

2.11.5 Sexual Misconduct: Harassment, Offense, Abuse, or Child Abuse Policy Statement

All public and private postsecondary institutions that participate in any of the Title IV financial assistance programs (Wartburg participates in the Federal Student program of Title IV) must comply with the *Higher Education Act (HEA) of 1965*, amended to the *Crime Awareness and Campus Security Act of 1990* and to the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act in 1998*, to disclose campus crime statistics and security information annually as well as to issue timely warnings. *The Violence Against Women Reauthorization Act of 2013 (VAWA)* included amendments to the Clery Act. What follows is a portion of the Campus Security Report (found on our Consumer Information page on our website) which falls under the umbrella of *Title IX of the Education Amendments of 1972, intertwined with the Clery Act and VAWA*, which requires institutions to log and report certain crimes that occur on institutional property, including the crime of sexual assault. The Clery Act also requires institutions to issue emergency notifications and timely warnings for criminal conduct that presents an imminent, serious, or continuing threat to campus.

Wartburg Theological Seminary Title IX Regulations

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I. Policy Overview

This policy sets forth Wartburg Theological Seminary's obligations under the 2020 Title IX Regulations. This policy also includes Wartburg's obligations under the 2013 Clery Amendments pertaining to sexual assault, dating violence, domestic violence, and stalking.

Our Title IX Coordinator is:

Kellie Lisa

klisi@wartburgseminary.edu

563-589-0203

333 Wartburg Pl

Dubuque, Iowa 52003

Questions about Title IX may be referred to the Title IX Coordinator or to the assistant secretary for civil rights:

Civil Rights Commission
Grimes State Office Building
400 E 14th St
Des Moines, IA 50319-1004
515-281-4121 or 800-457-4416
<https://icrc.iowa.gov/>

Any person may report conduct prohibited by this policy to the Title IX Coordinator. A complaint about the Title IX Coordinator may be made to the seminary president.

II. Statement of Non-Discrimination

Wartburg Theological Seminary does not discriminate on the basis of sex in its educational programs and activities, including employment and admission. Complaints of discrimination on the basis of sex will be handled based on the following:

Sex Discrimination

Sex Discrimination is defined by Iowa Code Sec. 216.6 as follows: 30 The Iowa Civil Rights Act prohibits discrimination in employment based on sex, marital status, pregnancy (including childbirth or related conditions), gender identity, and sexual orientation The Act defines "gender identity" as the gender-related identity of a person, regardless of the person's assigned sex at birth. The term "sexual orientation" is defined to include actual or perceived heterosexuality, homosexuality, or bisexuality.

Redress of Complaints

Complaints based on the conduct of seminary students, faculty and staff members, other persons acting in official capacities, and visitors should be reported to the appropriate administrative official. Any individual who believes she or he has been harassed or discriminated against should address her or his complaint to the Title IX coordinator.

III. Scope

This policy applies to all students, faculty, and staff who experience prohibited sexual harassment in Wartburg Theological Seminary's education programs or activities. This includes locations, events, or circumstances over which Wartburg Theological Seminary exercised substantial control over both the Respondent and the context in which the sexual harassment occurs, and also includes any building owned or controlled by a student organization that is officially recognized by Wartburg Theological Seminary. Wartburg Theological Seminary has other policies and procedures that may be applicable if the conduct does not meet the definition of prohibited sexual harassment under this policy or otherwise fall within the scope of this policy. *[This is also referenced in the faculty and staff handbook.]*

IV. Prohibited Sexual Harassment

In accordance with its obligations under the Title IX Regulations of 2020, Wartburg Theological Seminary prohibits sexual harassment, which is conduct on the basis of sex, including gender identity, gender expression, or sexual orientation, that satisfies one or more of the following definitions:

1. **Quid Pro Quo Conduct.** An employee conditions the provision of an aid, benefit, or service of Wartburg Theological Seminary on an individual's participation in unwelcome sexual conduct;

2. **Unwelcome Conduct.** Unwelcome conduct that is determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to Wartburg Theological Seminary's education program or activity; or

3. **Sexual assault.** An offense classified as a forcible or nonforcible sex offense. This category of prohibited conduct includes the following:

- i. **Sex Offenses**—Any sexual act directed against another person, without the affirmative consent. Sexual Act is defined as conduct between persons consisting of:
 - a. Contact between the penis and the vulva.
 - b. Contact between the penis and the anus.
 - c. Contact between the mouth and the penis.
- d. Contact between the mouth and the vulva

ii. **Non-Consensual Penetration** Actual or attempted 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 affirmative consent of the victim. This includes penetration forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving affirmative consent because of their temporary or permanent mental or physical incapacity.

iii. **Fondling**—The non-consensual touching of the private body parts of another person for the purpose of sexual gratification, without affirmative consent, whether forcibly and/or against that person's will or not forcibly or against the person's will in instances where the victim is incapable of giving affirmative consent because of their youth or because of their temporary or permanent mental or physical incapacity.

iv. **Other Lawfully Prohibited Sexual Intercourse**

This category includes conduct constituting sexual assault that does not meet the definition of Non-Consensual Penetration or Fondling:

- i. Nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law, regardless of affirmative consent.

- ii. Nonforcible sexual intercourse with a person who is under the statutory age of consent, regardless of affirmative consent.

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

5. Domestic violence. A felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, or by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner within 1 year prior to the assault.

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

7. Sexual Exploitation occurs when a person takes sexual advantage of another person for the benefit of anyone other than that person, without that person’s consent. Examples of behavior that could rise to the level of sexual exploitation include but are not limited to: prostituting another person; recording images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness without that person’s consent; distributing images (e.g., video, photograph) or audio of another person’s sexual activity, intimate body parts, or nakedness if the individual distributing the images or audio knows or should have known that the person depicted in the images or audio did not consent to such disclosure and objects to such disclosure; and, viewing another person’s sexual activity, intimate body parts, or nakedness in a place where that person would have a reasonable expectation of privacy, without that person’s consent, re, and for the purpose of arousing or gratifying sexual desire. Sexual exploitation may

V. Definitions

1. **Affirmative consent** means affirmative, conscious, and voluntary agreement to engage in sexual activity. It is the responsibility of each person involved in the sexual activity to ensure that they have the affirmative consent of the other or others to engage in the sexual activity. Affirmative consent must be ongoing throughout a sexual activity and can be revoked at any time.
 - Lack of protest or resistance does not mean consent.
 - Silence does not mean consent.
 - The existence of a dating relationship between the persons involved, or the fact of past sexual relations between them, should never by itself be assumed to be an indicator of consent.

It shall not be a valid excuse that the Respondent believed that the Complainant affirmatively consented to the sexual activity if the Respondent knew or reasonably should have known that

the Complainant was unable to consent to the sexual activity under any of the following circumstances:

- The Complainant was asleep or unconscious.
- The Complainant was incapacitated due to the influence of drugs, alcohol, or medication, so that the Complainant could not understand the fact, nature, or extent of the sexual activity.
- The Complainant was unable to communicate due to a mental or physical condition.

In addition, it shall not be a valid excuse to alleged lack of affirmative consent that the Respondent believed that the Complainant consented to the sexual activity under either of the following circumstances:

- The Respondent's belief in affirmative consent arose from the intoxication or recklessness of the Respondent.
- The Respondent did not take reasonable steps, in the circumstances known to the Respondent at the time, to ascertain whether the Complainant affirmatively consented.

2. **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment under this policy.
3. **Formal complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that Wartburg Theological Seminary investigate the allegation of sexual harassment. At the time of filing a Formal Complaint, a Complainant must be participating in or attempting to participate in the education program or activity of Wartburg Theological Seminary with which the Formal Complaint is filed.
4. **Grievance Process** means the fact-finding process from the time of the filing of the Formal Complaint through the final determination of an appeal (if any).
5. **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment under this policy.
6. **Supportive Measures** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to Wartburg Theological Seminary's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or Wartburg Theological Seminary's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas

of the campus, and other similar measures. Supportive measures may also include written notification about available services both within the institution and the community and options for available assistance as required by the Clery Act. Supportive measures are not disciplinary measures.

I. Reporting Prohibited Sexual Harassment

- 1. Notice of Allegations.** Wartburg Theological Seminary has notice of sexual harassment or allegations of sexual harassment under this policy when such conduct is reported to the Title IX Coordinator or any official of Wartburg Theological Seminary who has authority to institute corrective measures on behalf of Wartburg Theological Seminary. However, all employees are *required* to report sexual harassment, as defined and prohibited by this policy, to the Title IX Coordinator, consistent with the requests of the Complainant.
- 2. Response to a Report.** With or without a Formal Complaint, upon a report of sexual harassment, the Title IX Coordinator will promptly contact the Complainant to discuss the availability of Supportive Measures, consider the Complainant's wishes with respect to Supportive Measures, inform the Complainant of the availability of Supportive Measures with or without the filing of a Formal Complaint, and explain to the Complainant the process for filing a Formal Complaint.
- 3. Information Packet.** Upon a receipt of a report of sexual assault, dating violence, domestic violence or stalking, Wartburg Theological Seminary shall provide an information packet (*section 2.11.2.5.8 and section 2.11.5.14 in the Student and Community Life Handbook*) that contains procedures to follow if a sex offense, domestic violence, dating violence, sexual assault, or stalking has occurred, including information in writing about—
 - a. The importance of preserving evidence as may be necessary to the proof of criminal domestic violence, dating violence, sexual assault, or stalking, or in obtaining a protection order and the identification and location of witnesses;
 - b. How and to whom the alleged offense should be reported;
 - c. Options regarding law enforcement and campus authorities, including notification of the option to:
 - a. notify proper law enforcement authorities, including on-campus and local police;
 - b. be assisted by campus authorities in voluntarily notifying law enforcement authorities; and
 - c. decline to notify such authorities;
 - d. Where applicable, their rights and the institution's responsibilities regarding orders of protection, no contact orders, restraining orders, or similar lawful orders issued by a criminal, civil, or tribal court;

- e. Information about appropriate and available services both at the institution and in the community including information about the availability of, and contact information for, on- and off-campus resources and services, and coordination with law enforcement, as appropriate; and
- f. Options for, available reasonably available assistance and accommodations and how to request them; and
- g. Information about the participation of victim advocates and other supporting people.

Wartburg Theological Seminary's information for victims of sexual assault, dating violence, domestic violence and stalking is located in section 2.11.5.14 of the Student and Community Life Handbook or available from the Title IX Coordinator.

- 4. Implementation of Supportive Measures.** Wartburg Theological Seminary shall treat parties equitably by offering Supportive Measures to the Complainant, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not Supportive Measures as against the Respondent. Wartburg Theological Seminary will maintain as confidential any Supportive Measures provided to the Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of Wartburg Theological Seminary to provide the Supportive Measures. The Title IX Coordinator is responsible for coordinating the effective implementation of Supportive Measures. The Title IX Coordinator should record and retain records regarding requests and provision of Supportive Measure in accordance with the requirements set out at XIV. Record Keeping, below.
- 5. Emergency removal.** Nothing in this part precludes Wartburg Theological Seminary from removing a Respondent from Wartburg Theological Seminary education program or activity on an emergency basis, provided that Wartburg Theological Seminary undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.
- 6. Administrative Leave.** Wartburg Theological Seminary reserves the right to place a non-student employee Respondent on administrative leave during the pendency of a grievance process.
- 7. Amnesty for Student Code of Conduct Violations.**

Sometimes, individuals are reluctant to come forward to report perceived violations of this policy out of fear that they may be charged with violations of other policies. An individual who participates as a complainant or witness in an investigation of sexual

assault, domestic violence, dating violence, or stalking will not be subject to disciplinary sanctions for a violation of Wartburg Theological Seminary's student conduct policy at or near the time of the incident, unless Wartburg Theological Seminary determines that the violation was egregious, including, but not limited to, an action that places the health or safety of any other person at risk or involves plagiarism, cheating, or academic dishonesty.

II. Procedures for Resolving Complaints of Prohibited Sexual Harassment

1. Informal Resolution

Consistent with the requirements of this section, at any time prior to reaching a determination regarding responsibility Wartburg Theological Seminary may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that Wartburg Theological Seminary

- a. Provides to the parties a written notice disclosing:
 - i. The allegations,
 - ii. The requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a Formal Complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the Formal Complaint, and
 - iii. Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
- b. Obtains the parties' voluntary, written consent to the informal resolution process; and
- c. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.
- d. Completes the informal resolution process within 60 days of receiving the Formal Complaint, unless unusual or complex circumstances exist.

Wartburg Theological Seminary does not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of Formal Complaints of sexual harassment under this policy. Wartburg Theological Seminary shall not require the parties to participate in an informal resolution process and will not offer an informal resolution process unless a formal complaint is filed.

2. Formal Complaint and the Grievance Process

- i. **Filing a Formal Complaint.** A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the

contact information listed for the Title IX Coordinator above. A “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by Wartburg Theological Seminary that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint. Where the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a party. A Formal Complaint shall trigger an investigation except as specified below. The Formal Complaint should include the date(s) of the alleged incident(s), the name of the Respondent, and should describe the circumstances of the incident(s), where known.

ii. Dismissal of a Formal Complaint. Wartburg Theological Seminary shall investigate the allegations in a Formal Complaint, except as follows:

a. Mandatory Dismissal. Wartburg Theological Seminary shall dismiss the Formal Complaint if the conduct alleged in the Formal Complaint

- i. would not constitute sexual harassment as defined by this policy, even if proved,
- ii. did not occur in Wartburg Theological Seminary’s education program or activity,
- iii. or did not occur against a person in the United States.
- iv. This dismissal does not preclude action under another policy or procedure of Wartburg Theological Seminary.

b. Discretionary Dismissal. Wartburg Theological Seminary may dismiss the Formal Complaint or any allegations therein, if at any time during the investigation or hearing:

c.

- i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;
- ii. The Respondent is no longer enrolled in or employed by Wartburg Theological Seminary or
- iii. Specific circumstances prevent Wartburg Theological Seminary from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.
- iv. Occurred prior to August 14, 2020, in which case, Wartburg Theological Seminary’s current policy shall be used.

Wartburg Theological Seminary may dismiss a Formal Complaint at any time in the process if it becomes known that one of the foregoing reasons for dismissal applies.

Upon a dismissal required or permitted under this section, Wartburg Theological Seminary will promptly send written notice of the dismissal and reason(s) therefore simultaneously to the parties.

Wartburg Theological Seminary may also refer the matter to the appropriate department for resolution under section 2.21.14 of the Student and Community Life Handbook.

d. Consolidation of Formal Complaints.

Wartburg Theological Seminary may consolidate Formal Complaints as to allegations of sexual harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one Complainant or more than one Respondent, references in this section to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

3. Notice of Charges

i. Initial Notice of Charges.

Upon receipt of a Formal Complaint, prior to commencing the investigation, Wartburg Theological Seminary shall provide the following written notice to the parties who are known. This notice shall include:

- a. This policy (as a link or attachment).
- b. Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in this policy, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under this policy, and the date and location of the alleged incident, if known.
- c. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.
- d. Notification to the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney.
- e. Notification to the parties that they may inspect and review evidence, as set forth in this policy.
- f. Any provision in Wartburg Theological Seminary’s code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

- g. Describes the standard of evidence that will be used.
Throughout the investigation and subsequent determination of appropriate actions, all findings and conclusions shall be arrived at through preponderance of the evidence and shall be the standard of evidence adhered to by the investigator(s). Preponderance of the evidence is defined to be: the greater weight of evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. (Black's Law Dictionary, 9th edition) This may be referred to as 50% plus a feather.
- h. Lists all possible sanctions the institution may impose.
The Title IX coordinator shall then take appropriate action as required to ensure justice is done on behalf of both the complainant or victim, and the accused, according to the policy of the seminary. Appropriate action may include, but is not limited to, written reprimand of the person against whom the complaint is made, suspension or dismissal of the student against whom the complaint or allegation is made, change of employment status and/or responsibilities, or any other appropriate action or sanction, at the discretion of the Title IX coordinator. Any appropriate action decided or implemented may be reported by the Title IX coordinator and will become a part of the personnel file of the individual against whom the complaint is made.

ii. Amended Notice of Charges. If, in the course of an investigation, Wartburg Theological Seminary to investigate allegations about the Complainant or Respondent that are not included in the initial notice of charge, Wartburg Theological Seminary must provide notice of the additional allegations to the parties whose identities are known.

iii. Principles for the Grievance Process

Under this grievance process, Wartburg Theological Seminary shall:

- a. Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on Wartburg Theological Seminary and not on the parties, provided that Wartburg Theological Seminary cannot access, consider, disclose, 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's 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, unless Wartburg Theological Seminary obtains that party's voluntary, written consent to do so for a grievance process under this section (if a party is not an "eligible student," as defined in 34 CFR 99.3, then Wartburg Theological Seminary must obtain the voluntary, written consent of a "parent," as defined in 34 CFR 99.3).

- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- c. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- d. Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the Complainant or Respondent in any meeting or grievance proceeding; however, Wartburg Theological Seminary may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties. For the purposes of this policy, the role of the advisor is limited to the following: the advisor may attend any interview or meeting connected with the grievance process, but may not actively participate in interviews nor provide testimony or argument on behalf of the party. The advisor may attend the live hearing and may conduct cross-examination of the other party and any witness at the hearing; otherwise, the advisor may not actively participate in the hearing.
- e. Allow each party to be accompanied by a support person if they do not wish to have an advisor. Each party may be accompanied by only one other person unless there is good cause, such as a disability-related accommodation or union representative.
- f. Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- g. Require an objective evaluation of all relevant evidence—including both inculpatory and exculpatory evidence— and provide that credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.
- h. Require that any individual designated as a Title IX Coordinator, investigator, decisionmaker, or any person to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual Complainant or Respondent. Wartburg Theological Seminary may use internal personnel or external parties in the informal resolution process or the grievance process, provided that they meet this requirement.

- i. Include a presumption that the Respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.
- j. Use the following standard of evidence to determine responsibility for allegations in a Formal Complaint of sexual harassment: preponderance of the evidence standard.] The standard of evidence shall be the same for Formal Complaints against students as for Formal Complaints against faculty and staff.
- k. Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

iv. Extensions of the Grievance Process

The Title IX Coordinator may grant or deny requests from either party to temporarily delay the grievance process or may issue the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the delay or extension and the reasons for the action.

Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities.

v. Investigation of Formal Complaints

If not serving as the Investigator, the Title IX Coordinator will appoint an Investigator, who may be an employee or official of Wartburg Theological Seminary or may be an external investigator with appropriate experience or expertise. The parties will be provided with notice of the identity of the appointed Investigator, and will be informed that any objections to the service of the appointed Investigator on grounds of conflict of interest or a lack of impartiality should be submitted in writing to the Title IX Coordinator within three days of notice of the appointment. The Title IX Coordinator will decide promptly whether the appointed Investigator will or will not continue to conduct the investigation. Any materials collected or notes prepared by the Investigator during the objection period will be turned over to any replacement Investigator. The replacement Investigator will decide whether to use such materials or not.

When investigating a Formal Complaint, Wartburg Theological Seminary shall, within 20 calendar days of receiving the Formal Complaint, unless unusual or complex circumstances exist:

- a. Engage in fact-gathering of all relevant facts. Credibility resolutions and fact-finding shall be conducted in the live hearing phase of the grievance process.

- b. Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a Formal Complaint, including the evidence upon which Wartburg Theological Seminary does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation.
- c. Prior to completion of the investigative report, send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report.
- d. Make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- e. Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing or other time of determination regarding responsibility, the Title IX Coordinator shall send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response. Upon finalization of the investigative report, the Title IX Coordinator shall provide it to the decision-maker(s).

III. Live Hearings Under the Grievance Process

1. Requirement of a Live Hearing for Fact-Finding and Determining Responsibility.

- a. Following the investigation, within 10 days of sending the final investigative report to the parties, unless unusual or complex circumstances exist, Wartburg Theological Seminary shall conduct a live hearing in front of the decision-maker(s), which may be an individual or a Review Panel, for the purposes of determining responsibility for allegations of sexual harassment in the Formal Complaint. The decision-maker(s) cannot be the same person(s) as the Title IX Coordinator or the investigator(s). A decision-maker may include internal employees or external third-parties contracted by Wartburg Theological Seminary. If using a Review Panel, the Title IX Coordinator will choose 3 Review Panel members from its pool to attend the hearing and make determinations. All potential Review Panel members will receive annual training as specified by this policy. The parties each may challenge the participation of any member of the Review Panel for conflict of interest or other good cause. The Title IX Coordinator will make the final decision whether to select an alternate upon a challenge from a party. If using a Review Panel, the Title IX Coordinator will appoint a member of the Review Panel to be Chair of the Review Panel.

- b. The live hearing will be closed. The only individuals permitted to participate in the hearing are as follows: the Complainant and Respondent, the decision-maker(s), the advisor for each party, any witnesses (only while being questioned), and any individual providing authorized accommodations or assistive services.
- c. If a party does not have an advisor present at the live hearing, Wartburg Theological Seminary shall provide without fee or charge to that party, an advisor of Wartburg Theological Seminary's choice, who may be, but is not required to be, an attorney, to conduct cross examination on behalf of that party. Wartburg Theological Seminary is obligated to ensure each party has an advisor, either of the party's or [Institution's] choice regardless of whether or not the party is present at the hearing. To ensure timely proceedings, a party shall alert the Title IX Coordinator as soon as practicable if the party will need an advisor. If a party's selected advisor is unavailable for a hearing date, the live hearing date may be postponed for good cause.
- d. Live hearings may be conducted with all parties physically present in the same geographic location or, at Wartburg Theological Seminary's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.
- e. At the request of either party, Wartburg Theological Seminary shall provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions.
- f. Wartburg Theological Seminary shall create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. Any other recording is prohibited, and violations may result in discipline.
- g. The parties shall separately participate in a pre-hearing meeting with the investigator to go over the process and administration of the live hearing. Prior to or during this meeting, the investigator will set the deadlines for submitting and exchanging names of witnesses, evidence, and pre-hearing questions. (The parties will also be permitted to submit questions during the live hearing.) Participation in this pre-hearing meeting is required in order to facilitate the efficient and fair administration of the live hearing process.

2. Questioning at the Live Hearing

- i. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.

- ii. Only relevant cross examination and other questions may be asked of a party or witness.
- iii. Decision-maker(s) also have the right to question a party or witness.
- iv. Cross examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding Wartburg Theological Seminary's ability to otherwise restrict the extent to which advisors may participate in the proceedings.
- v. Before the Complainant, Respondent, or witness answers a cross-examination or other question, the Chair must first determine whether the question is relevant. The Chair must explain to the party proposing the questions any decision to exclude a question as not relevant.
- vi. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the Complainant, or 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.

3. Use of Witness Statements

- i. If a party or witness does not submit to cross examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility but may reach a determination based on evidence that does not constitute a statement by the party.
- ii. The decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross examination or other questions.

4. Written Determination of the Decision-Maker

- i. The decision-maker(s) shall issue a written determination regarding responsibility. If the decision-maker is a Review Panel, a majority of the Review Panel members must find that a policy violation occurred for a finding of responsibility and a majority of the Panel members must assent to the sanction(s) imposed, if any.
- ii.

To reach this determination, the decision-maker must apply the standard of evidence required by this policy. The written determination must include:

- a. Identification of the allegations potentially constituting sexual harassment as defined by this policy;

- b. A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
 - c. Findings of fact supporting the determination;
 - d. Conclusions regarding the application of Wartburg Theological Seminary's policy to the facts;
 - e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the respondent, and whether remedies designed to restore or preserve equal access to Wartburg Theological Seminary's education program or activity will be provided to the complainant; and
 - f. The procedures and permissible bases for the Complainant and Respondent to appeal, as set forth in this policy.
- iii. Wartburg Theological Seminary shall provide the written determination to the parties simultaneously.
 - iv. The determination regarding responsibility becomes final either on the date that Wartburg Theological Seminary provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

IV. Appeals

1. Grounds

Within 10 days of receiving the written determination, either party may appeal from a determination regarding responsibility, and from Wartburg Theological Seminary's dismissal of a Formal Complaint or any allegations therein, on the following grounds:

Ground 1: Procedural irregularity that affected the outcome of the matter;

Ground 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

Ground 3: The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

Appeals must be sent to the Title IX Coordinator in writing.

2. Response to Appeals

As to all appeals, the Title IX Coordinator (or designee) shall:

- i. Notify the other party in writing immediately when an appeal is filed and implement appeal procedures equally for both parties;
- ii. Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;
- iii. Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;
- v. Give the non-appealing party an opportunity to submit a written statement in response to the appeal within 10 days of receiving the appeal, which shall be transmitted within 2 business days to the Appeal decision-maker(s).

Within 20 days of receiving the appeal and the response, the Appeal decision-maker(s) shall issue a written decision describing the result of the appeal and the rationale for the result; and provide the written decision simultaneously to both parties. The Appeal decision-maker(s) may deny the appeal or, if the appeal ground(s) has or have been met, may return the case to the initial decision-maker(s) for reconsideration, or convene a new hearing. If a case is returned to the initial decision-maker(s), the Appeal decision-maker(s) shall identify which aspects merit further review.

V. Remedies and Sanctions

Remedies must be designed to restore or preserve equal access to Wartburg Theological Seminary's education program or activity.

A student found responsible for a violation of this policy will be subject to sanction(s) regardless of whether legal proceedings involving the same incident are underway or anticipated. An employee found responsible for a violation of this policy will be subject to sanction(s) up to and including termination of employment.

The Title IX coordinator shall then take appropriate action as required to ensure justice is done on behalf of both the complainant or victim, and the accused, according to the policy of the seminary. Appropriate action may include, but is not limited to, written reprimand of the person against whom the complaint is made, suspension or dismissal of the student against whom the complaint or allegation is made, change of employment status and/or responsibilities, or any other appropriate action or sanction, at the discretion of the Title IX coordinator. Any appropriate action decided or implemented may be reported by the Title IX coordinator and will become a part of the personnel file of the individual against whom the complaint is made. (*excerpted from section 2.11.5.8 of the Student and Community Life Handbook*)

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

VI. Retaliation Prohibited

No student, faculty or staff member may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right established by this

policy or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy.

Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or Formal Complaint of sexual harassment, for the purpose of interfering with any right under this Policy constitutes retaliation.

The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under this section.

Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination available in section 2.11.5.12 - Retaliation of the Student and Community Life Handbook

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 does not constitute retaliation prohibited under of this section, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

VII. Confidentiality

Consistent with the requirements of this policy, Wartburg Theological Seminary shall keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a Formal Complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. This means that Wartburg Theological Seminary will protect the party's privacy consistent with this Policy but may disclose information to those who have a legitimate need to know and in order to process complaints under this policy.

Confidentiality is not absolute, however. Where criminal conduct has occurred, or where the health and/or safety of others in the community may be in danger, it may be necessary for Wartburg Theological Seminary to take appropriate steps to protect the safety of its students and employees, including the person who has reported the misconduct.

In most cases, Confidential Resources at Wartburg Theological Seminary will not share the substance of any such communications or that such communications occurred without consent. Individuals who wish to talk about issues related to sexual harassment or sexual misconduct confidentially, with the understanding that Wartburg Theological Seminary will not take any action based on such confidential communications, are encouraged to contact one of these Confidential Resources.

Confidential resources may, however, have an obligation to disclose otherwise-privileged information where they perceive an immediate and/or serious threat to a person and/or property. This is a limited exception to the privileged nature of communications with

Confidential Resources. Reports or records maintained by Wartburg Theological Seminary (including Counseling Service records), and other confidential, non-privileged records may, however, be subject to a subpoena if civil or criminal charges are filed in court.

In accordance with the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, Confidential Resources will not report Clery crimes they learn about through confidential communications for purposes of Wartburg Theological Seminary's compilation of campus crime statistics.^[41] In addition, when appropriate and legally permissible, Wartburg Theological Seminary shall conduct record-keeping on reports of dating violence, domestic violence, stalking and sexual assault, such as that collected for legally required disclosures, that excludes personally-identifiable information of any complainants.

VIII. Required Trainings

The Title IX Coordinator, investigators, decision-makers, and any person who facilitates an informal resolution process (whether internal or external) shall receive training on the definition of sexual harassment under this policy, the scope of Wartburg Theological Seminary's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. These individuals shall receive annual training on the issues related to domestic violence, dating violence, sexual assault, and stalking and how to conduct an investigation and hearing process that protects the safety of victims and promotes accountability.

Decision-makers shall receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant.

Investigators shall receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, will not rely on sex stereotypes and will promote impartial investigations and adjudications of Formal Complaints of sexual harassment.

IX. Recordkeeping.

Wartburg Theological Seminary shall 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 this policy, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to

- restore or preserve equal access to Wartburg Theological Seminary's education programs or activities;
2. Any appeal and the result therefrom;
 3. Any informal resolution and the result therefrom; and
 4. Wartburg Theological Seminary outsources all investigations and hearing proceedings.
 5. Records of any actions, including any Supportive Measures, taken in response to a report or Formal Complaint of sexual harassment. In each instance, Wartburg Theological Seminary will document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to Wartburg Theological Seminary's education program or activity. If Wartburg Theological Seminary does not provide a complainant with Supportive Measures, then Wartburg Theological Seminary must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit Wartburg Theological Seminary in the future from providing additional explanations or detailing additional measures taken.

X. Effective Date; Revisions

This policy is effective as of August 14, 2020 and was approved by the Wartburg Theological Seminary's Board of Trustees on August 14, 2020].