



## **POLICY ON NON-HARASSMENT AND NON-DISCRIMINATION AND GRIEVANCE PROCESSES FOR ALLEGED VIOLATIONS**

### **WTS Policy on Non-Harassment and Non-Discrimination**

#### **I. Introduction**

We, the faculty, staff, and students at Western Theological Seminary (WTS) seek to foster a community of faith and learning that reflects the Kingdom of God, allowing for the flourishing in Jesus Christ of all its members. Jesus told his disciples, "By this everyone will know that you are my disciples, if you have love for one another."<sup>1</sup> As part of Christ's community of loving disciples, we seek unity. In Christ, the divisions that exist due to race and ethnicity, social status, and gender no longer exist.<sup>2</sup> As God's chosen children, we desire to clothe ourselves with compassion, kindness, humility, meekness, patience, forgiveness, and love.<sup>3</sup> We seek to reflect the vision of community that will be fully realized when the kingdom of God is fully established in which there will be people "from every nation, from all tribes and peoples and languages, standing before the throne" in worship and adoration.<sup>4</sup>

As we strive for this ideal, we acknowledge that because we are sinful individuals, we are also a fallen community, influenced by old habits and hidden prejudices. There are times when we harm others through our words, actions, and even institutional policies and traditions. There are circumstances in which we fail to do justice or love mercy. In such instances, we commit to face our wrong-doing; to listen, to talk, to pray, and when we fall short, to confess our sin, to accept God's forgiveness, and to change our behavior as we seek understanding, justice, healing, and reconciliation.

In response to those situations where we break our community covenant, we seek to resolve the breach pastorally to bring understanding, justice, healing, and reconciliation. In some cases, these can be brought about through open and honest communication, confession, and forgiveness. In other cases, however, due to the nature and gravity of the offense, a more formal approach must be followed to ensure the safety of the injured individual(s) and to move toward understanding, justice, healing, and reconciliation.

Western Theological Seminary adheres to all federal and state civil rights laws and regulations prohibiting discrimination in private institutions of higher education.

The Seminary does not discriminate in admissions, employment, and educational programs on the basis of race, color, national origin, age, sex, marital or family status, disability, height, weight, genetic

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<sup>1</sup> John 13:35

<sup>2</sup> Galatians 3:25-26

<sup>3</sup> Colossians 3:12-14

<sup>4</sup> Revelation 7:9

information, and other prohibited characteristics in accordance with applicable federal, state, and local laws and ordinances.

As a religious institution, the Seminary reserves the right to make employment and hiring decisions on the basis of religious criteria, based on the Free Exercise Clause of the First Amendment to the Constitution of the United States and various relevant statutes.

This policy covers nondiscrimination in both employment and access to educational opportunities. Therefore, any member of the Western Theological Seminary community whose acts deny, deprive, or limit the educational or employment access, benefits, and/or opportunities of any member of the Western Theological Seminary community on the basis of that person's actual or perceived membership in the protected classes listed above is in violation of the Seminary's policy on nondiscrimination. The Seminary also provides accommodations to individuals with disabilities.

When brought to the attention of Western Theological Seminary, any such discrimination will be promptly and fairly addressed and remedied by the Seminary according to the appropriate grievance process described below.

Western Theological Seminary's policies and procedures are in compliance with Title IX of the Education Amendments of 1972 that prohibits discrimination based on sex and protects individuals from unlawful sexual harassment in education programs and activities.

As a part of Christ's community, we seek to go beyond the letter of the law to fulfill our covenantal responsibilities to God and each other.

## **II. Glossary of terms used in this policy**

- *Advisor* means a person chosen by a party or appointed by the institution to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any. All advisors will have received appropriate and required training.
- *Appeal decision-maker* means the person charged by Western Theological Seminary with authority to decide appeals filed within the Seminary's grievance procedures. The Appeal decision-maker will have received appropriate and required training.
- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Complaint (formal)* means a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging harassment or discrimination based on a protected class or retaliation for engaging in a protected activity against a Respondent and requesting that Western Theological Seminary investigate the allegation.

- *Confidential Resource* means an employee who is not a Mandated Reporter of notice and/or reports of harassment, discrimination, and/or retaliation (irrespective of Clery Act Campus Security Authority status).
- *Day* means a business day when Western Theological Seminary is in normal operation.
- *Decision-Maker* refers to those officials who have decision-making and sanctioning authority within the Seminary's formal grievance process. Specifically, decision-makers include hearing officers and Appeal Decision-makers. All decision-makers will have received appropriate and required training.
- *Education program or activity* means locations, events, or circumstances where Western Theological Seminary exercises substantial control over both the Respondent and the context in which the sexual harassment or discrimination occurs and also includes any building owned or controlled by a student organization that is officially recognized by Western Theological Seminary.
- *Final Determination*: A conclusion by the preponderance of the evidence that the alleged conduct occurred and whether it did or did not violate policy.
- *Finding*: A conclusion by the preponderance of evidence that the conduct did or did not occur as alleged (as in a "finding of fact").
- *Grievance Procedures* are methods of formal or informal resolution designated by Western Theological Seminary to address conduct that falls within the policy. The Grievance Procedures include two processes: Process A and Process B. Process A will be used to address all misconduct that falls within the Policy other than that addressed by Process B. Process B will be used to address conduct that falls within the definition of "Title IX Sexual Harassment" included below and which complies with the requirements of the Title IX regulations (34 CFR §§ 106.30, 106.44 and 106.45).
- *Hearing Officer* refers to the person charged by Western Theological Seminary with decision-making and sanctioning authority within the Seminary's grievance procedures. The Hearing Officer will have received the required and appropriate training.
- *Investigator* means the person or persons charged by Western Theological Seminary with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling this information into an investigation report and file of directly related evidence.
- *Mandated Reporter* means an employee of Western Theological Seminary who is obligated by policy to report any possible violation of this policy that they observe or have knowledge of to the Title IX Coordinator. All Seminary employees (except for confidential resources) are considered Mandated Reporters.

- *Member of the WTS Community* refers to, but is not limited to, applicants, students, student organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, and invitees.
- *Notice* means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- *Official with Authority* (OWA) means an employee of Western Theological Seminary explicitly vested with the responsibility to implement corrective measures for harassment, discrimination, and/or retaliation on behalf of Western Theological Seminary. This term includes the Title IX Coordinator, senior Seminary officials, and all employees in supervisory positions.
- *Party or Parties* refers to the Complainant and Respondent, or the Complainant(s) and Respondent(s), collectively. Nothing in this policy may be read in derogation of any legal right of a parent or guardian to act on behalf of their child.
- *Process A* means the grievance procedures entitled "Grievance Process for Alleged Violations of the Policy on Non-Harassment and Non-Discrimination," which is included in Appendix A.
- *Process B* means the grievance procedures entitled "Grievance Process for Alleged Title IX Sexual Harassment Violations," which is included in Appendix B.
- *Remedies* are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and/or restore access to Western Theological Seminary's educational program.
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute harassment or discrimination based on a protected class; or retaliation for engaging in a protected activity.
- *Resolution* means the result of an informal or formal resolution under Process A or Process B.
- *Sanction* means a consequence imposed by Western Theological Seminary on a Respondent who is found to have violated this policy.

### III. Rationale for Policy

Western Theological Seminary is committed to providing a workplace and educational environment, as well as other benefits, services, programs, and activities, that are free from discrimination, harassment, and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity, Western Theological Seminary has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of discrimination or harassment on the basis of protected class status, and for allegations of

retaliation. Western Theological Seminary values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

#### **IV. Applicable Scope**

The core purpose of this policy is the prohibition of all forms of discrimination. Sometimes, discrimination involves exclusion from or different treatment in activities, such as admission or employment. Other times, discrimination takes the form of harassment or, in the case of sex-based discrimination, can encompass sexual harassment, sexual assault, stalking, sexual exploitation, dating violence or domestic violence. When an alleged violation of this anti-discrimination policy is reported, the allegations are subject to Western Theological Seminary's "Grievance Process for Alleged Violations of the Policy on Non-Harassment and Non-Discrimination" (Process A) or "Grievance Process for Alleged Title IX Sexual Harassment Violations," (Process B), as determined by the Title IX Coordinator, and as detailed below.

When the Respondent is a member of the Western Theological Seminary community, a grievance process may be available regardless of the status of the Complainant, who may or may not be a member of the Western Theological Seminary community. The procedures below may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and/or investigated in accordance with this policy.

#### **V. Title IX Coordinator**

Rayetta Perez, Director of Administration and Human Resources, serves as the Title IX Coordinator<sup>5</sup> and oversees the implementation of the WTS Policy on Non-Harassment and Non-Discrimination. The Title IX Coordinator has the primary responsibility for coordinating the Seminary's efforts related to the intake, investigation, resolution, and implementation of supportive measures and remedies to stop, remediate, and prevent discrimination, harassment, and retaliation prohibited under this policy.

##### **A. Independence and Conflict-of-Interest**

The Title IX Coordinator acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy and these procedures. All Seminary officials involved in the resolution and adjudication of allegations under this policy are vetted and trained to ensure they are not biased for or against any party in a specific case, or for or against Complainants and/or Respondents, generally. These officials include the Coordinator, any deputy coordinators, and any other individual designated by the Seminary to participate in the resolution and adjudication process.

To raise concerns regarding a potential conflict of interest or possible bias by the Title IX Coordinator, or to report misconduct or discrimination committed by the Title IX Coordinator, with any other administrator involved in the resolutions processes, please contact Western Theological Seminary President, Dr. Felix Theonugraha, or designee. To raise concerns regarding a potential conflict of interest or possible bias with any other administrator or individual involved in the resolution and adjudication process, please contact the Title IX Coordinator.

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<sup>5</sup> For ease of reference, the Title IX Coordinator is referred to as the Title IX Coordinator for all discrimination bases.

## **B. Administrative Contact Information**

Complaints and/or other notice of alleged policy violations, or inquiries about or concerns regarding this policy and procedures, may be made internally to:

Rayetta Perez  
Title IX Coordinator and Director of Administration and Human Resources  
101 East 13<sup>th</sup> Street  
Holland, MI 49423  
616 392.8889, ext. 103  
rayetta.perez@westernsem.edu  
www.westernsem.edu

Dr. John Brogan  
Deputy Title IX Coordinator  
101 East 13<sup>th</sup> Street  
Holland, MI 49423  
616 392.8889, ext. 192  
john.brogan@westernsem.edu

Western Theological Seminary has also classified most employees as Mandated Reporters, who are required to report any possible violation of this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party, to the Title IX Coordinator. Employees who serve as confidential resources as described below are not required to report possible violations (except as needed to comply with the requirements of the Clery Act.) The section below on Mandated Reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

Office for Civil Rights (OCR)  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202-1100  
Customer Service Hotline #: 800.421.3481  
Facsimile: 202.453.6012 TDD#: 877.521.2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov) Web: <http://www.ed.gov/ocr>

Michigan Department of Civil Rights  
Grand Rapids Office  
State Office Building, 4th Floor  
350 Ottawa, N.W.  
Grand Rapids, MI 49503  
Phone: 616.356.0380 Web: <http://www.michigan.gov/mdcr>

For complaints involving employees:  
Equal Employment Opportunity Commission (EEOC)  
Detroit Field Office

Patrick V. McNamara Building  
477 Michigan Avenue  
Room 865  
Detroit, MI 48226  
United States  
Phone: 800.669.4000

## **VI. Jurisdiction of Western Theological Seminary**

This policy applies to the education program, services, and activities of Western Theological Seminary, to conduct that takes place on the campus or on property owned or controlled by the Seminary, or at Seminary-sponsored events.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprive someone of access to Western Theological Seminary's educational program. Western Theological Seminary may also extend jurisdiction to off-campus and/or to online conduct when the Title IX Coordinator determines that the conduct affects a substantial Western Theological Seminary interest.

Regardless of where the conduct occurred, Western Theological Seminary will address complaints or notice to the Title IX Coordinator or a WTS Official with Authority to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity. A substantial Western Theological Seminary interest includes:

- a. Any action that constitutes a criminal offense as defined by law. This includes, but is not limited to, single or repeat violations of any local, state, or federal law;
- b. Any situation in which it is determined that the Respondent poses an immediate threat to the physical health or safety of any student or other individual;
- c. Any situation that significantly impinges upon the rights, property, or achievements of oneself or others or significantly breaches the peace and/or causes social disorder; and/or
- d. Any situation that is detrimental to the educational interests or mission of Western Theological Seminary.

Further, even when the Respondent is not a member of Western Theological Seminary's community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator.

In addition, Western Theological Seminary may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from Western Theological Seminary property and/or events.

All vendors serving Western Theological Seminary through third-party contracts are subject to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator may assist the Complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX Coordinator may be able to assist and support a student or employee Complainant who experiences discrimination in an internship, intercultural immersion program, or other environment external to Western Theological Seminary where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

## **VII. Notice/Complaints of Discrimination, Harassment, and/or Retaliation**

Notice or complaints of discrimination, harassment, and/or retaliation may be made using any of the following options:

1) File a complaint with, or give verbal notice to, Rayetta Perez, Title IX Coordinator, rayetta.perez@westernsem.edu, or 616.392.8555 x103 or Dr. John Brogan, Deputy Title IX Coordinator, john.brogan@westernsem.edu, or 616.392.8555. x192. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX Coordinator or Deputy Title IX Coordinator.

2) Report to any member of the WTS faculty or staff (with the exception of employees who serve as confidential resources as described below).

A complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent and requesting that WTS investigate the allegation(s). A complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase "document filed by a Complainant" means a document or electronic that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint.

### **A. Anonymous Reporting**

Anonymous reporting of violations of the policy will be investigated by Western Theological Seminary to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous reporting may limit Western Theological Seminary's ability to investigate, respond, and provide remedies, depending on what information is shared.

### **B. Mandated Reporting**

All Western Theological Seminary employees (faculty, staff, administrators), with the exception of Seminary Resolution Advisors (see section C below) are expected to report possible violations of this policy (including possible discrimination, harassment, or retaliation) that they observe or of have knowledge of to the Title IX Coordinator.



In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources (listed below) may maintain confidentiality and are not required to report actual or suspected discrimination or harassment. They may offer options and resources without any obligation to inform an outside agency or campus official unless a Complainant has requested the information be shared.

If a Complainant expects formal action in response to their allegations, reporting to any Mandated Reporter can connect them with resources to report crimes and/or policy violations, and these employees will pass reports to the Title IX Coordinator (and/or the police, if desired by the Complainant) within 24 hours, who will take action when an incident is reported to them.

The following sections describe the reporting options at Western Theological Seminary

### **C. Confidential Resources**

If a Complainant would like the details of an incident to be kept confidential, the Complainant may speak with a Seminary Resolution Advisor. Resolution Advisors may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to the Title IX Coordinator – thereby offering options and advice without any obligation to inform the Title IX Coordinator unless a Complainant has requested information to be shared.

Resolution Advisors are:

#### **On-campus**

On-campus (WTS employees)

- Kate Bareman, Associate Director of Student Life, [kathryn.bareman@westernsem.edu](mailto:kathryn.bareman@westernsem.edu); 616.392.8555 x 142
- Dr. Tim Basselin, Director of Field Education and Student Life, [tim.basselin@westernsem.edu](mailto:tim.basselin@westernsem.edu); 616.392.8555 x141
- Dr. Chuck DeGroat, Professor of Pastoral Care and Counseling, [chuck@westernsem.edu](mailto:chuck@westernsem.edu); 616.392.8555 x194
- Dr. Suzanne McDonald, Professor of Historical and Systematic Theology, [suzanne@westernsem.edu](mailto:suzanne@westernsem.edu); 616.392.8555 x136

#### **Off-campus**

- Resilience: Advocates for Ending Violence  
24-Hour Help Line 800.848.5991  
Español: 866.728.2131  
<https://resiliencemi.org/>

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials.

When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (i) the individual gives written consent for its disclosure; or (ii) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities.

WTS offers an Employee Assistance Program (EAP) which is available to help employees and their dependents free of charge. The EAP may be reached at [www.pinerest.org/eap](http://www.pinerest.org/eap) or 616.800.442.0809 (24/7 hotline).

Employees who are Resolution Advisors and who receive reports within the scope of their confidential roles are required to timely submit anonymous statistical information for Clery Act purposes.

#### **D. Mandated Reporters and Formal Notice/Complaints**

All employees of Western Theological Seminary (including student employees), with the exception of those who are designated as Confidential Resources, are Mandated Reporters and must promptly share with the Title IX Coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly report any possible violation of this policy that they observe or have knowledge of, even if not reported to them by a Complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with Mandated Reporters, as those details must be shared with the Title IX Coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Coordinator by employees, unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from Western Theological Seminary.

Supportive measures may be offered as the result of such disclosures without formal Western Theological Seminary action.

Failure of a Mandated Reporter, as described above in this section, to report an incident of harassment or discrimination that they observe or have knowledge of is a violation of Western Theological Seminary policy and can be subject to disciplinary action for failure to comply.

#### **E. Time Limits on Reporting**

There is no time limitation on providing notice/complaints to the Title IX Coordinator. However, if the Respondent is no longer subject to Western Theological Seminary’s jurisdiction and/or significant time has passed, the ability to investigate, respond, and provide remedies may be more limited or impossible.

Acting on complaints or notice to the Title IX Coordinator or a WTS Official with Authority significantly impacted by the passage of time (including, but not limited to, the rescission or revision of policy) is at the discretion of the Title IX Coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

When notice/complaint is affected by significant time delay, Western Theological Seminary will typically apply the policy in place at the time of the alleged misconduct and the procedures in place at the time of the complaint or notice to WTS.

#### **F. When a Complainant Does Not Wish to Proceed**

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal complaint to be pursued, they may make such a request to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether Western Theological Seminary proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate risk assessment.

The Title IX Coordinator's decision should be based on results of the risk assessment that show a compelling risk to health and/or safety that requires Western Theological Seminary to pursue action to protect the community.

A compelling risk to health and/or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. Western Theological Seminary may be compelled to act on alleged employee misconduct irrespective of a Complainant's wishes.

The Title IX Coordinator must also consider the effect that non-participation by the Complainant may have on the availability of evidence and Western Theological Seminary's ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When Western Theological Seminary proceeds, the Complainant (or their Advisor) may have as much or as little involvement in the process as they wish. The Complainant retains all rights of a Complainant under this policy irrespective of their level of participation.

Note that Western Theological Seminary's ability to remedy and respond to notice may be limited if the Complainant does not want Western Theological Seminary to proceed with an investigation and/or grievance process.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow Western Theological Seminary to honor that request, Western Theological Seminary will offer informal resolution options (see below), supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Please consider that delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

#### **G. False Allegations and Evidence**

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with, or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under Western Theological Seminary's policy.

#### **H. Amnesty for Complainants and Witnesses**

Western Theological Seminary encourages the reporting of misconduct and crimes by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Western Theological Seminary officials or participate in grievance processes because they fear that they themselves may be in violation of certain policies, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons.

It is in the best interests of Western Theological Seminary community that Complainants choose to report misconduct to Western Theological Seminary officials, that witnesses come forward to share what they know, and that all parties be forthcoming during the process.

To encourage reporting and participation in the process, Western Theological Seminary maintains a policy of offering parties and witnesses amnesty from minor policy violations – such as underage consumption of alcohol or the use of illicit drugs – related to the incident.

Amnesty does not apply to more serious allegations such as physical abuse of another or illicit drug distribution.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves. Western Theological Seminary maintains a policy of amnesty for students who offer help to others in need.

#### **VIII. Supportive Measures**

Western Theological Seminary will offer and implement appropriate and reasonable supportive measures to the parties upon receipt of a complaint or other notice of alleged harassment, discrimination, and/or retaliation by the Title IX Coordinator or a WTS Official with Authority (OWA), as defined above. WTS will maintain as confidential any supportive measures, provided confidentiality does not impair the institution's ability to provide the supportive measures.

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to Western Theological Seminary's education program or activity, including measures designed to

protect the safety of all parties or Western Theological Seminary's educational environment, and/or deter harassment, discrimination, and/or retaliation.

The Title IX Coordinator promptly makes supportive measures available to the parties upon receiving notice or a complaint. At the time that supportive measures are offered, Western Theological Seminary will inform the Complainant, in writing, that they may file a formal complaint with Western Theological Seminary either at that time or in the future, if they have not done so already. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

Western Theological Seminary will maintain the privacy of the supportive measures, provided that privacy does not impair Western Theological Seminary's ability to provide the supportive measures. Western Theological Seminary will act to ensure as minimal an academic/occupational impact on the parties as possible. Western Theological Seminary will implement measures in a way that does not unreasonably burden the other party.

These actions may include, but are not limited to:

- Referral to counseling, medical, and/or other healthcare services
- Referral to the Employee Assistance Program
- Referral to community-based service providers
- Visa and immigration assistance
- Student financial aid counseling
- Education to the institutional community or community subgroup(s)
- Altering campus housing assignment(s)
- Altering work arrangements for employees or student-employees
- Safety planning
- Providing campus safety escorts
- Providing transportation accommodations
- Implementing contact limitations (no contact orders) between the parties
- Academic support, extensions of deadlines, or other course/program-related Adjustments
- Timely warnings
- Class schedule modifications, withdrawals, or leaves of absence
- Increased security and monitoring of certain areas of the campus
- Any other actions deemed appropriate by the Title IX Coordinator

Violations of no contact orders will be referred to appropriate student or employee conduct processes for enforcement.

#### **A. Emergency Removal**

Western Theological Seminary can act to remove a student Respondent entirely or partially from its education program or activities on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal. This risk analysis is performed by the Title IX Coordinator in conjunction with appropriate Seminary and community resources using standard objective violence risk assessment procedures.

In all cases in which an emergency removal is imposed, the student will be given notice of the action and the option to request to meet with the Title IX Coordinator prior to such action/removal being imposed, or as soon thereafter as reasonably possible, to show cause why the action/removal should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal is appropriate. When this meeting is not requested in a timely manner, objections to the emergency removal will be deemed waived. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable to do so. Emergency removal decisions may be appealed to the Appeal Decision-maker as described below.

A Respondent may be accompanied by an Advisor of their choice when meeting with the Title IX Coordinator for the show cause meeting. The Respondent will be given access to a written summary of the basis for the emergency removal prior to the meeting to allow for adequate preparation.

The Title IX Coordinator has sole discretion under this policy to implement or stay an emergency removal and to determine the conditions and duration. Violation of an emergency removal under this policy will be grounds for discipline, which may include expulsion or termination.

Western Theological Seminary will implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the Title IX Coordinator, these actions could include, but are not limited to: removing a student from Seminary-owned housing, temporarily re-assigning an employee, restricting a student's or employee's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete without financial penalty, authorizing an administrative leave, and suspending a student's participation in extracurricular activities, student employment, or student organizational leadership.

At the discretion of the Title IX Coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

An employee may be placed on paid or unpaid administrative leave.

## **IX. Privacy**

Every effort is made by Western Theological Seminary to preserve the privacy of reports.<sup>6</sup> Western Theological Seminary will not share the identity of any individual who has made a report or

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<sup>6</sup> For the purpose of this policy, privacy and confidentiality have distinct meanings. **Privacy** means that information related to a complaint will be shared with a limited number of Western Theological Seminary employees who "need to know" in order to assist in the assessment, investigation, and resolution of the complaint. All employees who are involved in Western Theological Seminary's response to notice under this policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of student education records will be protected in accordance with the Family Educational Rights and Privacy Act ("FERPA"), as outlined in Western Theological Seminary's Student Records Policy. The privacy of employee records will be protected in accordance with Human Resources policies. **Confidentiality** exists in the context of laws that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, counselors, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Western Theological Seminary has designated individuals who have the ability to have privileged communications as

complaint of harassment, discrimination, or retaliation; any Complainant, any individual who has been reported to be the perpetrator of sex discrimination, any Respondent, or any witness, except as permitted by the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g; FERPA regulations, 34 CFR part 99; or as required by law; or to carry out the purposes of 34 CFR Part 106, including the conducting of any investigation, hearing, or grievance proceeding arising under these policies and procedures.

Western Theological Seminary reserves the right to determine which Seminary officials have a legitimate educational interest in being informed about incidents that fall within this policy, pursuant to the Family Educational Rights and Privacy Act (FERPA).

Only a small group of officials who need to know will typically be told about the complaint, including but not limited to members of the WTS Leadership Team, Academic Office, and faculty. Information will be shared as necessary with Investigators, Decision Makers, Resolution Team members, witnesses, and the parties. The circle of people with this knowledge will be kept as tight as possible to preserve the parties' rights and privacy.

Western Theological Seminary may disclose information to appropriate parties when the information is necessary to protect the health or safety of the student or other individuals. While there is an expectation of privacy around what is discussed during interviews and during the resolution process, the parties have discretion to share their own experiences with others if they so choose but are encouraged to discuss with their Advisors first before doing so.

## **X. Policy on Discrimination and Harassment**

Students, staff, administrators, and faculty are entitled to an employment and educational environment that is free of discriminatory harassment. Western Theological Seminary's harassment policy is not meant to inhibit or prohibit educational content or discussions inside or outside of the classroom that include germane but controversial or sensitive subject matters protected by academic freedom.

The sections below describe the specific forms of legally prohibited discrimination and harassment that are also prohibited under Western Theological Seminary policy. Discrimination and harassment are prohibited under this policy on the basis of race, color, national origin, age, sex, marital or family status, disability, height, weight, genetic information, and other prohibited characteristics in accordance with applicable federal, state, and local laws and ordinances, except in the event of a bona fide occupational qualification. When speech or conduct is protected by academic freedom and/or the principles of free speech, it will not be considered a violation of Western Theological Seminary policy, though supportive measures may be offered to those impacted. All policies encompass actual and/or attempted offenses.

### **A. Discrimination**

Discrimination includes actions that deprive or limit access to education, employment, benefits, or other opportunities and/or treat an individual differently on the basis of actual or perceived membership in a class protected by policy or law (as listed in the categories noted in this policy).

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Confidential Resources. Non-identifiable information may be shared by Confidential Resources for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

## **B. Harassment**

Harassment is defined as unwelcome conduct by any member or group of the community on the basis of actual or perceived membership in a class protected by policy or law.

Western Theological Seminary does not tolerate discriminatory harassment of any WTS community member.

A hostile environment is one that unreasonably interferes with, limits, or effectively denies an individual's educational or employment access, benefits, or opportunities.<sup>7</sup> This discriminatory effect results from harassing verbal, written, graphic, or physical conduct that is so severe or pervasive or persistent that it denies or limits an individual's access to the education program or activity.

Western Theological Seminary reserves the right to address harassment that 1) does not rise to the level of creating a hostile environment, or 2) that is of a generic nature and not based on a protected status. Addressing such conduct will not result in the imposition of discipline under this policy, but may be addressed through respectful conversation, remedial actions, education, and/or other informal resolution mechanisms.

For assistance with informal resolution techniques and approaches, employees and students should contact the Title IX Coordinator or the Director of Human Resources.

### **Online Harassment and Misconduct**

The policies of Western Theological Seminary are written and interpreted broadly to include online manifestations of any of the behaviors prohibited below, when those behaviors occur in or have an effect on Western Theological Seminary's education program and activities or use Western Theological Seminary networks, technology, or equipment.

Although Western Theological Seminary may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the Seminary, it will engage in a variety of means to address and mitigate the effects.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social media, unwelcome sexual or sex-based messaging, distributing, or threatening to distribute revenge pornography, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the Seminary community.

Any online posting or other electronic communication by students, including cyber-bullying, cyber-stalking, cyber-harassment, etc., occurring completely outside of Western Theological Seminary's control (e.g., not on Western Theological Seminary networks, websites, or between Western Theological Seminary email accounts) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

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<sup>7</sup> This definition of hostile environment is based on Federal Register / Vol. 59, No. 47 / Thursday, March 10, 1994: [Department of Education Office for Civil Rights, Racial Incidents and Harassment Against Students At Educational Institutions Investigative Guidance](#).



Otherwise, such communications are considered protected free speech. Supportive measures for Complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus harassing speech by employees, whether online or in person, may be regulated by Western Theological Seminary only when such speech is made in an employee's official or work-related capacity.

### **C. Title IX Sexual Harassment**

The Department of Education's Office for Civil Rights (OCR), the Equal Employment Opportunity Commission (EEOC), and the State of Michigan regard Sexual Harassment, a specific form of discriminatory harassment, as an unlawful discriminatory practice.

Western Theological Seminary has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community.

Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.

Sexual Harassment, as an umbrella category, includes the offenses of sexual harassment, sexual assault, domestic violence, dating violence, and stalking, and is defined as:

Conduct on the basis of sex/gender or that is sexual that satisfies one or more of the following:

- 1) Quid Pro Quo:
  - a. an employee of Western Theological Seminary,
  - b. conditions<sup>8</sup> the provision of an aid, benefit, or service of Western Theological Seminary,
  - c. on an individual's participation in unwelcome sexual conduct.
- 2) Sexual Harassment:
  - a. unwelcome conduct,
  - b. determined by a reasonable person,
  - c. to be so severe, and
  - d. pervasive, and,
  - e. objectively offensive,
  - f. that it effectively denies a person equal access to Western Theological Seminary's education program or activity.<sup>9</sup>
- 3) Sexual assault, defined as:
  - a) Sex Offenses, Forcible:

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<sup>8</sup> Implicitly or explicitly.

<sup>9</sup> Unwelcomeness is subjective and determined by the Complainant (except when the Complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the Complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

- Any sexual act<sup>10</sup> directed against another person<sup>11</sup>,
- without the consent of the Complainant,
- including instances in which the Complainant is incapable of giving consent.
- b) Sex Offenses, Non-forcible:
  - As defined above, any sexual act directed against another person,
  - without the consent of the Complainant,
  - including instances in which the Complainant is incapable of giving consent.
- c) Sex Offenses, Non-forcible:
  - Incest:
    - 1) Non-forcible sexual intercourse,
    - 2) between persons who are related to each other,
    - 3) within the degrees wherein marriage is prohibited by Michigan law.
  - Statutory Rape:
    - 1) Non-forcible sexual intercourse,
    - 2) with a person who is under the statutory age of consent of 16.

- 4) Dating Violence, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a person,

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<sup>10</sup> A 'sexual act' is specifically defined by federal regulations to include one or more of the following:

Forcible Rape:

- 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.

Forcible Sodomy:

- Oral or anal sexual intercourse with another person,
- forcibly,
- and/or against that person's will (non-consensually), or
- not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age<sup>#</sup> or because of temporary or permanent mental or physical incapacity.

Sexual Assault with an Object:

- The use of an object or instrument to penetrate,
- however slightly,
- the genital or anal opening of the body of another person,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

Forcible Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- forcibly,
- and/or against that person's will (non-consensually),
- or not forcibly or against the person's will in instances in which the Complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

<sup>11</sup> This would include having another person touch another person sexually, forcibly, or without their consent.

- d. who is in or has been in a social relationship of a romantic or intimate nature with the Complainant.
    - i. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition—
    - ii. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
    - iii. Dating violence does not include acts covered under the definition of domestic violence.
- 5) Domestic Violence, defined as:
- a. violence,
  - b. on the basis of sex,
  - c. committed by a current or former spouse or intimate partner of the Complainant,
  - d. by a person with whom the Complainant shares a child in common, or
  - e. by a person who is cohabitating with, or has cohabitated with, the Complainant as a spouse or intimate partner, or
  - f. by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of Michigan, or
  - g. by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of Michigan.

\*To categorize an incident as Domestic Violence, the relationship between the Respondent and the Complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.

- 6) Stalking, defined as:
- a. engaging in a course of conduct,
  - b. on the basis of sex,
  - c. directed at a specific person, that
    - i. would cause a reasonable person to fear for the person's safety, or
    - ii. the safety of others; or
    - iii. suffer substantial emotional distress.
- For the purposes of this definition—
- (i) Course of conduct means two or more acts, including, but not limited to, acts in which the Respondent 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.
  - (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the Complainant.
  - (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

#### **D. Force, Coercion, Consent, and Incapacitation<sup>12</sup>**

As used in the offenses above, the following definitions and understandings apply:

##### **1. Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., "Have sex with me or I'll hit you," "Okay, don't hit me, I'll do what you want.").

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

##### **2. Coercion**

Coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

##### **3. Consent is:**

- knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain *their* consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease within a reasonable time.

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<sup>12</sup> The standard used in the sexual assault statutes in Michigan is whether the accused used "force or coercion to accomplish the sexual [act]." Mich. Comp. Laws. Ann. § 750.520b – e.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on Western Theological Seminary to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

#### **4. Incapacitation**

A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent.

It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. "Should have known" is an objective, reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the "who, what, when, where, why, or how" of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

#### **XI. Other Discrimination and Harassment Prohibited by this Policy**

In addition to the forms of sexual harassment described above, which are covered by Title IX, Western Theological Seminary additionally prohibits the following offenses as forms of discrimination that may be within or outside of Title IX when the act is based upon the Complainant's actual or perceived membership in a protected class.

- Sexual Exploitation, defined as: taking non-consensual or abusive sexual advantage of another for their own benefit or for the benefit of anyone other than the person being exploited, and that conduct does not otherwise constitute sexual harassment under this policy. Examples of Sexual Exploitation include, but are not limited to:
  - Sexual voyeurism (such as observing or allowing others to observe a person undressing or using the bathroom or engaging in sexual acts, without the consent of the person being observed)
  - Invasion of sexual privacy

- Taking pictures, video, or audio recording of another in a sexual act, or in any other sexually-related activity when there is a reasonable expectation of privacy during the activity, without the consent of all involved in the activity, or exceeding the boundaries of consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person's consent), including the making or posting of revenge pornography
  - Prostituting another person
  - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
  - Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
  - Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual connections
  - Forcing a person to take an action against that person's will by threatening to show, post, or share information, video, audio, or an image that depicts the person's nudity or sexual activity
  - Knowingly soliciting a minor for sexual activity
  - Engaging in sex trafficking
  - Creation, possession, or dissemination of child pornography
- Threatening or causing physical harm, extreme verbal, emotional, or psychological abuse, or other conduct which threatens or endangers the health or safety of any person;
  - Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
  - Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the Western Theological Seminary community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity;
  - Bullying, defined as:
    - Repeated and/or severe
    - Aggressive behavior
    - Likely to intimidate or intentionally hurt, control, or diminish another person, physically and/or mentally
    - That is not speech or conduct otherwise protected by the First Amendment.

Violation of any other Western Theological Seminary policies may constitute a Civil Rights Offense when a violation is motivated by actual or perceived membership in a protected class, and the result is a discriminatory limitation or denial of employment or educational access, benefits, or opportunities.

Sanctions for the above-listed Civil Rights Offenses range from reprimand through expulsion/termination.

## **XII. Policy on Disability Discrimination and Accommodation**

Western Theological Seminary is committed to full compliance with the Americans With Disabilities Act of 1990 (ADA), as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified persons with disabilities, as well as other federal and state laws and regulations pertaining to individuals with disabilities.

Under the ADA and its amendments, a person has a disability if they have a physical or mental impairment that substantially limits a major life activity.

The ADA also protects individuals who have a record of a substantially limiting impairment or who are regarded as disabled by Western Theological Seminary, regardless of whether they currently have a disability. A substantial impairment is one that significantly limits or restricts a major life activity such as hearing, seeing, speaking, breathing, performing manual tasks, walking, or caring for oneself.

Dr. Carlos Thompson has been designated as Western Theological Seminary's ADA/504 Coordinator responsible for overseeing efforts to comply with these disability laws, including responding to grievances and conducting investigations of any allegation of noncompliance or discrimination based on disability. Anyone needing such accommodations or support should contact Dr. Thompson.

Grievances related to disability status and/or accommodations will be addressed using the procedures below.

### **A. Students with Disabilities**

Western Theological Seminary is committed to providing qualified students with disabilities with reasonable accommodations and support needed to ensure equal access to the academic programs, services, and activities of Western Theological Seminary.

All accommodations are made on an individualized basis. A student requesting any accommodation should first contact the ADA/504 Coordinator, who coordinates services for students with disabilities.

The ADA/504 Coordinator reviews documentation provided by the student and, in consultation with the student, determines which accommodations are appropriate for the student's particular needs and academic program(s) in accordance with the Seminary's applicable policies.

### **B. Employees with Disabilities**

Pursuant to the ADA, Western Theological Seminary will provide reasonable accommodation(s) to all qualified employees with known disabilities when their disability affects the performance of their essential job functions, except when doing so would be unduly disruptive or would result in undue hardship to Western Theological Seminary.

An employee with a disability is responsible for submitting a request for an accommodation to the ADA/504 Coordinator and providing any necessary documentation. The ADA/504 Coordinator will work with the employee's supervisor to identify which essential functions of the

position are affected by the employee's disability and what reasonable accommodations could enable the employee to perform those duties in accordance with Western Theological Seminary's applicable policies.

### **XIII. Retaliation**

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process, supporting a Complainant or Respondent, assisting in providing information relevant to an investigation, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Western Theological Seminary will take all appropriate and available steps to protect individuals who fear that they may be subjected to retaliation.

Western Theological Seminary and any member of the Seminary community are prohibited from attempted or actual intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure.

Charges against an individual for code of conduct violations may be considered retaliatory if those charges do not involve discrimination or harassment but arise out of the same facts or circumstances as a report or complaint of discrimination or harassment for the purpose of interfering with or circumventing any right or privilege provided afforded under this process.

The exercise of rights protected under free speech principles does not constitute retaliation.

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 and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

### **XIV. Federal Reporting and Warning Obligations**

#### **A. Federal Statistical Reporting Obligations**

Campus Security Authorities, the Director of Administration and Human Resources and the Vice President of Finance, have a duty to report the following for federal statistical reporting purposes (under the Clery Act):

- a) All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;
- b) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;



- c) VAWA-based crimes,<sup>13</sup> which include sexual assault, domestic violence, dating violence, and stalking; and
- d) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be reported regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given).

#### **B. Federal Timely Warning Obligations**

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the Clery Act, Western Theological Seminary must issue timely warnings for incidents reported to them that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Western Theological Seminary will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

### **XV. Notification**

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local address of the parties as indicated in official institutional records, or emailed to the parties' Western Theological Seminary-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

### **XVI. Revision**

These policies and procedures will be reviewed and updated periodically by the Title IX Coordinator. Western Theological Seminary reserves the right to make changes to this document as necessary and once those changes are posted online, they are in effect. The Title IX Coordinator may make minor modifications to these procedures that do not materially jeopardize the fairness owed to any party, such as to accommodate summer schedules.

The Title IX Coordinator may also vary procedures materially with notice (on the Western Theological Seminary website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this policy and procedure.

If government regulations change in a way that impacts this document, this document will be construed to comply with the most recent government regulations.

This policy does not establish contractual rights, in whole or in part, between the Seminary and any individuals, including students and employees.

This policy and procedure was implemented in January 2021.

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<sup>13</sup> VAWA is the Violence Against Women Act.

## APPENDIX A

### PROCESS A: GRIEVANCE PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON NON-HARASSMENT AND NON-DISCRIMINATION

(not including allegations of Title IX Sexual Harassment, which is addressed in Process B)

#### I. Introduction

Western Theological Seminary will act on any formal or informal allegation or notice of violation of the Policy on Non-Harassment and Non-Discrimination that is received by the Title IX Coordinator or a member of the administration, faculty, or other employee, with the exception of confidential resources, as articulated in the policy above. The Seminary will provide a prompt and equitable resolution of complaints filed under this policy.

The procedures described below apply to all allegations of harassment or discrimination on the basis of protected class status involving students, staff, faculty members, administrators, or third parties. The procedures below do not apply to qualifying allegations of *Title IX Sexual Harassment*, as defined below (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, faculty, or administrators.

These procedures may also be used to address collateral misconduct arising from the investigation of or occurring in conjunction with harassing or discriminatory conduct (e.g., vandalism, physical abuse of another, etc.). All other allegations of misconduct unrelated to incidents covered by this policy will be addressed through the procedures elaborated in the WTS Handbook. Process A is applicable when the Title IX Coordinator determines Process B is inapplicable, or offenses subject to Process B have been dismissed.

Requests for accommodations in the investigation and resolution process for individuals with disabilities should be directed to the Section ADA/504 Coordinator or the Title IX Coordinator.

#### 1. Harassment and Discrimination Resolution Process (HDRP)

Allegations under this policy are resolved using the HDRP. Members of the Resolution Team are listed in this policy, which is available publicly on the WTS website. Members of the Resolution Team are trained in all aspects of the resolution process, and can serve in any of the following roles, at the direction of the Title IX Coordinator:

- To provide sensitive intake for and initial advice pertaining to allegations
- To serve as informal resolution facilitators
- To investigate allegations
- To act as process advisors to those involved in the Harassment and Discrimination Resolution Process
- To serve as an Appeal Decision-Maker

WTS Resolution Team members are (listed alphabetically):

- Ms. Carol Ann Bailey
- Dr. Tim Basselin
- Dr. Carol Bechtel

- Dr. John Brogan
- Dr. David Stubbs

Resolution Team members also recommend proactive policies and, along with the Deputy Title IX Coordinator, may be consulted by the Title IX Coordinator at any time during a resolution process. Resolution Team members receive relevant and required training organized by the Title IX Coordinator, including a review of WTS policies and procedures as well as applicable federal and state laws and regulations so that they are able to appropriately function in this role.

## **II. Preliminary Inquiry**

Following receipt of notice or a report of misconduct, the Title IX Coordinator<sup>14</sup> engages in a preliminary inquiry to determine whether the alleged misconduct, if true, would constitute a violation of the Policy on Non-Harassment and Non-Discrimination. The preliminary inquiry is typically five (5) to ten (10) business days in duration. WTS will communicate directly with the Complainant and Respondent during this process. This inquiry may also serve to help the Title IX Coordinator to determine if the allegations evidence violence, threat, pattern, predation and/or weapons, in the event that the Complainant has asked for no action to be taken. In any case where violence, threat, pattern, predation, and/or weapons is not evidenced, the Title IX Coordinator may respect a Complainant's request for no action and will investigate only so far as necessary to determine appropriate remedies. As necessary, WTS reserves the right to initiate resolution proceedings without a formal report or participation by the Complainant.

If a Restorative Process is desired by the Complainant, is agreed upon by the Respondent, and appears appropriate given the nature of the alleged behavior, then the report does not proceed to a formal investigation, unless a pattern of misconduct is suspected or there is an actual or perceived threat of further harm to the community or any of its members.

In cases where the Complainant wishes to proceed or WTS determines it must proceed, and the preliminary inquiry shows that the alleged misconduct, if true, would constitute a violation of the policy, the Title IX Coordinator will initiate a formal investigation.

Once a formal investigation is commenced, the Title IX Coordinator will provide written notification of the investigation to the Respondent.<sup>15</sup> WTS aims to complete all investigations within a sixty (60) business days' time period, which can be extended as necessary for appropriate cause by the Title IX Coordinator with notice to the parties as appropriate.

If, during the preliminary inquiry or at any point during the formal investigation, the Title IX Coordinator determines that the alleged misconduct, even if true, would not constitute a violation of the policy, the process will end unless the Complainant requests that the Title IX Coordinator makes an extraordinary determination to re-open the investigation. This decision lies in the sole discretion of

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<sup>14</sup> If circumstances require, the President or Title IX Coordinator may designate another person to oversee the process below, should an allegation be made against the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill his or her duties.

<sup>15</sup> Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official WTS records; or emailed to the parties' seminary-issued email account. Once mailed, emailed, and/or received in-person, notice is presumed to have been delivered.

the Title IX Coordinator.

**A. Supportive Measures (see Policy)**

**B. Promptness**

All allegations are acted upon promptly by Western Theological Seminary once it has received notice or a formal complaint. WTS strives to complete the investigation and resolution process within 90-120 business days to resolve, typically. WTS' goal is to complete the investigation process within sixty (60) business days and to complete the informal resolution or the appeal process, if used, within thirty (30) business days. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but Western Theological Seminary will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in Western Theological Seminary procedures will be delayed, the Seminary will provide written notice to the parties of the delay, the cause of the delay, and an estimate of the anticipated additional time that will be needed as a result of the delay.

**III. Advisor**

Each party is allowed to have an advisor of their choice present with them for all meetings and proceedings, from intake through final determination. The parties may select whomever they wish to serve as their advisor as long as the advisor is eligible and not involved in the resolution process, such as serving as a witness. The advisor may be a friend, mentor, family member, attorney, or any other supporter who is available and eligible. Witnesses cannot also serve as advisors. The parties may choose advisors from inside or outside the Seminary community, or proceed without an advisor.

The parties may be accompanied by their advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews. Advisors may also assist the parties in submitting written communications to WTS. However, at all times during the assessment and resolution process, the parties are expected to communicate directly with WTS upon request by WTS. All advisors are subject to the same campus rules, whether they are attorneys or not. Advisors may not address campus officials in a meeting or interview unless invited to. The advisor may not make a presentation or represent the Complainant or the Respondent during any meeting or proceeding and may not speak on behalf of the advisee to the investigators or hearing panelists. The parties are expected to ask and respond to questions on their own behalf, without representation by their advisor. Advisors may confer quietly with their advisees or in writing as necessary, as long as they do not disrupt the process. For longer or more involved discussions, the parties and their advisors may ask for breaks or step out of meetings to allow for private conversation. Advisors will typically be given an opportunity to meet in advance of any interview or meeting with the administrative officials conducting that interview or meeting. This pre-meeting will allow advisors to clarify any questions they may have, and allows the Seminary an opportunity to clarify the role the advisor is expected to take.

Advisors are expected to refrain from interference with the investigation and resolution. Any advisor who steps out of their role will be warned once and only once. If the advisor continues to disrupt or otherwise fails to respect the limits of the advisor role, the advisor will be asked to leave the meeting. When an advisor is removed from a meeting, that meeting will typically continue without the advisor.

present. Subsequently, the Title IX Coordinator will determine whether the advisor may be reinstated, may be replaced by a different advisor, or whether the party will forfeit the right to an advisor for the remainder of the process. The Seminary expects that the parties will wish to share documentation related to the allegations with their advisors. The Seminary provides a consent form that authorizes such sharing. The parties must complete this form before the Seminary is able to share records with an advisor, though parties may share the information directly with their advisor if they wish. Advisors are expected to maintain the privacy of the records shared with them. The records provided by the Seminary may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the Seminary. The Seminary may seek to restrict the role of any advisor who does not respect the sensitive nature of the process or who fails to abide by the Seminary's privacy expectations.

The Seminary expects advisors to adjust their schedules to allow them to attend meetings. The Seminary does not typically change scheduled meetings to accommodate an advisor's inability to attend. The Seminary will, however, make reasonable provisions to allow an advisor who cannot attend in person to attend a meeting by telephone, video, and/or virtual meeting technologies as may be convenient and available.

A party may elect to change advisors during the process and is not locked into using the same advisor throughout.

The parties must advise the investigators of the identity of their advisor at least one day before the date of their first meeting with investigators (or as soon as possible if a more expeditious meeting is necessary or desired). The parties must provide timely notice to investigators if they change advisors at any time.

Additionally, parties may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Reporting parties may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>), or the
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]

#### **IV. Resolution Options**

The allegation (if not dismissed at any time during the process) will be resolved through one of these two resolution processes:

Informal Resolution

Formal Resolution

The process used to resolve the allegation considers the preferences of the parties, but is ultimately determined at the discretion of the Title IX Coordinator.

Proceedings are private. All persons present at any time during the resolution process are expected to

maintain the privacy of the proceedings in accordance with WTS policy. While the contents of the hearing are private, the parties have discretion to share their own experiences if they so choose, and should discuss doing so with their advisors.

#### **A. Informal Resolution**

Either party may request to initiate Informal Resolution by contacting the Title IX Coordinator. It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Western Theological Seminary will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Informal Resolution is an informal process including mediation or restorative processes, etc. by which a mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Informal Resolution.

The determination of whether Informal Resolution is appropriate and will be used for a particular matter is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

##### **Informal Resolution Processes**

A Restorative Process or Mediated Process may be used for less serious, yet inappropriate, behaviors and are encouraged as an alternative to a Formal Resolution process to resolve conflicts. The Title IX Coordinator will determine if an Informal Resolution process is appropriate, based on the willingness of the parties, the nature of the conduct at issue, and the susceptibility of the conduct to conflict resolution. In a Restorative Process, a trained facilitator will facilitate a dialogue with the parties to an effective resolution, if possible. In a Mediated Process, a trained intermediary will conduct negotiations structured by agreement of the parties.

Sanctions are not possible as the result of an Informal Resolution process, though the process may include determining agreed-upon actions for the parties. The Title IX Coordinator will keep records of any resolution that is reached, may take appropriate responsive actions if parties fail to abide by the agreed-upon actions.

A Restorative Process will not be the primary resolution mechanism used to address reports of violent behavior of any kind or in other cases of serious violations of policy, though it may be made available after the Formal Resolution process is completed should the parties and the Title IX Coordinator believe that it could be beneficial. It is not necessary to pursue a Restorative Process first in order to pursue Formal Resolution, and any party participating in Restorative Process can stop that process at any time and request a shift to Formal Resolution.

#### **B. Formal Resolution**

Formal Resolution can be pursued for any behavior that falls within the Policy on Non-Harassment and Non-Discrimination, except for behaviors defined as Title IX Sexual Harassment, at any time during the process. In Formal Resolution, the Title IX Coordinator has the authority to address all collateral misconduct, meaning that WTS may address all allegations of discrimination, harassment, and retaliation, but also may address any additional alleged policy violations that have occurred in concert with the discrimination, harassment, or retaliation, even though those collateral allegations may not specifically fall within the Policy on Non-Discrimination and Non-Harassment.

### **1. Investigation and Determination**

Once the decision is made to commence a formal investigation, the Title IX Coordinator, or an individual designated as the investigator, including an outside party contracted by the Seminary to conduct the investigation, will begin the investigation.

Investigations entail interviews with all relevant parties and witnesses, obtaining relevant evidence, and identifying sources of expert information, as appropriate.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses, and to provide evidence.

The investigation will typically take the following steps, if not already completed (not necessarily in order):

- The Title IX Coordinator will initiate or assist with any necessary supportive measures
- Determine the identity and contact information of the Complainant
- Identify all policies allegedly violated
- Complete an immediate preliminary inquiry to determine if the alleged misconduct, if true, would constitute a violation of the policy.
- If there is insufficient evidence to support that the alleged misconduct, if true, would constitute a violation of the policy, the inquiry should be closed with no further action.
- Commence a thorough, reliable, and impartial investigation
- Meet with the Complainant to understand allegations, if necessary
- If possible, provide written notification to the parties prior to their interviews so that they may have the assistance of an advisor of their choosing present for all meetings attended by the advisee (the advisor may be a member of the Resolution Team)
- Provide the Complainant and Respondent with a written description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures and a statement of the potential sanctions/responsive actions that could result
- Provide information about available Informal Resolution Process to the Complainant and the Respondent
- Interview all relevant individuals and conduct follow-up interviews as necessary
- Allow each party the opportunity to identify witness and submit documentation or other evidence
- Provide regular updates to the parties throughout the investigation
- Write an investigation report fairly summarizing the investigation and relevant evidence
- Once the report is complete, the report, including preliminary conclusions based on a preponderance of the evidence whether a policy violation is more likely than not, is shared

with the parties for their review and comment. The review and comment period will be five (5) business days. The Title IX Coordinator may incorporate feedback from the parties as appropriate

- After review of any responses from the parties, the Title IX Coordinator will finalize and share the final investigative report with the parties,

At any point during the investigation, if it is determined, even if true, the alleged violation would not constitute a violation of WTS policy, the Title IX Coordinator has the authority to terminate the investigation and end the resolution proceedings.

Upon completion of the investigation, the investigator will provide a Review Panel with the final investigative report. The Review Panel will be comprised of two members of the Resolution Team with the Title IX Coordinator. The Title IX Coordinator will determine which two members of the team will participate in the Review Panel.

The Review Panel will conduct any additional necessary inquiry and then finalize a determination in accordance with the procedures below. The Review Panel will consider, but is not bound by, the recommendations of the investigation.

The Review Panel will base the determination(s) on the preponderance of the evidence, whether it is more likely than not that the respondent violated policy as alleged.

The Review Panel will inform the parties of the final determination within three (3) days of the resolution, without significant time delay between notifications.

Witnesses who are employees (as distinguished from the parties) are expected to cooperate with and participate in the WTS investigation and the Resolution Process. Failure of an employee witness to cooperate with and/or participate in the investigation or Resolution Process constitutes a violation of policy and may be subject to discipline.

The Respondent may choose to admit responsibility for all or part of the alleged policy violations at any point during the investigation or Formal Resolution process.

Notification will be made in writing and may be delivered by one or more of the following methods: in person; mailed to the local or permanent address of the parties as indicated in official WTS records; or emailed to the parties' Seminary-issued email account. Once mailed, emailed and/or received in-person, notice is presumed to have been delivered. The notification of outcome will specify the finding on each alleged policy violation, any sanctions that may result which WTS is permitted to share according to state or federal law, and the rationale supporting the findings to the extent WTS is permitted to share under state or federal law. The notice will also include information on when the results are considered by WTS to be final and any changes that will occur prior to finalization. Notification will also include information about WTS' appeal process.

## **2. Additional Details of the Investigation Process**



#### **i. Remote processes**

At the discretion of the investigator, parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies. Where remote technologies are used, Western Theological Seminary makes reasonable efforts to ensure privacy and security of remote interviews and, and that any technology does not work to the detriment of any party or subject them to unfairness.

#### **ii. Recording**

No unauthorized audio or video recording of any kind is permitted during the resolution process. If the investigator elects to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

#### **iii. Evidence**

Any evidence that is relevant may be considered by the investigator and Review Panel, including historical and pattern evidence. The Review Panel may exclude irrelevant or immaterial evidence and may choose to disregard evidence lacking in credibility or that is improperly prejudicial.

Unless the Review Panel determines it is appropriate, the investigation and the finding will not consider: (1) incidents not directly related to the possible violation, unless they show a pattern, (2) the sexual history of the Complainant (though there may be a limited exception made in regard to the sexual history between the parties), or (3) privileged information.

### **V. Sanctions and Remedies**

Factors considered when determining a sanction/responsive action may include:

- The nature, severity of, and circumstances surrounding the violation
- An individual's disciplinary history
- Previous allegations or allegations involving similar conduct
- Any other information deemed relevant by the hearing panel
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community.

The sanction(s) will be implemented as soon as is feasible. The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken, or sanctions imposed by outside authorities.

#### **A. Student Sanctions**

The following are the usual sanctions that may be imposed by the Seminary upon students or organizations singly or in combination:

- *Warning:* A formal statement that the behavior was unacceptable and a warning that further infractions of any WTS policy, procedure or directive will result in more severe sanctions/responsive actions.
- *Probation:* A written reprimand for violation of the Policy on Non-Harassment and Non-

Discrimination, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Western Theological Seminary policy, procedure or directive within a specified period of time. Terms of the probation will be specified and may include denial of specified social privileges, exclusion from co-curricular activities, non-contact orders and/or other measures deemed appropriate.

- *Suspension:* Termination of student status for a definite period of time not to exceed two years, and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure at WTS. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Title IX Coordinator.
- *Expulsion:* Permanent termination of student status, revocation of rights to be on campus for any reason, or attend WTS-sponsored events. This sanction will be noted as a Conduct Expulsion on the student's official transcript.
- *Withholding Diploma:* WTS may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending, or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* WTS reserves the right to revoke a degree awarded from WTS for fraud, misrepresentation or other violation of Seminary policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, de-recognition, loss of all privileges (including Seminary registration), for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, WTS may assign any other sanctions as deemed appropriate.

#### **B. Employee Sanctions**

The sanctions that may be imposed by the Seminary on an employee who has engaged in harassment, discrimination, and/or retaliation include

- Warning – Verbal or Written
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, WTS may assign any other sanctions as deemed appropriate.

Should an employee resign with unresolved allegations pending, the records of the Title IX Coordinator will reflect that status, and any Western Theological Seminary responses to future

inquiries regarding employment references for that individual will include the former employee's unresolved status.

### **C. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement long-term remedies or actions with respect to the parties and/or the campus community to stop the harassment, discrimination, and/or retaliation; remedy its effects; and prevent its reoccurrence. These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, long-term remedies may also be provided to the Complainant even if no policy violation is found.

### **D. Failure to Complete Sanctions/Comply with Interim and Long-Term Remedies/Responsive Actions**

All Respondents are expected to comply with conduct sanctions, responsive actions, and corrective actions within the timeframe specified by the Title IX Coordinator. Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/responsive/corrective action(s), including suspension, expulsion, and/or termination from Western Theological Seminary and may be noted on a student's official transcript and in an employee's personnel records. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

## **VII. Appeals**

Any party may file a request for appeal ("Request for Appeal") of a Notice of Emergency Removal, Closure Notice or Notice of Outcome, but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice.

Western Theological Seminary will designate an Appeal Decision-maker, which may be through a contract with an outside attorney or relevant resource. No Appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

Appeals are limited to the following grounds:

1. Procedural irregularity that affected the outcome of the matter;

2. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
3. The Title IX Coordinator or member of the Review Panel had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this policy, that request will be denied by the Appeal Decision-maker and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this policy, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Review Panel.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the Review Panel will be mailed, emailed, and/or provided a hard copy of the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-maker to all parties for review and comment.

The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Appeal Decision-maker will render a decision in no more than twenty (20) business days after receiving the information, barring exigent circumstances. WTS strives to complete the appeals process within thirty (30) business days after receiving a Request for Appeal.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. .

### **Sanctions Status During the Appeal**

Any sanctions imposed as a result of the hearing are generally stayed during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above. If any of the sanctions are to be implemented immediately post-hearing, but pre-appeal, then emergency removal procedures (detailed above) for a hearing on the justification for doing so must be permitted within 48 hours of implementation.

### **VIII. Recordkeeping**

In implementing this policy, records of all allegations, investigations, resolutions, and hearings will be kept for seven years, or as required by state or federal law or institutional policy, by the Title IX Coordinator in the Title IX case database.

## APPENDIX B

### GRIEVANCE PROCESS FOR ALLEGED TITLE IX SEXUAL HARASSMENT VIOLATIONS (PROCESS B)

#### Overview

Western Theological Seminary will act on any formal or informal notice/complaint of violation of the policy on Non-Harassment and Non-Discrimination ("the policy") that is received by the Title IX Coordinator or any other Official with Authority.

The procedures below, known as "Process B," apply only to qualifying allegations of sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) involving students, staff, administrator, or faculty members.

If other policies are invoked, such as policies on protected class harassment or discrimination above, please see Appendix A for a description of the procedures applicable to the resolution of such offenses, known as "Process A."

Process A can also apply to sexual harassment (including sexual assault, dating violence, domestic violence, and stalking, as defined above) when jurisdiction does not fall within Process B, as determined by the Title IX Coordinator.

Requests for accommodations in the investigation and resolution process for individuals with disabilities should be directed to the Section 504/ADA Coordinator or the Title IX Coordinator.

The procedures below may be used to address collateral misconduct arising from the investigation of or occurring in conjunction with reported misconduct (e.g., vandalism, physical abuse of another). All other allegations of misconduct unrelated to incidents covered by the policy will be addressed through procedures described in the WTS Handbook.

#### II. Notice/Complaint

Upon receipt of a complaint or notice to the Title IX Coordinator of an alleged violation of the policy, the Title IX Coordinator initiates a prompt initial assessment to determine the next steps Western Theological Seminary needs to take.

#### III. Initial Assessment

Following receipt of notice or a complaint of an alleged violation of this policy, the Title IX Coordinator engages in an initial assessment, typically within five (5) to ten (10) business days. The steps in an initial assessment can include:

- The Title IX Coordinator seeks to determine if the person impacted wishes to make a formal complaint, and will assist them to do so, if desired.
  - If they do not wish to do so, the Title IX Coordinator determines whether to initiate a complaint because a violence risk assessment indicates a compelling threat to health and/or safety.
- The Title IX Coordinator reaches out to the Complainant to offer supportive measures.

- The Title IX Coordinator works with the Complainant to ensure they are aware of the right to have an Advisor.
- The Title IX Coordinator works with the Complainant to determine whether the Complainant prefers a supportive and remedial response, an informal resolution option, or a formal investigation and grievance process.
  - Informal resolution is not available for student complaints of Title IX Sexual Harassment against employees.
  - If a supportive and remedial response is preferred, the Title IX Coordinator works with the Complainant to identify their wishes, assesses the request, and coordinates the implementation accordingly. If no Formal Grievance Process is initiated, the Complainant can elect to initiate one later, if desired.
  - If an informal resolution option is preferred, the Title IX Coordinator assesses whether the complaint is suitable for informal resolution, which informal mechanism may serve the situation best or is available, and may seek to determine if the Respondent is also willing to engage in informal resolution.
  - If a Formal Grievance Process is preferred, the Title IX Coordinator determines if the misconduct alleged falls within the scope of Title IX:
    - If it does, the Title IX Coordinator will initiate the formal investigation and grievance process.
    - If it does not, the Title IX Coordinator determines that Title IX does not apply (and will “dismiss” that aspect of the complaint, if any), assesses which policies may apply, which resolution process is applicable, and will refer the matter accordingly. Please note that dismissing a complaint under Title IX is solely a procedural requirement under Title IX, and does not limit Western Theological Seminary’s authority to address a complaint with an appropriate process and remedies.

#### **A. Preservation of Evidence**

The preservation of evidence in incidents of sexual assault is critical to potential criminal prosecution and to obtaining restraining orders, and particularly time-sensitive. Western Theological Seminary will inform the Complainant of the importance of preserving evidence by taking the following actions:

1. Seek forensic medical assistance at Holland Hospital, ideally within 120 hours of the incident (sooner is better)
2. Avoid showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
3. Try not to urinate.
4. If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
2. If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container.
3. Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be reiterated, if timely.

### **B. Dismissal (Mandatory and Discretionary)<sup>16</sup>**

Western Theological Seminary must dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute sexual harassment as defined above, even if proved; and/or
- 2) The conduct did not occur in an educational program or activity controlled by Western Theological Seminary (including buildings or property controlled by recognized student organizations), and/or Western Theological Seminary does not have control of the Respondent; and/or
- 3) The conduct did not occur against a person in the United States; and/or
- 4) At the time of filing a formal complaint, a Complainant is not participating in or attempting to participate in the education program or activity of Western Theological Seminary<sup>17</sup>.

Western Theological Seminary may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein; or
- 2) The Respondent is no longer enrolled in or employed by Western Theological Seminary; or
- 3) Specific circumstances prevent Western Theological Seminary from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

Upon any dismissal, Western Theological Seminary will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties.

This dismissal decision is appealable by any party under the procedures for appeal below A. Complainant who decides to withdraw a complaint may later request to reinstate it or refile it.

### **C. Counterclaims**

Counterclaims by the Respondent may be made in good faith but are also sometimes made for purposes of retaliation. Western Theological Seminary is obligated to ensure that the grievance process is not abused for retaliatory purposes.

Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may constitute a violation of this policy.

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<sup>16</sup> These dismissal requirements are mandated by the 2020 Title IX Regulations, 34 CFR §106.45.

<sup>17</sup> A Complainant may still be entitled to supportive measures, but the formal grievance process is not applicable.

#### **D. Supportive Measures (see Policy)**

### **IV. Advisor**

#### **A. Right to an Advisor**

The parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor as long as the Advisor is eligible.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict-of-interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Hearing Officer.

#### **B. Who Can Serve as an Advisor**

The Advisor may be a friend, mentor, family member, attorney, or any other individual a party chooses to advise, support, and/or consult with them throughout the resolution process. The parties may choose Advisors from inside or outside of the Seminary community.

Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, prior to a hearing.

#### **C. Advisor's Role in Meetings and Interviews**

The parties may be accompanied by their Advisor in all meetings and interviews at which the party is entitled to be present, including intake and interviews.

Western Theological Seminary cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not or cannot afford an attorney, Western Theological Seminary is not obligated to provide an Advisor, except as described below at the hearing.

#### **D. Advisors in Hearings/Western Theological Seminary-Appointed Advisor**

Under U.S. Department of Education regulations under Title IX, a cross-examination is required during the hearing, but must be conducted by the parties' Advisors. The parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, Western Theological Seminary will appoint a trained Advisor for the limited purpose of conducting any questioning of the other party and witnesses.

A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party's Advisor will not conduct questioning, Western Theological Seminary will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised party in the hearing itself. Questioning of the parties and witnesses will also be conducted by the Hearing Officer during the hearing.

#### **E. Advisor Violations of Western Theological Seminary Policy**

All Advisors are subject to the same Western Theological Seminary policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Western Theological Seminary officials in a meeting or



interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s), Hearing Officer, or Appeal Decision-maker, except during a hearing proceeding, during cross-examination.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation phase of the resolution process. Although the Advisor generally may not speak on behalf of their advisee, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any resolution process meeting or interview. For longer or more involved discussions, the parties and their Advisors should ask for breaks to allow for private consultation.

Any Advisor who oversteps their role as defined by this policy will be warned only once. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

#### **F. Sharing Information with the Advisor**

Western Theological Seminary expects that the parties may wish to have the Seminary share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the parties participate more meaningfully in the resolution process.

Western Theological Seminary also provides a consent form that authorizes the Seminary to share such information directly with their Advisor. The parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Western Theological Seminary is able to share records with an Advisor.

#### **G. Expectations of an Advisor**

Western Theological Seminary generally expects an Advisor to adjust their schedule to allow them to attend Seminary meetings when planned, but may change scheduled meetings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Western Theological Seminary may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

#### **H. Expectations of the Parties with Respect to Advisors**

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The parties are expected to inform the Investigator(s) of the identity of their Advisor at least two (2) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a party changes Advisors, consent to share information with the

previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least two (2) business days before the hearing.

#### **I. Assistance in Securing an Advisor**

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.]
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/> ]

### **V. Resolution Processes**

#### **A. Resolution Timeline**

Western Theological Seminary strives to complete the investigation and resolution process within 90 – 120 business days. WTS strives to complete the informal resolution or appeals process within thirty (30) business days. These timeframes can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties as appropriate, as well as an estimate of how much additional time will be needed to complete the process.

#### **B. Informal Resolution**

To initiate Informal Resolution, a Complainant needs to submit a formal complaint, as defined above. If a Respondent wishes to initiate Informal Resolution, the Respondent should contact the Title IX Coordinator. Informal resolution is not available for student complaints of Title IX Sexual Harassment against employees.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process, and any party participating in Informal Resolution can stop the process at any time and begin or resume the Formal Grievance Process.

Prior to implementing Informal Resolution, Western Theological Seminary will provide the parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Western Theological Seminary.

Western Theological Seminary will obtain voluntary, written confirmation that all parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the parties to participate in Informal Resolution.

Informal Resolution is an informal process including mediation or restorative practices, etc. by a

mutually agreed upon resolution of an allegation is reached. All parties must consent to the use of Informal Resolution.

The Title IX Coordinator may look to the following factors to assess whether Informal Resolution is appropriate, or which form may be most successful for the parties:

- The parties' amenability to Informal Resolution;
- Likelihood of potential resolution, taking into account any power dynamics between the parties;
- The parties' motivation to participate;
- Civility of the parties;
- Results of a violence risk assessment/ongoing risk analysis;
- Disciplinary history;
- Whether an emergency removal is needed;
- Skill of the Informal Resolution facilitator with this type of allegation;
- Complaint complexity;
- Emotional investment/capability of the parties;
- Rationality of the parties;
- Goals of the parties;
- Adequate resources to invest Informal Resolution

The ultimate determination of whether Informal Resolution is available or successful is to be made by the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions. Results of complaints resolved by Informal Resolution are not appealable.

### **C. Formal Resolution**

#### **1. Resources to Carry Out a Formal Grievance Process**

As appropriate, Western Theological Seminary will designate an individual, which may be non-Seminary attorneys, investigators, and other relevant resources to carry out the Formal Grievance Process. Contracted parties must be qualified and meet the applicable training requirements.

Contracted parties can serve in the following roles, at the direction of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the parties
- To serve in a facilitation role in Informal Resolution if appropriately trained in appropriate resolution modalities (e.g., mediation, restorative practices)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a Hearing Facilitator (process administrator, no decision-making role)
- To serve as a Hearing Officer
- To serve as an Appeal Decision-maker

#### **2. Formal Grievance Process: Notice of Investigation and Allegations**

The Title IX Coordinator will provide written notice of the investigation and allegations (the "NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to

accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations,
- The identity of the involved parties (if known),
- The precise misconduct being alleged,
- The date and location of the alleged incident(s) (if known),
- The specific policies implicated,
- A description of the applicable procedures,
- A statement of the potential sanctions/responsive actions that could result,
- A statement that Western Theological Seminary presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination,
- A statement that determinations of responsibility are made at the conclusion of the process and that the parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period,
- A statement about Western Theological Seminary's policy on retaliation,
- Information about the privacy of the process,
- Information on the need for each party to have an Advisor of their choosing and suggestions for ways to identify an Advisor,
- A statement informing the parties that Western Theological Seminary's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process,
- Detail on how the party may request disability accommodations during the interview process,
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the parties' address if the parties reside on Seminary premises, or emailed to the parties' Western Theological Seminary-issued email or designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

### **3. Appointment of Investigators**

Once the decision to commence a formal investigation is made, the Title IX Coordinator will designate an investigator to carry out the investigation and related processes.

### **4. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process, including the Title IX Coordinator, Investigator(s), Hearing Officers, Appeal Decision-makers, or other individuals as

designated by WTS to participate in the process, may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s) to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, appropriate action will be taken, as necessary. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the President of Western Theological Seminary.

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness.

Western Theological Seminary operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the preponderance of the evidence standard.

#### **5. Investigation Timeline**

Investigations are completed expeditiously, normally within thirty (30) to sixty (60) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, etc.

Western Theological Seminary will make a good faith effort to complete investigations as promptly as circumstances permit and will communicate regularly with the parties to update them on the progress and timing of the investigation.

#### **6. Delays in the Investigation Process and Interactions with Law Enforcement**

Western Theological Seminary may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to: a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of parties and/or witnesses, and/or accommodations for disabilities or health conditions.

Western Theological Seminary will communicate in writing the anticipated duration of the delay and reason to the parties, and provide the parties with status updates if necessary. Western Theological Seminary will promptly resume its investigation and resolution process as soon as feasible. During such a delay, Western Theological Seminary will implement supportive measures as deemed appropriate.

Western Theological Seminary action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

## 7. Steps in the Investigation Process

All investigations are prompt and equitable. Investigations involve interviews with relevant parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as appropriate.

All parties have a full and fair opportunity, through the investigation process, to suggest witnesses, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

The Investigator(s) typically take(s) the following steps, if not already completed (not necessarily in this order):

- Determine the identity and contact information of the Complainant
- In coordination with the Title IX Coordinator, initiate or assist with any necessary supportive measures
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated
- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation
- Commence a prompt and equitable investigation
- Prepare the initial Notice of Investigation and Allegation (NOIA). The NOIA may be amended with any additional or dismissed allegations
  - Notice should inform the parties of their right to have the assistance of an Advisor, who could be a member of the Pool or an Advisor of their choosing present for all meetings attended by the party
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary
- Provide regular status updates to the parties throughout the investigation
- Write a comprehensive investigation report fairly summarizing the investigation and relevant evidence. Appendices including relevant physical or documentary evidence will be included
- The Investigator(s) gather, assess, and synthesize evidence, but make no conclusions, engage in no policy analysis, and render no recommendations as part of their report
- Prior to the conclusion of the investigation, provide the parties and their respective Advisors (if so desired by the parties) a secured electronic or hard copy of the draft investigation report as well the evidence and provide the parties and their Advisors an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Western Theological Seminary does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The parties may elect to waive the full ten (10) days. The Investigator(s) may elect to respond in writing in the investigation report to the parties' submitted responses and/or to share the responses between the parties for additional responses
- The Investigator(s) will incorporate relevant elements of the parties' written responses into the final investigation report, include any additional relevant evidence, make any

necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period.

- The Investigator will incorporate any relevant feedback, and the final report is then shared with all parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing.

#### **8. Role and Participation of Witnesses in the Investigation**

Witnesses (as distinguished from the parties) who are employees of Western Theological Seminary are expected to cooperate with and participate in Western Theological Seminary's investigation and resolution process.

#### **9. Remote processes**

In the discretion of the investigator, parties and witnesses may be interviewed remotely by phone, video conferencing, or similar technologies. Witnesses may also provide written statements in lieu of interviews, or respond to questions in writing, if deemed appropriate by the Investigator. Where remote technologies are used, Western Theological Seminary makes reasonable efforts to ensure privacy and security of remote interviews and that any technology does not work to the detriment of any party or subject them to unfairness.

#### **10. Recording of Interviews**

No unauthorized audio or video recording of any kind is permitted during investigation meetings. If Investigator(s) elect to audio and/or video record interviews, all involved parties must be made aware of audio and/or video recording.

#### **11. Sexual History**

During the investigation and hearing processes, questioning regarding a Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged, or if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

#### **12. Treatment Records and Other Privileged Information**

During the investigation and hearing processes, the investigator and adjudicator, as the case may be, are not permitted to access, consider, disclose, permit questioning concerning, or otherwise use:

- A party's records that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party; or
- Information or records protected from disclosure by any other legally-recognized privilege, such as the attorney client privilege; unless the University has obtained the party's voluntary, written consent to do so for the purposes of the investigation and adjudication process

## **D. Hearing**

### **1. Referral for Hearing**

Provided that the complaint is not resolved through Informal Resolution, once the final investigation report is shared with the parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be less than ten (10) business days from the conclusion of the investigation – when the final investigation report is transmitted to the parties and the Decision-maker

### **2. Hearing Officer**

Western Theological Seminary will designate a single Hearing Officer to serve as the Decision-maker. The Hearing Officer will also Chair the hearing. The Hearing Officer will not have had any previous involvement with the investigation.

The Title IX Coordinator and those who have served as Investigators may be called as witnesses in the hearing and therefore may not serve as Hearing Officers. Those who are serving as Advisors for any party may not serve as Hearing Officers in that matter.

The Title IX Coordinator may not serve as the Hearing Officer or Appeal Decision-maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill this role. The hearing will convene at a time determined by the Hearing Officer.

### **3. Notice of Hearing**

No less than ten (10) business days prior to the hearing, the Title IX Coordinator or the Hearing Officer will send notice of the hearing to the parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result.
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities.
- Any technology that will be used to facilitate the hearing.
- Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Officer and parties to see and hear a party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing.
- A list of all those who will attend the hearing, along with an invitation to object to the Hearing Officer on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least two (2) business days prior to the hearing.
- Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- A statement that if any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the party's or witness's testimony and any



statements given prior to the hearing will not be considered by the Hearing Officer. For compelling reasons, the Hearing Officer may reschedule the hearing.

- Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator if they do not have an Advisor, and the Seminary will appoint one. Each party must have an Advisor present. There are no exceptions.
- A copy of all the materials provided to Hearing Officer about the matter unless they have been provided already.
- An invitation to each party to submit to the Hearing Officer an impact statement pre-hearing that the Decision-maker will review during any sanction determination.
- An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least seven (7) business days prior to the hearing.
- Notification that the parties can bring mobile phones/devices into the hearing, so long as they are turned off and not a distraction.

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to this policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline followed by Western Theological Seminary and remain within the 90-120 business days goal for resolution.

#### **4. Pre-Hearing Preparation**

The Hearing Officer, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) unless all parties and the Hearing Officer assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and the Hearing Officer do not assent to the admission of evidence newly offered at the hearing, the Hearing Officer may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The parties will be given the name of the Hearing Officer at least five (5) business days in advance of the hearing. All objections to the Hearing Officer must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than two (2) business days prior to the hearing. Decision-makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

Any Hearing Officer who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the parties, witnesses, and Advisors in advance of the hearing. If a Hearing Officer or Appeal Decision-maker is unsure of whether a bias or conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

## **5. Pre-Hearing Meetings**

The Hearing Officer may convene a pre-hearing meeting(s) with the parties and/or their Advisors to invite them to submit the questions or topics they (the parties and/or their Advisors) wish to ask or discuss at the hearing, so that the Hearing Officer can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Officer must document and share with each party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Hearing Officer may request that the parties provide a written response to the final investigation report.

The Hearing Officer, **only** with full agreement of the parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

At each pre-hearing meeting with a party and their Advisor, the Hearing Officer will consider arguments that evidence identified in the final investigation report as relevant is, in fact, not relevant. Similarly, evidence identified as directly related but not relevant by the Investigator(s) may be argued to be relevant. The Hearing Officer may decide on these arguments pre-hearing and will exchange those rulings between the parties prior to the hearing to assist in preparation for the hearing. The Hearing Officer may consult with legal counsel and/or the Title IX Coordinator, or ask either or both to attend pre-hearing meetings.

The pre-hearing meeting(s) may be recorded with the consent of the parties.

## **6. Hearing Procedures**

At the hearing, the Decision-maker has the authority to hear and make determinations on all allegations of discrimination, harassment, and/or retaliation and may also hear and make determinations on any additional alleged policy violations that have occurred in concert with the discrimination, harassment, and/or retaliation, even though those collateral allegations may not specifically fall within the WTS Policy on Non-Harassment and Non-Discrimination.

Participants at the hearing will include the Hearing Officer, the Investigator(s) who conducted the investigation, the parties, Advisors to the parties, any called witnesses, the Title IX Coordinator, other WTS staff to assist with hearing logistics, and anyone providing authorized accommodations or assistive services.

The Hearing Officer will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Hearing Officer will allow witnesses who have relevant information to appear at a portion of the hearing in order to respond to specific questions from the Hearing Officer) and the parties and the witnesses will then be excused.

## **7. Joint Hearings**

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

## **8. The Order of the Hearing – Introductions and Explanation of Procedure**

The Hearing Officer explains the procedures and introduces the participants. This may include a final opportunity for challenge or recusal of the Hearing Officer on the basis of bias or conflict of interest. The Hearing Officer will rule on any such challenge unless the Hearing Officer is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.

The Hearing Officer AND/OR hearing facilitator then conducts the hearing according to the hearing script. At the hearing, recording, witness logistics, party logistics, curation of documents, separation of the parties, and other administrative elements of the hearing process are managed by a hearing facilitator. The hearing facilitator, who may be the Title IX Coordinator, may attend to: logistics of rooms for various parties/witnesses as they wait; flow of parties/witnesses in and out of the hearing space; ensuring recording and/or virtual conferencing technology is working as intended; copying and distributing materials to participants, as appropriate, etc.

## **9. Investigator Presents the Final Investigation Report**

The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Hearing Officer and the parties (through their Advisors).

Neither the parties nor the Hearing Officer should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Officer will direct that it be disregarded.

## **10. Testimony and Questioning**

The parties/witnesses will submit to questioning by the Hearing Officer and the parties through their Advisors ("cross-examination").

All questions are subject to a relevance determination by the Hearing Officer. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted by the Hearing Officer upon request if agreed to by all parties and the Hearing Officer), the proceeding will pause to allow the Hearing Officer to consider it, and the Hearing Officer will determine whether the question will be permitted, disallowed, or rephrased.

The Hearing Officer may explore arguments regarding relevance with the Advisors if the Hearing

Officer so chooses. The Hearing Officer will then state their decision on the question for the record and advise the party/witness to whom the question was directed, accordingly. The Hearing Officer will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Hearing Officer will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Officer has final say on all questions and determinations of relevance, subject to any appeal. The Hearing Officer may consult with legal counsel on any questions of admissibility. The Hearing Officer may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Officer has ruled on a question.

#### **11. Refusal to Submit to Cross-Examination and Inferences**

If a party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Hearing Officer may not rely on any prior statement made by that party or witness at the hearing (including those contained in the investigation report) in the ultimate determination of responsibility. The Hearing Officer must disregard that statement. Evidence provided that is something other than a statement by the party or witness may be considered.

If the party or witness attends the hearing and answers some cross-examination questions, only statements related to the cross-examination questions they refuse to answer cannot be relied upon. However, if the statements of the party who is refusing to submit to cross-examination or refuses to attend the hearing are the subject of the allegation itself (e.g., the case is about verbal harassment or a quid pro quo offer), then those statements are not precluded from admission.

The Hearing Officer may not draw any inference solely from a party's or witness's absence from the hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than sexual harassment are considered at the same hearing, the Hearing Officer may consider all evidence it deems relevant, may rely on any relevant statement as long as the opportunity for cross-examination is afforded to all parties through their Advisors, and may draw reasonable inferences from any decision by any party or witness not to participate or respond to questions.

If a party's Advisor of choice refuses to comply with Western Theological Seminary's established rules of decorum for the hearing, Western Theological Seminary may require the party to use a different Advisor. If a Western Theological Seminary-provided Advisor refuses to comply with the rules of decorum, Western Theological Seminary may provide that party with a different Advisor to conduct cross-examination on behalf of that party.

#### **12. Recording Hearings**

Hearings (but not deliberations) are recorded by Western Theological Seminary for purposes of review in the event of an appeal. The parties may not record the proceedings and no other unauthorized recordings are permitted.

The Hearing Officer, the parties, their Advisors, and appropriate administrators of Western Theological Seminary will be permitted to listen to the recording in a controlled environment

determined by the Title IX Coordinator.

#### **E. Deliberation, Decision-making, and Standard of Proof**

After the hearing is complete, the hearing Decision-maker will objectively evaluate all relevant evidence collected during the investigation, including both inculpatory and exculpatory evidence, together with testimony and non-testimony evidence received at the hearing, and ensure that any credibility determinations made are not based on a person's status as a Complainant, Respondent, or witness. The hearing Decision maker will take care to exclude from consideration any evidence that was ruled inadmissible at the pre-hearing conference, during the hearing, or by operation of "Subjection to Questioning." The Hearing Officer will reach a determination as to whether the Respondent is responsible or not responsible for the policy violation(s) in question. The preponderance of the evidence standard of proof is used.

When there is a finding of responsibility on one or more of the allegations, the Hearing Officer may then consider the previously submitted party impact statements in determining appropriate sanction(s).

The Hearing Officer will ensure that each of the parties has an opportunity to review any impact statement submitted by the other party(ies). The Hearing Officer may – at their discretion – consider the statements, but they are not binding.

The Hearing Officer will review the statements and any pertinent conduct history and will determine the appropriate sanction(s)[in consultation with other appropriate administrators, as required.

#### **F. Notice of Outcome**

The Notice of Outcome will then be shared with the parties simultaneously. Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the parties as indicated in official Western Theological Seminary records, or emailed to the parties' Western Theological Seminary-issued email or otherwise approved account. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will identify the specific policy(ies) reported to have been violated, including the relevant policy section, and will contain a description of the procedural steps taken by Western Theological Seminary from the receipt of the misconduct report to the determination, including any and all notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

The Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation to the extent Western Theological Seminary is permitted to share such information under state or federal law; any sanctions issued which Western Theological Seminary is permitted to share according to state or federal law; and any remedies provided to the Complainant designed to ensure access to Western Theological Seminary's educational or employment program or activity, to the extent Western Theological Seminary is permitted to share such information under state or federal law (this detail is not typically shared with the Respondent unless the remedy directly relates to the Respondent).

The Notice of Outcome will also include information on when the results are considered by Western Theological Seminary to be final, any changes that occur prior to finalization, and the relevant procedures and bases for any available appeal options.

### **G. Sanctions and Remedies**

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Any other information deemed relevant by the Hearing Officer(s)

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.

#### **1. Student Sanctions**

The following are the usual sanctions<sup>18</sup> that may be imposed upon students or organizations singly or in combination<sup>19</sup>:

- *Warning*: A formal statement that the conduct was unacceptable and a warning that further violation of any Western Theological Seminary policy, procedure, or directive will result in more severe sanctions/responsive actions.
- *Probation*: A written reprimand for violation of the WTS Policy on Non-Harassment and Non-Discrimination, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any Western Theological Seminary policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.
- *Suspension*: Termination of student status for a definite period of time not to exceed two years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Western Theological Seminary. This sanction may be noted as a Conduct Suspension on the student's official transcript, at the discretion of the Title IX Coordinator.
- *Expulsion*: Permanent termination of student status and revocation of rights to be on campus

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<sup>18</sup> Western Theological Seminary policies on transcript notation will apply to these proceedings.

<sup>19</sup> Subject to Western Theological Seminary's Organizational Code of Conduct.

for any reason or to attend WTS-sponsored events. This sanction will be noted permanently as a Conduct Expulsion on the student's official transcript.

- *Withholding Diploma:* Western Theological Seminary may withhold a student's diploma for a specified period of time and/or deny a student participation in commencement activities if the student has an allegation pending or as a sanction if the student is found responsible for an alleged violation.
- *Revocation of Degree:* WTS reserves the right to revoke a degree previously awarded from Western Theological Seminary for fraud, misrepresentation, and/or other violation of Western Theological Seminary policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a student prior to graduation.
- *Organizational Sanctions:* Deactivation, loss of recognition, loss of some or all privileges (including Seminary registration) for a specified period of time.
- *Other Actions:* In addition to or in place of the above sanctions, WTS may assign any other sanctions as deemed appropriate.

## **2. Employee Sanctions/Responsive Actions**

Responsive actions that may be imposed by the Seminary on an employee who has engaged in harassment, discrimination, and/or retaliation include:

- Warning – Verbal or Written
- Performance Improvement Plan/Management Process
- Enhanced supervision, observation, or review
- Required Counseling
- Required Training or Education
- Probation
- Denial of Pay Increase/Pay Grade
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Transfer
- Reassignment
- Delay of tenure track progress
- Assignment to new supervisor
- Restriction of stipends, research, and/or professional development resources
- Suspension with pay
- Suspension without pay
- Termination

Other Actions: In addition to or in place of the above sanctions/responsive actions, WTS may assign any other responsive actions as deemed appropriate.

## **3. Withdrawal or Resignation While Charges Pending**

### ***a. Student***

Should a student decide not to participate in the resolution process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Western Theological Seminary, the resolution process ends, as the Seminary no longer has disciplinary jurisdiction over the withdrawn student.

However, Western Theological Seminary may continue to address and remedy any systemic issues,

variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation. If the student who withdraws or leaves while the process is pending returns to Western Theological Seminary, the process will be resumed.

If the student Respondent only withdraws or takes a leave for a specified period of time (e.g., one semester or term), the resolution process may continue remotely and that student is not permitted to return to Western Theological Seminary unless and until all sanctions have been satisfied.

#### ***b. Employee***

Should an employee resign with unresolved allegations pending, the resolution process ends, as the Seminary no longer has disciplinary jurisdiction over the resigned employee.

However, Western Theological Seminary may continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged harassment or discrimination.

The employee who resigns with unresolved allegations pending is not eligible for rehire with Western Theological Seminary, and the records retained by the Title IX Coordinator will reflect that status.

All Western Theological Seminary responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

#### **4. Long-Term Remedies/Other Actions**

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the parties and/or the campus community that are intended to stop the harassment, discrimination, and/or retaliation, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation accommodations
- Implementation of long-term contact limitations between the parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies owed by Western Theological Seminary to the Respondent to ensure no effective denial of educational access.



Western Theological Seminary will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Western Theological Seminary's ability to provide these services.

#### **5. Failure to Comply with Sanctions and/or Interim and Long-term Remedies and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Hearing Officer and, if applicable, the Appeal Decision-maker).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Western Theological Seminary.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

#### **H. Appeals**

Any party may file a request for appeal ("Request for Appeal") of a Notice of Emergency Removal, Dismissal Notice or Notice of Outcome, but it must be submitted in writing to the Title IX Coordinator within five (5) business days of the delivery of the Notice.

Western Theological Seminary will designate an Appeal Decision-maker, which may be through a contract with an outside attorney or relevant resource. No Appeal Decision-maker will have been involved in the process previously, including any dismissal appeal that may have been heard earlier in the process.

Appeals are limited to the following grounds:

- (A) Procedural irregularity that affected the outcome of the matter;
- (B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and
- (C) The Title IX Coordinator, Investigator(s), or Decision-maker had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this policy, that request will be denied by the Appeal Decision-maker and the parties and their Advisors will be notified in writing of the denial and the rationale.

If any of the grounds in the Request for Appeal meet the grounds in this policy, then the Appeal Decision-maker will notify the other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Hearing Officer.

The other party(ies) and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigators and/or the Hearing Officer will be mailed, emailed, and/or provided a hard copy of

the request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. All responses will be forwarded by the Appeal Decision-maker to all parties for review and comment.

The non-appealing party (if any) may also choose to raise a new ground for appeal at this time. If so, that will be reviewed to determine if it meets the grounds in this policy by the Appeal Decision-maker and either denied or approved. If approved, it will be forwarded to the party who initially requested an appeal, the Investigator(s) and/or Hearing Officer, as necessary, who will submit their responses in five (5) business days, which will be circulated for review and comment by all parties.

Neither party may submit any new requests for appeal after this time period. The Appeal Decision-maker will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses and the Appeal Decision-maker will render a decision in no more than ten (10) business days, barring exigent circumstances.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration, any sanctions that may result which Western Theological Seminary is permitted to share according to state or federal law, and the rationale supporting the essential findings to the extent Western Theological Seminary is permitted to share under state or federal law.

Notification will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local address of the parties as indicated in official institutional records, or emailed to the parties' Western Theological Seminary-issued email or otherwise approved account. Once mailed, emailed and/or received in-person, notice will be presumptively delivered.

## **VI. Recordkeeping**

Western Theological Seminary will maintain for a period of seven years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
2. Any disciplinary sanctions imposed on the Respondent;
3. Any remedies provided to the Complainant designed to restore or preserve equal access to Western Theological Seminary's education program or activity;
4. Any appeal and the result therefrom;
5. Any Informal Resolution and the result therefrom;
6. All materials used to train Title IX Coordinators, Investigators, Hearing Officers, Appeal Decision-makers, and any person who facilitates an Informal Resolution process. Western Theological Seminary will make these training materials publicly available on the Seminary's website, or upon request for inspection by members of the public; and
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
  - a. The basis for all conclusions that the response was not deliberately indifferent;
  - b. Any measures designed to restore or preserve equal access to Western Theological Seminary's education program or activity; and

- c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

Western Theological Seminary will also maintain any and all records in accordance with state and federal laws.

Where appropriate, this Policy and Grievance Processes include language from the ATIXA 2020 One Policy, Two Procedures Model.

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL  
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