Dr.  
937-327-7527  
[nickosonc@wittenberg.edu](mailto:nickosonc@wittenberg.edu)

Mary Beth Walter

Chief Human Resources Officer, Associate Vice President for  
Administration and Deputy Title IX Coordinator  
Recitation Hall- 3 W Campus Dr.  
937-327-7517  
[walterm@wittenberg.edu](mailto:walterm@wittenberg.edu)

*For Athletics*

Katherine Robinson

Senior Woman Administrator, Assistant Director of Athletics, and Deputy Title  
IX Coordinator  
Health, Wellness, & Athletics Complex, Room 227- 250 Bill Edwards Dr  
937-327-6496  
[robinsonk6@wittenberg.edu](mailto:robinsonk6@wittenberg.edu)

For further information on this notice of non-discrimination or for questions about enforcement of this notice contact the Office of Civil Rights, U.S. Department of Education. Visit <http://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm> for the address and phone

number of the office that serves your area, or call 1-800-421-3481.

Any responsibilities assigned to the Title IX Coordinator under this Policy may be performed by the Title IX Coordinator's designee. Where the Title IX Coordinator is subject to a conflict of interest or bias regarding a particular case, the President shall appoint a designee to act as the Title IX Coordinator for purposes of that case.

### **III. SCOPE OF POLICY**

This Policy applies to all students, faculty, staff, and administrators, vendors, independent contractors, visitors, and members of the Board of Directors. All community members are expected to abide by this Policy when engaged in employment, education programs or activities sponsored by the University or which otherwise is related to the University or its business. Education programs or activities include locations, events, or circumstances over which the institution exercises substantial control over both the respondent and the context in which the sexual harassment occurs. This Policy also applies to education programs and activities of recognized student organizations and any buildings owned by recognized student organizations. This Policy does not apply to Prohibited Conduct that occurs outside of the United States of America.

This Policy specifically prohibits Sex Discrimination, Sexual Harassment, Sexual Assault, Stalking, Dating Violence, Domestic Violence, and Retaliation (together, “Prohibited Conduct”) against individuals of any sex, gender, gender identity, gender expression, transgender status, or sexual orientation. This Policy also prohibits gender-based harassment that does not involve conduct of a sexual nature, including hazing and failure to provide equal opportunities in admissions, employment, or athletics.

This Policy applies to all forms of Prohibited Conduct that:

- Occur on campus;
- Occur in the context of any University education program or activity; or
- Have continuing adverse effects on campus, on any member of the University community, or in the context of any University education program or activity, regardless of where the conduct occurred.

Regardless of when, where or with whom the conduct occurred, the University will offer resources and assistance to any individuals who have been affected by Prohibited Conduct.

### **IV. RESOURCES FOR INDIVIDUALS WHO MAY BE VICTIMS OF SEXUAL HARASSMENT OR OTHER FORMS OF PROHIBITED CONDUCT**

The Title IX Coordinator and Deputy Title IX Coordinators listed above have been designated to handle inquiries regarding this Policy.

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 days a week, from:

On Campus:

- Campus Emergencies, (937) 327-6363
- Wittenberg Police & Department of Campus Safety (937) 327-6231
- Tiger Counseling Center, (937) 327-7946
- Student Development, (937) 327-7800

- Womyn’s Center/Project Woman Advocate, (937) 328-5308
- University Pastor, (937) 327-7411
- WittPD Transport, (937) 327-6231
- Wittenberg Employee Assistance Program (EAP), 1-888-319-7819

Off Campus:

- Police Emergency, 911
- Mercy Health- Wittenberg Health Center (937) 523-9050
- Springfield Police Department, (937) 324-7680
- Clark County Sheriff’s Department, (937) 328-2560
- Clark County Health Department, (937) 390-5600
  - STD/HIV Testing
- Springfield Regional Medical Center, (937) 523-1400
  - Sexual Assault Nurse Examiner (SANE) available
- Timely Care
  - 833-4-TIMELY (846359)
  - [timelycare.com/wittenberg](http://timelycare.com/wittenberg) to download the app
- Project Woman, (937) 325-3737 (Emergency)
  - Non-emergency 328-5308
- National Sexual Assault Hotline, 1-800-656-HOPE

Other:

<http://www.rainn.org>

<http://www.onestudent.org>

<https://victimconnect.org>

For non-emergency assistance during Business Hours (8:00AM to 5:00PM, Monday-Friday):

**Faculty and staff** are strongly urged to contact the Director of Human Resources/ Deputy Title IX Coordinator, Carol Nickoson at (937) 327-7527 or e-mail [nickosonc@wittenberg.edu](mailto:nickosonc@wittenberg.edu) or Chief Human Resources Officer, Associate Vice President for Administration and Deputy Title IX Coordinator, Mary Beth Walter at (937) 327-7517 or email [walterm@wittenberg.edu](mailto:walterm@wittenberg.edu).

**Students** are strongly urged to contact the Assistant Vice President for Student Development and ~~the~~ Dean of Students/Title IX Coordinator, Gwen Owen at (937) 327-7800, email [oweng@wittenberg.edu](mailto:oweng@wittenberg.edu) or Director of Student Conduct and Deputy Title IX Coordinator, Kristina Bryant Reed at (937) 327-7804 or e-mail [bryantkl@wittenberg.edu](mailto:bryantkl@wittenberg.edu).

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 changed, 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 the details remembered as soon as possible.

## **V. POLICY**

### **1. Notice to the University and Mandatory Reporters.**

Wittenberg University will respond promptly in a manner that is not deliberately indifferent to any actual knowledge of Prohibited Conduct under this Policy. Actual knowledge means notice of Prohibited Conduct to the Title IX Coordinator, a Deputy Title IX Coordinator, or any University official with authority to institute corrective measures. These officials include the President, Provost, Vice President for Finance and Administration, Vice President and Dean of Students, Wittenberg Police Division Chief, and the Vice President & Director of Athletics and Recreation.

#### **A. Responsible Parties**

All members of the University community are responsible for knowing and understanding the University's Title IX Policy. Individuals with questions should contact the Title IX Coordinator or a Deputy Title IX Coordinator for further information.

In the event that a member of the faculty or staff learns of Prohibited Conduct under this Policy, written or unwritten, that faculty or staff member is required to notify a Title IX Coordinator. While all faculty and staff are obligated to report Prohibited Conduct under the Policy, it does not qualify all employees as individuals with the authority to institute corrective measures on behalf of the recipient. 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.

### **2. Privacy and Confidentiality.**

The University aspires to treat all inquiries and complaints about Prohibited Conduct under the Policy with respect to privacy. Privacy means that the information will be shared only with other individuals who have a "need to know" such information to implement this Policy, including to provide supportive measures. The University shall protect the privacy of individuals involved in a report of Prohibited Conduct to the extent allowed by law and College Policy. The University is committed to protecting the privacy of individuals involved in a report of Prohibited Conduct, and will balance individual privacy with its obligation to conduct a thorough review of allegations to protect the parties and the broader community and maintain an environment free from Prohibited Conduct. Where the University must complete publicly available recordkeeping for purposes of the Clery Act, it will do so without the inclusion of personally identifiable information regarding the complainant.

The University counselor and campus pastors are considered to be confidential resources and 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. The University's Memorandum of Understanding with Project Woman provides for confidential victim advocates

to Wittenberg students and employees. Information held by a confidential resources shall not be shared except in certain circumstances, such as where the information indicates imminent threat to the health and safety of others, or where the individual is obligated to report child abuse or neglect.

### **3. Definitions.**

*Advisor* – In any administrative meeting, investigative meeting, or hearing, the complainant and respondent may choose to be assisted by an advisor of their choice. The parties may select their own advisor or may select an advisor from a list of campus community members or partners who have undergone Title IX training to guide a party through the informal or formal resolution process. The advisor may accompany the party to any Wittenberg investigative meeting, administrative meeting, or hearing. Attorneys and any others serving as advisors must adhere to the expectations of the role as described in this Policy. Advisors are limited in their conduct as indicated throughout this Policy.

*Coercion* - Unreasonable pressure or persuasion, duress, cajoling and/or compulsion to engage in unwanted sexual activity. Coercion is the overriding of a person's free will to give consent. Can be identified by the following factors: intensity, frequency, duration and/or isolation.

*Complainant* - An individual who is alleged to be the victim of Prohibited Conduct under this Policy.

*Consent* is defined as 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 13 years of age or younger cannot give effective consent, and persons under the age of 16 cannot give consent to individuals 18 or older.

*Day(s)* - For purposes of this Policy, except as otherwise indicated, all references to days are considered working days.

*Decision Maker* – An individual appointed by Wittenberg University to preside over a hearing and make a determination on whether a violation of Prohibited Conduct under this Policy occurred.

*Education Program or Activity* – For purposes of this Policy, an education program or activity includes locations, events, or circumstances over which the University exercises substantial control over both the respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

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

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



*Formal complaint* – A document, (physical or electronic submission) filed by a complainant or signed by the Title IX Coordinator alleging sex discrimination or sexual harassment against a respondent and requesting that Wittenberg University investigate the allegation.

*Incapacitation* – Incapacitation occurs when an individual lacks the ability to make informed, rational judgments regarding the participation in sexual activity. Incapacitation is defined as the inability, temporarily or permanently, to give consent because an individual is mentally and/or physically helpless, asleep, unconscious, or unaware that sexual activity is occurring. In addition, persons with certain intellectual or development disabilities may not have the capacity to give consent. Where alcohol or other drugs are involved, incapacitation is a state beyond intoxication. Consent cannot be obtained by taking advantage of another individual's incapacitation.

Evaluating incapacitation requires an assessment of how the consumption of alcohol and/or drugs affects an individual's decision-making ability, awareness of consequences, ability to make informed judgments, capacity to appreciate the nature of the sexual act, and the level of consciousness.

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

In order to be found responsible for Prohibited Conduct by way of incapacitation negating consent, the Respondent must have either known or should have known of the Complainant's incapacitation based on objectively and reasonably apparent indications of impairment when viewed from the perspective of a sober, reasonable person in the Respondent's position.

Being intoxicated or drunk is never a defense to Prohibited Conduct under this Policy.

*Intake Officers* – Designated University personnel trained to provide initial counsel and support to anyone who may have been subjected to Prohibited Conduct under this Policy.

*Investigator* – Designated and trained University personnel responsible for conducting an investigation and for presenting the written investigative report to the decision-maker.

*Respondent* - A person who is reported to have engaged in Prohibited Conduct.

*Student* – A person who has gained admission to the University.

*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 Wittenberg's education programs or activities without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Wittenberg'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, mutual restrictions on contact between the parties, changes in work or housing locations, leave of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Wittenberg 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 Wittenberg University to provide the supportive measures.

Supportive measures also include protective measures as required under the Clery Act.

## **VI. PROHIBITED CONDUCT**

This Policy addresses a broad spectrum of behavior, all of which falls under the broad definition of Prohibited Conduct. The term Prohibited Conduct includes: Sex Discrimination; Sexual Harassment – Title IX; Sexual Harassment – Non-Title IX; Harassment on the Basis of Sex; Sexual Exploitation; and Retaliation.

### **1. *Sex Discrimination is when an individual is, on the basis of sex is:***

- Treated differently in determining whether such person satisfies any requirement or condition for the provision of any aid, benefit or service;
- Provided different aid, benefits or services;
- Provided aid, benefits, or services in a different manner;
- Denied any aid, benefit, or service;
- Subjected to separate or different rules of behavior, sanctions, or other treatment;
- Treated differently concerning the domicile or residence of a student or applicant, including eligibility for in-state fees and tuition;
- Discriminated against by providing significant assistance to any agency, organization, or person which discriminates on the basis of sex in providing any aid, benefit, or service to students or employees;
- Otherwise limited in the enjoyment of any right, privilege, advantage, or opportunity with regards to aid, benefits, or services; or
- Treated differently with regard to terms, conditions, or benefits of employment, or in the recruitment, consideration, or selection therefor.

Note that discrimination on the basis of sex in employment is permissible in situations where sex is a bona fide occupational qualification reasonably necessary to the normal operation of the University.

Examples of conduct that may form the basis of a Sex Discrimination complaint include, but are not limited to:

- Offering higher academic grades to students of a particular sex;
- Silencing students of a particular sex in classroom discussion;
- Referring to members of a particular sex by a derogatory name related to their sex.

2. **Sexual Harassment – Title IX** is defined by the federal Title IX regulations. It is distinguishable from Sexual Harassment – Non-Title IX due to the definition itself, as well as because the presence of a Sexual Harassment – Title IX claim is required for a hearing under this Policy, assuming that certain jurisdictional requirements are met as described below.

**Sexual Harassment – Title IX** is conduct on the basis of sex that satisfies one or more of the following:

**Quid Pro Quo** - An employee of the institution conditioning the provision of an aid, benefit or service of the college on an individual's participation in unwelcome sexual conduct;

**Unwelcome Conduct** - Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person access to Wittenberg University's education program and activities;

**Sexual Assault** - an offense classified as a forcible or non-forcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation, to include engaging in or attempting to engage in any of the following:

- a. **Rape:** 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 complainant, including instances in which the complainant is incapable of giving consent.
- b. **Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the complainant is incapable of giving consent because of their youth or because of their temporary or permanent mental incapacity.
- c. **Incest:** Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law. In Ohio, marriage is prohibited between individuals nearer of kin than second cousins.
- d. **Statutory Rape:** Nonforcible sexual intercourse with a person who is under the statutory age of consent. In Ohio, no person may have sex with a child under the age of thirteen, nor may a person over the age of eighteen have sex with a child under the age of sixteen.

- 3) **Dating Violence is violence committed by a person:**
- a. who is or has been in a social relationship of a romantic or intimate nature with the victim;
  - b. where the existence of such a relationship shall be determined based on a consideration of the following factors:
    - a. The length of the relationship.
    - b. The type of relationship.
    - c. The frequency of interaction between the persons involved in the relationship.
- 4) **Domestic Violence includes:**
- a. Felony or misdemeanor crimes of violence committed on the basis of sex:
    - 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.
- 5) **Stalking is** a course of conduct on the basis of sex directed at a specific person that would cause a reasonable person to:
- a. fear for the person's safety or the safety of others;
  - b. suffer substantial emotional distress.

For purposes of the definition of Stalking under this Policy:

- A "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.
- A "reasonable person" means a reasonable person under similar circumstances and with similar identities to the victim.
- "Substantial emotional distress" means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.

This includes Cyber-stalking which is the use of e-mail, internet, instant messaging, social media, or other electronic devices to harass or abuse another person.

**3. Sexual Harassment – Non-Title IX** is defined as unwelcome sexual advances, requests for sexual favors, and other verbal, visual, or physical conduct of a sexual nature when:

- Submission to or rejection of such conduct is an explicit or implicit condition of any individual’s employment, evaluation of academic work, or participation in any College education program or activity; or
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual or
- Such conduct has the purpose or effect of unreasonably interfering with an individual’s work or academic performance, i.e. it is sufficiently severe, pervasive, or persistent as to create an intimidating, hostile, or offensive work or educational environment under both an objective and subjective standard.

The determination of whether an environment is “hostile” must be based on a totality of the circumstances. These circumstances could include, but are not limited to:

- The frequency of the speech or conduct;
- The nature and severity of the speech or conduct;
- Whether the conduct was physically threatening;
- Whether the speech or conduct was humiliating;
- The effect of the speech or conduct on the complainant’s mental and/or emotional state;
- Whether the speech or conduct was directed at more than one person;
- Whether the speech or conduct arose in the context of other discriminatory conduct;
- Whether a statement is a mere utterance of an epithet, which engenders offense in an employee or a student or offends by mere discourtesy or rudeness.

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; displaying of pornographic materials on personal computers; and displaying objects or pictures that are sexual in nature.

**4. Domestic Violence – Non-Title IX** – is conduct that rises to the level of Domestic Violence as described above, but is not on the basis of sex.

**5. Stalking – Non-Title IX** is conduct that rises to the level of Stalking as described above, but is not on the basis of sex.

**6. Harassment on the Basis of Sex** is defined as unwelcome verbal, visual, or physical conduct on the basis of one's sex, gender, gender identity, gender expression, or sexual orientation when:

- Submission to or rejection of such conduct is an explicit or implicit condition of any individual's employment, evaluation of academic work, or participation in any College education program or activity; or
- Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting the individual or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e. it is sufficiently severe, pervasive, or persistent as to create an intimidating, hostile, or offensive work or educational environment under both an objective and subjective standard.

**7. Sexual Exploitation** is taking advantage of another person without Consent, and includes, but is not limited to:

- Causing or attempting to cause the Incapacitation of another person in order to gain sexual advantage over the other person or in order to allow another to gain sexual advantage over the other person;
- Prostituting another person or causing another person to be prostituted;
- 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
- Knowingly or recklessly exposing another person to a significant risk of sexual transmitted infection, including HIV.

**8. Retaliation** consists of the intimidation, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or its implementing regulations, 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 the Title IX regulations. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sexual discrimination or Sexual Harassment – Title IX, 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 – Title IX, constitutes retaliation.

Speaking about an investigation, proceeding, or hearing under this Policy does not constitute retaliation, unless it otherwise rises to the level of Prohibited Conduct (for example because it constitutes Stalking).

Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this Policy or Title IX regulations does not constitute retaliation, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

## **VII. PROCEDURES RELATED TO TITLE IX POLICY**

### **1. Timing of Report**

There is no time limit to invoking this Policy in responding to complaints of Prohibited Conduct under the Policy. Nevertheless, student, faculty, and staff are encouraged to report Prohibited Conduct immediately in order to maximize the University's ability to address concerns. 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.

### **2. 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.

### **3. 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.

### **4. Criminal Proceedings**

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 misconduct has occurred. In other words, conduct may constitute sexual misconduct under this Policy even if law enforcement agencies lack sufficient evidence of a crime and therefore decline to prosecute.

## 5. Retention and Disposal of Records

Wittenberg University will maintain for a period of eight years:

- Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript, any disciplinary sanction imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to Wittenberg's education program or activity;
- Any appeal and the result therefrom;
- Any informal resolution and the result therefrom;
- All materials used to train Title IX coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process. These training materials are publicly available on the University website, or will be made available upon request;
- Records of any actions, including any supportive measures, taken in response to a report or complaint of sexual harassment, including the bases for the University's conclusion, that the University's response was not deliberately indifferent; and that Wittenberg has taken measures designed to restore or preserve equal access to Wittenberg's educational program or activity. If supportive measures are not provided, Wittenberg will keep a record of why such a response was not clearly unreasonable in light of known circumstances.

If the respondent is a faculty or staff member and a violation of University Policy is found, a copy of the determination report will be placed in the respondent's confidential file. If the respondent is a student, the report will be placed in the respondent's student disciplinary file.

## VIII. 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 they have been subjected to Prohibited Conduct 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.

To report Prohibited Conduct, any person may contact the Title IX Coordinator or Deputy Coordinators. These administrators are specifically trained in the dynamics of sexual and/or gender-based harassment, discrimination and violence, and all conduct prohibited in this Policy. A report can be made in person, by telephone, by email, online using the [Report Form for Incidents of Sex Discrimination, Misconduct, Relationship Violence and/or Stalking](#), or by any other means that results in the Title IX Coordinator receiving the report. Such reports may be made at any time, including during non-business hours. A report can also be made



anonymously, although reporting anonymously may limit the University's ability to follow up or address the report.

When Wittenberg University becomes aware of a report of Prohibited Conduct, it is committed to offering prompt, effective, and sensitive assistance to all parties and protecting the community from harm. Wittenberg University recognizes its legal obligation to promptly respond to reports of Prohibited Conduct by offering supportive measures; follow a fair grievance process as outlined in this Policy to resolve Formal Complaints of Prohibited Conduct; and provide remedies to the complainant where Prohibited Conduct is found to have occurred.

Choosing to make a report and deciding how to proceed can be a process that unfolds over time. Wittenberg University strongly encourages anyone who experiences or has experienced sexual misconduct to report it for their own protection and support as well as for the safety of the Wittenberg community. At the time a report is made, a person does not have to decide whether to request any particular course of action, nor does a person need to know how to label what happened. Wittenberg will provide support that can assist each individual in making these important decisions, and to the extent legally possible, will respect an individual's autonomy in deciding how to proceed.

Upon receiving a report, the Title IX Coordinator or designee, will offer to meet with the complainant in order to discuss supportive measures and provide a written explanation of the individual's rights and options, including written notification about existing counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid, and other services available, both within the University and in the community.

Any individual wishing to make a report about Prohibited Conduct has the following options under the Policy:

### **1. Anonymous Report**

Any individual may make an anonymous report concerning Prohibited Conduct. Any individual may report the incident without disclosing their name, identifying the responding party or requesting any action. Depending on the extent of information available about the incident or the individuals involved, however, the University's ability to respond to an anonymous report may be limited. Currently, an anonymous report can be made by submitting a written document through campus mail to Casey Gill, Title IX Coordinator, 727 Fountain Ave., 101 Shouplin Center.

### **2. Campus Reporting Options**

#### **Title IX Coordinator**

Gwen Owen

Assistant Vice President for Student Development, Interim

Dean of Students, and Title IX Coordinator

Shouplin Center 101- 737 N Fountain Ave.

937-327-7800

[oweng@wittenberg.edu](mailto:oweng@wittenberg.edu)

## **Title IX Deputy Coordinators**

*For Students*

Kristina Bryant Reed

Director of Student Conduct and Deputy Title IX Coordinator

Shouvlin Center 101- 737 N Fountain Ave.

937-327-7804

[bryantk1@wittenberg.edu](mailto:bryantk1@wittenberg.edu)

*For Faculty and Staff*

Carol Nickoson

Director of Human Resources and Deputy Title IX Coordinator

Recitation Hall- 3 W Campus Dr.

937-327-7527

[nickosonc@wittenberg.edu](mailto:nickosonc@wittenberg.edu)

Mary Beth Walter

Chief Human Resources Officer, Associate Vice President for

Administration and Deputy Title IX Coordinator

Recitation Hall- 3 W Campus Dr.

937-327-7517

[walterm@wittenberg.edu](mailto:walterm@wittenberg.edu)

*For Athletics*

Katherine Robinson

Senior Woman Administrator, Assistant Director of Athletics, and Deputy Title

IX Coordinator

Health, Wellness, & Athletics Complex, Room 227- 250 Bill Edwards Dr

937-327-6496

[robinsonk6@wittenberg.edu](mailto:robinsonk6@wittenberg.edu)

## **Wittenberg Police Division**

937-327-6231 (non-emergency number)

Available as a first option to report an incident of sexual misconduct and can reach Dean on Call at any time. Available 24 hours a day, 7 days a week.

### **3. Filing a Criminal Report**

Pursuing Wittenberg University's process does not mean that a complainant waives the right to a criminal or other legal process and vice versa. Anyone who believes they have experienced sexual assault, dating violence, domestic violence, stalking, or other criminal behavior may also elect to make a criminal complaint. The Wittenberg Police Division (WPD) will assist the complainant in reporting an assault by initiating civil and/or filing a criminal charge. WPD works closely with the Springfield Police Department to initiate civil/and or criminal charges against the offending party or parties. 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.

#### **4. Amnesty for Alcohol or Other Drugs**

To encourage reporting, an individual who reports misconduct will not be subject to disciplinary action by the University for their personal consumption of drugs or alcohol at or near the time of the incident, provided that any such violations did not and do not place the health or safety of any other person at risk. Wittenberg may, however, initiate an educational discussion or pursue other educational remedies regarding alcohol or other drugs.

#### **5. Reports Involving Minors or Suspected Child Abuse**

In accordance with Ohio law, Wittenberg University requires all members of the community to report any suspected child abuse or neglect involving a minor under the age of 18 years.

All University employees are required to immediately report any suspected child abuse or neglect to the Title IX Coordinator and Wittenberg Chief of Police. The source of abuse does not need to be known in order to file a report.

Wittenberg University will report all suspected child abuse and neglect, including sexual misconduct, to law enforcement and/or child protective services. Wittenberg University must act quickly regarding all reasonable suspicions of sexual or physical abuse. It is not the responsibility of any employee or students to investigate suspected child abuse. This is the role of child protective services and law enforcement authorities.

In addition to notifying the Title IX Coordinator and Wittenberg Chief of Police, any individual may make a direct report as follows:

- If a child is in immediate danger, call 911.
- If there is no immediate danger, contact the Ohio Department of Job and Family Services Child Abuse and Neglect hotline a 855-642-4453.

#### **6. Federal Timely Warning Obligations**

Victims of Prohibited Conduct should be aware that University administrators must issue timely warnings for incidents reported to them that pose a substantial threat of bodily harm or danger to members of the campus community. The University will ensure that a victim's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the danger.

### **IX. SUPPORTIVE MEASURES**

In all reports of alleged misconduct under this Policy, 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 parties, including taking appropriate supportive measures before the final outcome of the investigation and hearing, if any.

Accordingly, at or after 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. In implementing supportive measures, Wittenberg

University will make reasonable efforts to communicate with the parties to ensure that all safety, emotional and physical well-being concerns are addressed.

While supportive measures may be permanent, they may also be amended or removed at the request of the complaining or responding party. Supportive measures are not a resolution to a report. They are temporary actions taken by Wittenberg to foster a more stable and safe environment during a period of ongoing exploration of options, investigation, and/or adjudication. Supportive measures are not intended to be permanent and may be amended or removed as additional information is gathered. Supportive measures may be instituted regardless of whether formal disciplinary action is sought or written complaint is filed, and regardless of whether the individual seeks law enforcement involvement.

Wittenberg University supports the right of students and employees to seek a protection order from a civil or criminal court. Wittenberg University honors any existing protection orders provided to the Wittenberg Police Division by members of the campus community.

### **1. Range of Supportive Measures**

The Title IX Coordinator or designee implements supportive measures at the discretion of Wittenberg University. Violation(s) of the directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action. The range of measures which may be applied to the complainant and respondent include but are not limited to:

- Access to counseling services and assistance in setting up an initial appointment
- Providing medical services
- Imposition of a no-contact order
- Imposition of a no trespass order
- Wittenberg Police assistance including medical escorts or increased patrol
- Transportation assistance
- Academic accommodations (with agreement of the appropriate faculty members, who will not be informed of the specific reason for the request with permission of the student).
  - Change in class schedule or other academic accommodation without penalty to the party
  - Rescheduling of exams and assignments
  - Providing alternative course completion options
  - Providing academic support services, such as tutoring
- Change in on-campus work schedule or job assignment
- Change in office location
- Residence modifications
  - Change in on-campus housing
  - Arrange to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
  - Limit access to specific residential facilities
- Limit an individual or organization's access to certain University facilities or activities
- Voluntary withdraw

- Emergency removal and/or administrative leave
- Any other remedy that can be tailored to the involved individuals to achieve the goal of this Policy.

## **2. Emergency Removal and Administrative Leave**

If the Title IX Coordinator, after receipt of a complaint and an individualized safety and risk assessment, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal of a respondent, the University may remove the respondent on an emergency basis. A removed respondent will receive notice and an opportunity to challenge the decision immediately following the removal. Information on how to file such a challenge will be provided in writing by the Title IX Coordinator.

Non-student employees may be placed on administrative leave or suspended depending on their employment classification. In such cases, the employee does not receive the opportunity to challenge the leave or suspension as is the case under the emergency removal procedure.

## **X. TITLE IX TEAM, ADVISORS, SUPPORT PERSONS, and ATTORNEYS**

Upon receipt of a report, Wittenberg University's Title IX Team will conduct an initial Title IX assessment. The goal of this assessment is to provide an integrated and coordinated response to reports of Prohibited Conduct. The assessment will consider the nature of the report, the safety of the individual and the campus community, and the complainant's expressed preference for resolution in determining the appropriate course of action to eliminate the conduct at issue, prevent its recurrence and address its effects.

### **A. Role of the Title IX Team**

The Title IX Team, led by the Title IX Coordinator, assists in the review, investigation and resolution of reports. This group includes the Title IX Coordinator, Title IX Deputy Coordinators, investigators, decision-makers (including those who made decisions on appeal), and any other designee who facilitates an informal resolution process. Members of the Title IX Team receive annual training on:

- How to serve impartially, avoiding prejudgment of facts, conflicts of interest, and bias.
- Definition of sexual harassment and Prohibited Conduct under the Policy;
- Scope of Wittenberg University's education program or activity;
- How to conduct an investigation and/or grievance process including hearings, as applicable;
- Appeals, as applicable;
- Informal resolution processes, as applicable;
- Training on technology to be used at a live hearing, as applicable;

- Training on issues of relevance of questions and evidence, including when questions about the complainant’s sexual predisposition or prior sexual behavior are not relevant;
- Strategies to protect parties who experience sexual misconduct or other forms of sex discrimination, harassment and violence.
- Issues related to dating violence, domestic violence, sexual assault, and stalking and on how to conduct an investigation and hearing process that protects the safety of complainants and promotes accountability.

Any individual assigned to the Title IX Team for a particular case must not have a conflict of interest or bias for or against complainants or respondents generally, or for or against an individual complainant or respondent. The following will not be considered evidence of bias:

- The Title IX Coordinator’s initiation of a formal complaint; or
- A Team member’s decision that allegations warrant an investigation.

The University will apply an objective, common sense approach to evaluating whether a particular person serving in a Title IX role is biased, and will exercise caution not to apply generalizations that might unreasonably conclude that bias exists. An individual’s current job title, professional qualifications, past experience, identity, or sex will not, alone, indicate bias. Use of trauma-informed practices will not be considered evidence of bias when such practices do not rely on sex stereotypes, apply generalizations to allegations in specific cases, cause loss of impartiality, or result in prejudgment of the facts at issue.

### **B. Advisors, Support Persons, and Attorneys**

All parties are entitled to advice and support during the Title IX process. In addition, the parties may consult the Title IX Coordinator or Deputy Title IX Coordinators, who do not directly participate in formal resolution.

1. **Advisor:** In any administrative meeting, investigative meeting, or hearing, the complainant and respondent may choose to be assisted by an advisor of their choice. The parties may select their own advisor, or may select an advisor from a list of campus community members or partners who have undergone Title IX training to guide a party through the informal or formal resolution process. An outside advisor may request an opportunity to meet with the Title IX Coordinator, or designee, in advance of participating in the proceedings to be informed about Wittenberg University’s expectations regarding confidentiality of the process. The advisor may accompany the party to any Wittenberg investigative meeting, administrative meeting, or hearing. Attorneys and any others serving as advisors must adhere to the expectations of the role as described in this Policy.

2. **Support Persons:** A complainant or respondent may also choose to be assisted by an emotional support person of their choice during all meetings and investigative interviews. Because of concerns related to confidentiality as expressed by the U.S. Department of Education, hearings may not be attended by emotional support persons unless otherwise required by law.

The support person who attends meetings and investigative interviews cannot be a witness in the proceedings. The support person is a silent and non-participating presence who is there solely to observe and provide moral support during the hearing itself. The support person may not delay, disrupt, or interfere with any meeting or interview.

Absent extenuating circumstances, witnesses and others involved in an investigation or hearing are not entitled to have a support person present.

### **C. Initial Title IX Assessment**

In every report of sexual and/or gender-based harassment, discrimination and violence, Wittenberg will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps may include supportive and interim protective measures to provide safety of an individual and the campus community.

Upon assessment of safety and risk to an individual and the campus community, an investigation may be initiated dependent on the complainant's wish to pursue a formal complaint. A formal complaint is required for the University to initiate an investigation or facilitate an informal resolution process.

The initial assessment typically begins with a preliminary meeting, between the complainant and Intake Officer, typically the Title IX Coordinator or Deputy Title IX Coordinator. The purpose of the preliminary meeting is to gain a basic understanding of the nature and circumstance of the report; it is not intended to be a full scale interview. At this meeting, the complainant will be provided with information about supportive measures, advocacy resources, and options for resolution.

## **XI. INITIATING A FORMAL COMPLAINT, INFORMAL AND FORMAL RESOLUTION**

Anyone who wishes to file a formal complaint for informal or formal resolution may do so by contacting a Title IX Coordinator or Deputy Title IX Coordinator.

All formal complaints will be signed and, upon resolution, filed with the Title IX Office, which will be the Office of Record for all formal complaints of Prohibited Conduct under this Policy.

When the respondent is a faculty member, the Director of Human Resources/Title IX Coordinator will seek the participation of the respondent's supervisor and/or the Provost when notifying the respondent of the formal complaint.



### **A. Written Notice**

Upon receipt of a formal complaint, Wittenberg will provide written notice to the known parties to include Wittenberg's Title IX Policy and grievance procedures; nature of allegations; and sufficient details known at the time, including but not limited to identities of the parties involved in the incident, if known, the alleged conduct prohibited under this Policy, and the date and location of the alleged incident, if known. The notice will also notify the parties that they may have an advisor of their choice present in any administrative meeting, investigative interview, or hearing, and that the advisor may be, but is not required to be, an attorney.

The written notice will indicate that the respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process. Additionally, all parties will be informed about the provision in our student and employee codes of conduct that prohibit knowingly making false statement or knowingly submitting false information during the informal or formal resolution processes.

Wittenberg will provide sufficient time for the parties to prepare a response before any initial interview.

Wittenberg will provide ongoing notice to the parties if additional allegations are to be investigated or resolved that are not included in the original notice provided.

### **B. Timing**

Wittenberg commits to prompt periods for conclusion of both informal and formal grievance procedures and for filing and resolving appeals. The University strives to complete resolution of informal and formal complaint procedures, including an investigation for formal complaints, within ninety days from the time it receives the complaint.

Wittenberg reserves the right to allow for a temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; a concurrent law enforcement activity; the need for language assistance or accommodation of disabilities, any intervening school break or vacation, or other unforeseen circumstances.

### **C. Informal Resolution**

Informal resolution may help to eliminate Prohibited Conduct by identifying and implementing remedies to stop sexual harassment, address its effects, and prevent its recurrence. Because it does not involve a formal adjudication process, it does not result in disciplinary action against the respondent unless the parties and the University agree on such action.

The informal resolution process is voluntary. Wittenberg will not require that any party participate in informal resolution, nor will Wittenberg require that any party waive the right to a full investigation and adjudication of formal complaints of Prohibited Conduct in order to enroll or continue to be enrolled, or be employed or continue to be employed, or enjoy any other right granted by the University. The parties may choose to pursue informal resolution at any time

prior to reaching a determination of responsibility. Likewise, any party may choose to end informal resolution and pursue formal resolution at any time prior to the reaching of an agreement.

The University will never offer or facilitate an informal resolution to resolve allegations that an employee engaged in Sexual Harassment – Title IX of a student, as it is prohibited to do so by the federal Title IX regulations.

Prior to initiating an informal resolution, the University will provide to the parties a written notice disclosing:

- The allegations;
- The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and
- Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

If the complainant files a formal complaint, and all parties provide voluntary, written consent to participate in an informal resolution process, Wittenberg University will assist the parties in an informal resolution process. The University must agree to any informal resolution for it to be enforced by the University. Informal resolution will typically be initiated within 30 business days of the initial report.

#### **D. Resolution of Complaints by Informal Resolution**

Under receipt of a complaint for informal resolution, 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 Title IX Office. Generally, the facilitator meets separately with the complainant and respondent. Examples of resolutions include the range of supportive measures previously described, an apology, counseling requirements, targeted and/or broad-based training and educational programming relevant for individuals or groups, access restrictions, and any other remedy that can be tailored to the involved individuals to achieve the goals of this policy.

The Title IX Coordinator or designee will refer complaints seeking informal 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 and Deputy Title IX Coordinator or designee.
- If the respondent is an employee, to the Director of Human Resources or designee.

The facilitator will contact the complainant and respondent within seven days after receiving the voluntary written consent to participate in informal resolution. The facilitator will provide written notice to both parties disclosing: the allegations; the requirements of the informal

resolution process including the circumstances under which Wittenberg precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to a formal complaint; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

The facilitator will confirm that the parties have given voluntary, written consent to pursue the Informal Resolution process.

The facilitator is responsible for documenting the facts as presented. If at any point, the complainant or respondent may withdraw from the informal resolution process and resume the formal resolution adjudication process. The facilitator will forward all relevant information to the Title IX Coordinator should resolution by adjudication become necessary.

If the complaint is resolved by Informal Resolution, the facilitator will forward a written report of that resolution to the Title IX Coordinator. The parties will sign an agreement to the terms of the informal resolution and which indicates that by doing so, they forego their rights to a formal resolution/adjudicated hearing for the complaint that they mutually resolved.

#### **E. Formal Resolution**

Disciplinary action against a respondent may only be taken through Formal Resolution procedures. If the complainant files a formal complaint, Wittenberg University will initiate the adjudication process to take immediate and corrective action through individual and community remedies. Wittenberg University seeks to resolve all reports within 90 business days of the initial reports.

The Formal Resolution process requires an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provides that credibility determinations may not be based on a person’s status as a complainant, respondent or witness.

### **XII. GRIEVANCE PROCEDURES FOR FORMAL RESOLUTION**

When a formal complaint is filed, the University will use these grievance procedures to investigate and adjudicate such complaint. Whether a case proceeds to hearing or not depends on the outcome of the Mandatory Dismissal Review, which occurs at the conclusion of the Investigation as indicated below.

The respondent is not responsible for the reported conduct until a determination regarding responsibility is made at the conclusion of these grievance procedures. The burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.

Any party whose participation is invited or expected during the investigatory or hearing process will be provided written notice of the date, time, location, participants, and purpose of all

hearings, investigative interviews, or other meetings with that party with sufficient time to prepare to participate.

### **A. Investigation**

The Title IX Coordinator or designee will designate one or more investigators who will be responsible for gathering relevant evidence. This may include gathering documents and conducting interviews with all individuals reasonably believed to have relevant information, including the complainant, the respondent, and witnesses.

Wittenberg will not access, consider, disclose or otherwise use a complainant or respondent's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional acting in the professional's capacity and are made and maintained in connection with the provision of treatment to the party, unless the complainant or respondent provides written consent to voluntarily share such information with the investigator.

Both the complainant and respondent will have equal opportunities to present witnesses, including fact and expert witnesses, and to provide other inculpatory and exculpatory evidence.

#### Investigative Report

Prior to completion of the investigative report, the University will send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties will have 10 days to submit a written response. The parties will have an equal opportunity to inspect and review any evidence obtained as a part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source. Due to confidentiality and to protect the integrity of the process, parties and their advisors are not permitted to disseminate copies of such evidence to third parties without authorization from the Title IX Coordinator. The investigator will consider the responses prior to completion of the investigative report.

The investigator will prepare an investigative report that fairly summarizes relevant evidence. The report will be distributed to the parties and their advisors simultaneously. If a complaint involves multiple complainants, multiple respondents, or both, the University may choose to issue a single investigative report and share with each party only those portions of the report that relate to that party.

All individuals are expected to be truthful 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.

After receipt of the investigative report, each party will have ten days to provide a written response to the investigative report. The written response will be considered by the decision-maker to the extent it is relevant.

### **B. Mandatory Dismissal Review**

The investigator will consider whether the conduct alleged, if demonstrated by a preponderance of the evidence, could constitute Sexual Harassment – Title IX under this Policy in light of the evidence gathered during the investigation, and shall make a recommendation to the Title IX Coordinator regarding the same. This recommendation occurs with the presentation of the investigative report. If Sexual Harassment – Title IX is properly alleged, the investigator will further determine whether those allegations meet all three of the following jurisdictional requirements:

- The Formal Complaint was filed when the complainant was participating in or attempting to participate in the education program or activity of the University;
- The reported Sexual Harassment – Title IX occurred against a person in the United States; and
- The reported Sexual Harassment – Title IX occurred in the University’s education program or activity.

Only if a complaint properly alleges Sexual Harassment – Title IX and meets all three jurisdictional requirements above will the complaint be submitted to the hearing process. The Title IX Coordinator will notify the parties, in writing, of the final assessment and whether or not the formal complaint will proceed to a hearing. If the case is not eligible for hearing, it will be decided using the investigative resolution process outlined below. The decision as to whether a case is eligible for a hearing may be appealed in writing by either party within three days of receipt of such decision to an individual designated by the Title IX Coordinator, as will be explained to the parties in notice of the decision. The other party will be provided with three days in which to respond to such appeal in writing. The decision on this appeal will be issued to the parties within three days of receiving the response.

### **C. Decision Maker**

Regardless of whether complaints are subject to the hearing process or the investigative resolution process, complaints will be decided by a trained, impartial decision maker. Any person who has a conflict of interest regarding the case may not serve as the decision maker for that case. A party who believes that the decision maker may not be impartial may bring that concern to the attention of the Title IX Coordinator or designee who will determine if a decision maker should be excused.

Wittenberg University reserves the right to appoint an appropriately trained decision maker from the faculty and staff or contract with external individuals to serve in such a role.

#### **D. Hearing Procedures**

The purpose of a formal hearing is to receive live testimony from the complainant, the respondent, and other witnesses. The decision-maker at a hearing may not be the Title IX Coordinator or an investigator that was assigned to investigate the case.

The University will require each party, in advance of the hearing, to disclose whether they intend to have an advisor present during the hearing, or whether they will need the University to provide one. Prior to the hearing, the decision-maker may require the advisor for each party to participate in a separate pre-hearing conference. A party may attend this conference with their advisor if they choose. The purpose of the pre-hearing conference will be to discuss hearing procedures and decorum rules, the witnesses that the party requests to attend, and any other concerns that, for efficiency purposes, may be better addressed prior to hearing. If pre-hearing conferences are held, they will be required for all parties.

At the request of either party, Wittenberg will arrange for the live hearing to occur with parties located in separate rooms with technology enabling the decision-makers and other parties to simultaneously see and hear the party or the witness answering questions. Live hearings may be conducted with all parties physically present in the same geographic location or, at Wittenberg's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants to simultaneously see and hear each other. An audio or audiovisual recording or transcript will be made of the hearing and available to either party for inspection or review.

All evidence subject to the parties' inspection and review will be available at the hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination.

At the live hearing, the decision-maker will permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. The decision-maker is also permitted to ask questions of the parties and witnesses. Such cross-examination on behalf of a party at the live hearing will be conducted directly, orally, or in real time by the party's advisor of choice and never by the party personally. If a party does not have an advisor present at the live hearing, Wittenberg will provide an advisor of Wittenberg's choice at no cost to that party.

All questioning at the hearing must be relevant, respectful, and non-abusive. No party will be "yelled" at or asked questions in an abusive or intimidating manner. If a party's advisor refuses to comply with restrictions set by the University regarding advisor conduct, the decision-maker may require that the party use a different advisor.

Only relevant cross-examination and other questions may be asked of a party or witness. Relevance is discussed further, below. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker will determine whether the question is relevant and explain any decision to exclude a question as not relevant. The decision-maker is not required to give a lengthy or complicated explanation of a relevancy determination during the

hearing. The decision-maker may send to the parties after the hearing any revisions to the decision-maker's explanation that was provided during the hearing.

If a party or witness does not submit to cross-examination at the live hearing, the decision-maker cannot rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot 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.

Video evidence showing the conduct alleged within a Formal Complaint may be considered, even if the party performing said conduct does not submit to cross-examination.

In cases where a respondent's alleged verbal conduct is, itself, the conduct alleged to be Prohibited Conduct, statements regarding the alleged verbal conduct is not considered the respondent's statement for purposes of this section. This is because the verbal conduct at issue does not constitute the making of a factual assertion to prove or disprove the allegations of Prohibited Conduct; instead, the verbal conduct constitutes part or all of the underlying allegations of Prohibited Conduct itself. For example, where a complainant alleges that the respondent said to the complainant: "If you go on a date with me, I'll give you a higher grade in my class," but the respondent does not submit to cross-examination at the hearing, the decision-maker may rely on other evidence or testimony from others that the respondent said those words to the complainant. The words allegedly attributed to the respondent are themselves the misconduct that constitutes Prohibited Conduct under this Policy and are not the respondent's "statement" (i.e., the respondent's intent to make a factual assertion).

These hearing procedures 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 decision-maker 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.

Relevancy and credibility determinations will be made in accordance with the respective sections, below. Requirements for the written determination, sanctions, remedies, and appeals are also outlined below.

### **E. Investigative Resolution**

Where a case is determined not to be eligible for a hearing, the Title IX Coordinator shall appoint a decision-maker to review the investigative report, relevant evidence, and responses of the parties and make a determination as to whether the respondent has committed any policy violations with respect to the allegations. Relevancy and credibility determinations will be made in accordance with the respective sections, below. Requirements for the written determination, sanctions, remedies, and appeals are also outlined below.

## **F. Relevance**

The following is considered irrelevant:

- Repetition of the same question;
- Evidence that is duplicative of other evidence;
- Information that is protected by a legally recognized privilege, unless such privilege has been waived by the individual who holds the privilege;
- Records related to a party's medical, counseling/psychological, and similar treatment records unless the party has given voluntary, written consent; and
- Information about the complainant's sexual predisposition or prior sexual behavior, unless:
  - The information is offered to prove that someone other than the respondent committed the alleged Prohibited Conduct; or
  - The information concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

Evidence will not be excluded solely because it is unduly prejudicial, concerns prior bad acts, or constitutes character evidence. However, the Decision-Maker may objectively evaluate such evidence by analyzing whether that evidence warrants a high or low level of weight or credibility.

## **G. Weighing Credibility**

The decision-maker will evaluate all admissible, relevant evidence for weight or credibility. The degree to which any inaccuracy, inconsistency, or implausibility in a narrative provided by a party or witness should affect a determination regarding responsibility is a matter to be decided by the decision-maker. Corroborating evidence is not required.

Credibility determinations are not based solely on observing demeanor, but rather are based primarily on other factors (e.g., specific details, inherent plausibility, internal consistency, corroborative evidence). Credibility determinations will not be based on an individual's status as a complainant, respondent, or witness.

A party's answers to cross-examination questions at a live hearing, if one is held, can and should be evaluated by a decision-maker in context, including taking into account that a party may experience stress while trying to answer questions.

## **H. Determination and Sanctions**

The decision maker will issue a written determination regarding responsibility after conducting an objective evaluation of all relevant evidence, including both inculpatory and exculpatory evidence. Within ten (10) days after the conclusion of a hearing or the submission of a case for investigative resolution, the decision maker will prepare a written report. The report will include identification of the allegations potentially constituting misconduct; 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 (if applicable); findings of fact supporting the determinations; conclusions regarding the application of the University's policies



to the facts; a statement of, and rationale for, the result to each allegation including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to Wittenberg's education program or activities will be provided to the complainant; and Wittenberg's procedures and bases for the complainant and respondent to appeal.

The decision maker will rely on the preponderance of evidence standard when making the determination. This means the determination will rest on whether the evidence indicates it is more likely than not that misconduct occurred in violation of a University policy. The same standard of evidence applies to adjudications of all formal complaints.

Appropriate sanctions will be imposed upon anyone found responsible for violating this Policy. Prohibited Conduct under the Policy may be considered adequate for dismissal of a student or termination of employment, including termination of a tenured faculty appointment. The range of sanctions can include, but is not limited to:

- Counseling
- Educational assignment
- No-contact order
- No trespass order
- Academic accommodations (with agreement of the appropriate faculty members, who will not be informed of the specific reason for the request with permission of the student)
  - Change in class schedule or other academic accommodation without penalty to the party
  - Rescheduling of exams and assignments
  - Providing alternative course completion options
  - Providing academic support services, such as tutoring
- Change in on-campus work schedule or job assignment
- Change in office location
- Residence modifications
  - Change in on-campus housing
  - Arrange to dissolve a housing contract and pro-rating a refund in accordance with campus housing policies
  - Limit access to specific residential facilities
- Limit an individual or organization's access to certain University facilities or activities
- Suspension
- Dismissal or Termination
- Termination of vendor/independent contractor contract

### **For Complaints against Students**

The decision maker will use the sanctioning guide as stated in the University *Student Handbook* to determine a sanction, which could include discipline up to and including dismissal from the University. The decision maker 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 decision maker 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, simultaneously.

### **For Complaints against Faculty, Staff, or Other Individuals**

The decision maker consults with the Director of Human Resources or President's designee to determine a sanction. The decision maker 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, to the Vice President for Finance and Administration for staff, or to the President if the respondent is a member of the President's Senior Staff.

The decision maker 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, simultaneously.

The determination regarding responsibility becomes final either on the date that Wittenberg University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely. The University will provide simultaneously written notification to the parties when the result becomes final.

When the decision-maker determines that a respondent has engaged in Prohibited Conduct, the University will provide remedies to a complainant designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services provided as supportive measures; however, remedies need not be non-disciplinary or non-punitive and need to avoid burdening the respondent. Where the final determination has indicated that remedies will be provided, the Title IX Coordinator will consult separately with the complainant regarding their preferences as to remedies that are appropriately designed to preserve or restore the complainant's equal access. The Title IX Coordinator will determine appropriate remedies and is responsible for effective implementation of such remedies. Remedies for a complainant which do not affect the respondent must not be disclosed to the respondent.

### **I. Right to Appeal**

Either party may appeal the written determination. Appeals must be made in writing to the Title IX Coordinator or designee within three business days after receipt of the decision. In turn, the appeal is forwarded to a trained appeal officer designated by the Title IX Coordinator, who may be the President or another a senior administrator, an external party, or another individual that does not have a conflict of interest. The appeal officer will not be the same decision-maker that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator.

The Title IX Coordinator will notify, in writing, the other party when an appeal is filed and implement appeal procedures equally for both parties. Both parties will have a reasonable, equal opportunity, to submit a written statement in support of, or challenging the outcome.

The appeals officer will issue a written decision to the Title IX Coordinator within ten days after the appeal response deadline that describes the result of the appeal and the rationale for the result. The result can include remand to the investigator or decision-maker for further steps consistent with the decision. The Title IX Coordinator or designee will provide the decision to the respondent and the complainant, simultaneously.

The appeal must be based on at least one of the following grounds to be considered:

- A procedural error that affected the outcome of the matter. Deviations from the designated procedures will not be a basis for sustaining an appeal unless material harm or prejudice results;
- New evidence that was not reasonably available at the time of determination regarding responsibility or dismissal was made, and which reasonably could have affected the outcome of the matter; or
- Disciplinary sanction imposed is substantially disproportionate to the violation(s) committed, considering the relevant aggravating and/or mitigating factors and/or the cumulative conduct record of the respondent or organization.
- The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affect the outcome of the matter.

#### **J. Consolidation of Formal Complaints**

Wittenberg University may consolidate formal complaints as to allegations of sexual harassment and Prohibited Conduct under this Policy against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of prohibited conduct arise out of the same facts or circumstances. The University may also consolidate allegations regarding violations of other University policies into the process outlined here, provided that Prohibited Conduct is also properly alleged.

### **XIII. SUPPORT SERVICES**

#### **For Students**

The University counselors provide 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 Womyn's Center provides confidential Campus Advocacy Support Services. In addition, Project Woman, the local rape crisis center provides confidential advocates to students and employees of Wittenberg to assist navigating internal and external resources, supporting, and judicial and criminal proceedings.

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.

#### **XIV. 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 decision maker.

In addition, all such incidents are included in the University's Annual Security Report which is made available to the campus community and the general public.

#### **XV. INDEMNIFICATION**

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.

#### **XVI. REVIEW OF PROCEDURES**

*The Title IX Team is authorized to make minor changes to this Policy, such as updating contact information and professional roles or major changes required to align policy language with any new legal requirements. Such changes should be reported to the Wittenberg Board of Directors via the Audit and Compliance Committee at least once a year. Major changes to the policy beyond those required by law should be submitted to the Board of Directors for approval. In addition, the Title IX Team will review the policy annually, based on experiences of people involved with the policy, to determine if major changes are required. Any community member with concerns about the policy should contact the Title IX Coordinator to discuss their concerns.*

## **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, September 2014, October 2014, September 2015  
Revised by the Board of Directors—May 5, 2017  
Non-material revisions – February, 2018  
Revised by the Board of Directors—May 3, 2019  
Revised by the Board of Directors—August 14, 2020  
Non-material revisions – January, 2024  
Non-material revisions- February, 2025