

**UNION PRESBYTERIAN SEMINARY -  
TITLE IX SEXUAL MISCONDUCT POLICY**

**IMPORTANT INFORMATION FOR INDIVIDUALS  
WHO MAY BE VICTIMS OF SEXUAL ASSAULT:**

If you or someone you know may have been a victim of Sexual Assault, you are strongly encouraged to seek immediate assistance from one or more of the sources in Exhibit A of this Policy.

**ASSISTANCE CAN BE OBTAINED FROM SEMINARY SECURITY LOCATED IN:**

W.S. MORTON LIBRARY, ROOM 102,  
3406 CHAMBERLAYNE AVENUE  
RICHMOND, VA

and available by phone at 804-278-HELP (4357).

Seminary security staff are available from 5:00 p.m. until 5:00 a.m., seven days a week.

Individuals may also report any Sexual Assault directly to local law enforcement agencies by dialing 911.

During applicable business hours, you are also strongly encouraged to contact one of the following individuals:

**Michelle Walker  
Title IX Coordinator**

Watts Hall, Room 103  
3401 Brook Road, Richmond, VA  
804-278-4252  
mwalker@upsem.edu  
8:30 a.m. - 5:00 p.m. Monday - Friday

**Jamie Cook  
The Office of Human Resources**

Watts Hall, Room 110  
3401 Brook Road, Richmond, VA  
804-278-4209  
jcook@upsem.edu  
7:30 a.m. - 4:00 p.m. Monday - Friday

**Lisa McLennan  
Vice President and Dean of Students - Charlotte**

Thomas W. Currie, III Academic Hall, Room F105  
5141 Sharon Road, Charlotte, NC  
980-636-1669(o)  
lmclennan@upsem.edu  
9:00 a.m. - 5:00 p.m. Tuesday - Saturday

For additional information about seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies, hospitals, and other resources, see Exhibit A attached to this Policy.

## ARTICLE I. INTRODUCTION

### Section 1.01 Notice of Nondiscrimination.

In accordance with the provisions of Title IX and 34 CFR § 106.8, Union Presbyterian Seminary (“the Seminary”) does not unlawfully discriminate on the basis of race, color, national origin, sex, sexual orientation, gender identity, disability, age, veteran status, or any other characteristic or status protected by applicable local, state, or federal law applicable to a religious educational institution in admission, treatment, or access to, or employment in, its programs and activities.

The following individuals have been designated to handle inquiries regarding the Seminary’s nondiscrimination policies.

- Inquiries concerning nondiscrimination on the basis of sex may be referred to the **Seminary’s Title IX Coordinator** (or to the U.S. Department of Education’s Office for Civil Rights (District of Columbia Office)). The Seminary’s Title IX Coordinator is Michelle Walker, whose office is located on the Richmond Campus in Watts Hall, Room 103. Ms. Walker may be contacted by phone at 804-278-4252 or by email at [mwalker@upsem.edu](mailto:mwalker@upsem.edu).
- Inquiries concerning nondiscrimination on the basis of a student’s disability may be referred to **the Seminary’s Director of Student Services**, Susan Blanchard. Susan Blanchard’s office is located on the Richmond Campus in Watts Hall, Room 107. Ms. Blanchard may be contacted by phone at 804-278-4204 or by email at [sblanchard@upsem.edu](mailto:sblanchard@upsem.edu).
- All other inquiries concerning nondiscrimination regarding *students* may be referred to the **Seminary’s Vice President Community Life & Dean of Students**, Michelle Walker. Michelle Walker’s office is located on the Richmond Campus in Watts Hall, Room 103. Ms. Walker may be contacted by phone at 804-278-4252 or by email at [mwalker@upsem.edu](mailto:mwalker@upsem.edu).
- All other inquiries concerning nondiscrimination regarding *employees* may be referred to the **Seminary’s Human Resources Specialist**, Jamie Cook. Jamie Cook’s office is located on the Richmond Campus in Watts Hall, Room 110. Ms. Cook may be contacted by phone at 804-278-4209 or by email at [jcook@upsem.edu](mailto:jcook@upsem.edu).

### Section 1.02 Background.

The Seminary regards a supportive community and a high quality of life as essential to its character as a religious educational institution preparing men and women for service in the Christian church. In keeping with that character, the Seminary provides and is committed to maintaining programs, activities, and an educational and work environment founded on civility and respect, where no one is unlawfully excluded from participation in, denied the benefits of, or subjected to discrimination in any Seminary program or activity on the basis of gender, sex, sexual orientation, sexual identity, gender identity, or gender expression as applicable to a religious educational institution.

Sexual Misconduct, as defined in this Policy, is antithetical to the Christian vision that informs the purpose of the Seminary, is incompatible with the Church’s moral standards for its members and professional leaders, is incompatible with the safe, healthy environment that the Seminary community expects and deserves, and will not be tolerated.

The Seminary is committed to providing programs, activities, and an educational and work environment free from sex discrimination. The Seminary is also committed to fostering a community that promotes prompt reporting of all types of Sexual Misconduct and timely and fair resolution of Sexual Misconduct Complaints. In furtherance of these commitments, this Policy sets forth available resources (Exhibit A), describes prohibited conduct (Article II), and establishes procedures for responding to Complaints of Sexual Misconduct (Articles III-VIII).

The Seminary will make this Policy and information about recognizing and preventing Sexual Misconduct readily available to all members of the Seminary community.

The Seminary is committed to eliminating Sexual Misconduct, preventing its recurrence, and addressing its effects.

### **Section 1.03 Applicability of This Policy.**

This Policy applies to any allegation of Sexual Misconduct made by or against a student or an employee of the Seminary or a third party, regardless of the sex, sexual orientation, sexual identity, gender, gender expression, or gender identity of any party, if the conduct giving rise to the Complaint is related to the Seminary's United States academic, educational, athletic, or extracurricular programs or activities. The Seminary's disciplinary authority, however, does not extend to third parties who are not students or employees of the Seminary. This Policy applies regardless of the sex, sexual orientation, sexual identity, gender, gender expression, gender identity, gender nonconformity, gender transition, or transgender status of the parties involved.

In the case of allegations of Sexual Misconduct (and any related misconduct as described in Section 2.04 below), unless otherwise stated, this Policy supersedes and applies in lieu of all other procedures and policies set forth in other Seminary documents.

### **Section 1.04 Period of Limitations.**

A Complaint of Sexual Misconduct may be filed at any time, regardless of the length of time between the alleged Sexual Misconduct and the decision to file the Complaint. However, the Seminary strongly encourages individuals to file Complaints promptly in order to preserve evidence for a potential legal or disciplinary proceeding. A delay in filing a Complaint may compromise the subsequent investigation, particularly if neither the Complainant nor the Respondent is employed by the Seminary or enrolled as a student at the time the Complaint is filed.

### **Section 1.05 Definitions Applicable to This Policy.**

Capitalized terms used in this Policy have the meanings given to them in Exhibit B.

## **ARTICLE II. STATEMENTS OF POLICY**

### **Section 2.01 Prohibition on Sexual Misconduct.**

This Policy is designed to protect the rights and needs of alleged victims and Respondents. Creating a safe environment is the responsibility of all members of the Seminary community.

The Seminary prohibits Sexual Misconduct. The Seminary strongly encourages prompt reporting of all types of Sexual Misconduct and is committed to fostering a community that promotes timely and fair resolution of Sexual Misconduct cases. The Seminary has defined Sexual Misconduct as any unwelcome conduct of a sexual nature.

However, not all unwelcome conduct of a sexual nature rises to the level of warranting adjudication and/or discipline pursuant to this Policy. Although the Seminary will properly address all allegations of Sexual Misconduct, this Policy uses the term “Material Sexual Misconduct,” as defined in Exhibit B, to identify those acts of Sexual Misconduct that do warrant adjudication under, and discipline pursuant to, this Policy. Violations of this Policy may result in the imposition of sanctions up to and including termination, dismissal, or expulsion.

### **Section 2.02 Prohibition on Retaliation.**

Retaliation against any person for filing, supporting, or providing information in good faith in connection with a Complaint of Sexual Misconduct, or any complaint of unlawful discrimination, is strictly prohibited. Violations of this prohibition will be addressed through this Policy and/or other Seminary disciplinary procedures, as deemed appropriate in the Seminary’s discretion. Any person who feels that he or she has been subjected to Retaliation should make a report to the Title IX Coordinator.

### **Section 2.03 Prohibition on Providing False Information.**

Any individual who knowingly files a false Complaint under this Policy, who knowingly provides false information to Seminary officials, or who intentionally misleads Seminary officials who are involved in the investigation or resolution of a Complaint may be subject to disciplinary action.

### **Section 2.04 Related Misconduct.**

The Hearing Board may hear allegations of and impose sanctions for alleged misconduct that is related to the Sexual Misconduct at issue, even if such related misconduct is not, when standing alone, governed by this Policy.

### **Section 2.05 Limited Immunity.**

The Seminary considers the reporting and adjudication of Sexual Misconduct cases on campus to be of paramount importance. The Seminary does not condone underage drinking or the use of illegal drugs. However, the Seminary may extend limited disciplinary immunity from punitive sanctions in the case of illegal alcohol or drug use to alleged victims, Respondents, Third-Party Reporters, and those assisting alleged victims of Sexual Misconduct, in its absolute and sole discretion.

## **Section 2.06 Individuals with Disabilities.**

The Seminary will make arrangements to ensure that individuals with disabilities are provided appropriate accommodations, to the extent necessary and available, to participate in the steps and procedures outlined in this Policy. Requests for student accommodations must be made to the Seminary's Director of Student Services, Susan Blanchard. Susan Blanchard's office is located on the Richmond Campus in Watts Hall, Room 107. Ms. Blanchard may be contacted by phone at 804-278 4204 or by email at [sblanchard@upsem.edu](mailto:sblanchard@upsem.edu). Employees seeking accommodations and all other inquiries may be directed to the Seminary's Human Resources Office located in Watts Hall, Room 110. The office is staffed from 7:30 a.m. to 4:00 p.m. Monday through Friday and may be contacted by phone at 804-278-4209 or at [jcook@upsem.edu](mailto:jcook@upsem.edu).

## **Section 2.07 Sexual Misconduct Education.**

The Seminary is committed to the prevention of Sexual Misconduct and routinely conducts outreach and educational programming designed to increase awareness of the prevalence of Sexual Misconduct involving students and other Seminary constituents, inform the Seminary community about issues related to Sexual Misconduct such as substance abuse and the role of the bystander, and promote knowledge of the Seminary's Sexual Misconduct Policy.

- (a)** The Seminary regularly conducts Sexual Misconduct training for its constituents, including the following groups:
  - (i)** The Title IX Coordinator
  - (ii)** The Vice Presidents of Academic Affairs and Academic Deans – Richmond and Charlotte
  - (iii)** The Vice President Finance & Administration
  - (iv)** The Seminary's Registrar
  - (v)** The Seminary's President
  - (vi)** Human Resources employees
  - (vii)** Seminary security staff
  - (viii)** Other employees
  - (ix)** Investigators
  - (x)** Students
  - (xi)** Members of the Hearing Board and any Appeals Officers
- (b)** The groups listed in Section 2.07(a) above are trained, as appropriate and applicable, on such subjects as:
  - (i)** This Sexual Misconduct Policy.

- (ii)** Title IX and related regulatory guidance, including the meaning of sexual harassment as defined by 34 CFR § 106.30.
- (iii)** The Seminary's responsibility to address allegations of Sexual Misconduct.
- (iv)** Recognizing and responding to reports of Sexual Misconduct.
- (v)** How to conduct an investigation into Complaints of Sexual Misconduct.
- (vi)** How to investigate and adjudicate Complaints of Sexual Misconduct in an impartial manner by avoiding bias, conflicts of interest, and prejudgment of the facts at issue.
- (vii)** Understanding common and counterintuitive victim responses (during and after an incident) and the effect of Sexual Misconduct on victims.
- (viii)** Understanding the link between substance abuse and Sexual Misconduct.
- (ix)** Which employees are "Responsible Employees" and which individuals and offices are confidential resources for students.
- (x)** Understanding what questions and evidence are relevant to determination of responsibility for alleged Sexual Misconduct.
- (xi)** Reasonable, appropriate, and sensitive investigative, interview, and hearing techniques that protect victim safety.
- (xii)** Issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking.

## ARTICLE III. CONFIDENTIALITY

### Section 3.01 Confidentiality in Reporting and Disclosure.

The Seminary encourages victims of Sexual Misconduct to talk to someone about what happened, both so that they can get the support they need and so that the Seminary can respond appropriately. The Seminary wants individuals to be aware of the various reporting and confidential disclosure options available to them so that they can make informed choices about where to turn should they be subjected to Sexual Misconduct.

- (a) **Seminary Chaplains.** Individuals may discuss alleged Sexual Misconduct in strict confidence with a Seminary Chaplain (the “Strictly Confidential Resource”), regardless of whether the Chaplain is “on duty” in his or her professional capacity at the time the discussion takes place. The Seminary Chaplains are:

Mairi Renwick, Richmond Chaplain  
Watts Hall, Room 103  
804-278-4222  
mrenwick@upsem.edu

Sally Herlong, Charlotte Chaplain  
Thomas W. Currie, III Academic Hall,  
Room F103  
980-636-1672  
sherlong@upsem.edu

Personally Identifiable Information shared with Strictly Confidential Resources is not part of students’ or employees’ Seminary records and will not be reported to other Seminary personnel (including the Title IX Coordinator), to the Respondent, or to others (unless the disclosing individual gives his or her consent to the disclosure or the law requires it (as may be the case with alleged Sexual Misconduct involving a minor or under conditions involving imminent physical harm, for example)).

Strictly Confidential Resources are not Responsible Employees and therefore are not required to (and will not, absent direction from the disclosing individual to do so) report incidents of alleged Sexual Misconduct to the Title IX Coordinator. For purposes of clarity, please understand that many of the Seminary employees who are not Strictly Confidential Resources are Responsible Employees. Communications made to Responsible Employees (and others) are not entitled to the same confidentiality protections as those made to Strictly Confidential Resources.

- (b) **The Title IX Coordinator and Responsible Employees.** A disclosure to the Title IX Coordinator or a Responsible Employee constitutes a report to the Seminary and obligates the Seminary to investigate the incident and take appropriate steps to address the allegations, which may include disclosures as contemplated by Section 3.02(a). *See the definition of “Responsible Employee” in Exhibit B for a list of the Seminary’s Responsible Employees.*

## **Section 3.02 Confidentiality in the Investigation and Resolution Processes.**

- (a) Sharing of Information (Applicable to All Complaints).** The Seminary will respect and will make every feasible effort to avoid the inappropriate disclosure of the information shared by and the identities of the parties involved in Sexual Misconduct matters.

Information regarding alleged Sexual Misconduct will generally be disclosed by Seminary personnel during the investigation and resolution processes only as follows:

- (i)** Seminary personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example:
    - 1)** Under conditions of potential imminent harm to the community, the Seminary may be required by federal law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct.
    - 2)** Information regarding the alleged Sexual Misconduct may be used as a statistical, anonymous report for data collection purposes under the Clery Act.
  - (ii)** Seminary personnel may report alleged Sexual Misconduct to local law enforcement if warranted by the nature of the allegations at issue or if required by law.
  - (iii)** Seminary administrators will share information regarding alleged Sexual Misconduct, as appropriate and necessary, in order to address and resolve the allegation(s) at issue, prevent the recurrence of similar Sexual Misconduct, and address the effects of the Sexual Misconduct.
- (b) Requests for Confidentiality.** If information regarding alleged Sexual Misconduct is shared with the Title IX Coordinator and/or a Responsible Employee, but the alleged victim desires that
- the information not be shared with other Responsible Employees, with the Respondent, or with others, even as appropriate and necessary to address the allegations,
  - that the Seminary not investigate the information, or
  - that no disciplinary action be taken,
- the alleged victim must request that the Seminary treat such information as confidential. This request must be made to the Title IX Coordinator.
- (i) Evaluation of a Confidentiality Request.** The Seminary takes requests for confidentiality seriously; however, granting such requests may limit the Seminary's ability to investigate and take reasonable action in response to a Complaint. The Seminary will evaluate the request for confidentiality in the context of the Seminary's commitment to provide a reasonably safe and non-discriminatory environment and will determine whether such request will be granted. In order to make such a determination, the Title IX Coordinator may conduct a preliminary investigation into the alleged Sexual Misconduct and may weigh requests for confidentiality against the following factors, among others:
    - 1)** the seriousness of the alleged Sexual Misconduct (including, but not limited to, whether the Sexual Misconduct was perpetrated with a weapon);



- 2) the increased risk that the alleged wrongdoer will commit additional acts of Sexual Misconduct, such as (A) whether there have been other reports or complaints against the alleged wrongdoer, (B) whether the alleged wrongdoer has a history of arrests or records from a prior school indicating a history of Sexual Misconduct or a history of violence, (C) whether the alleged wrongdoer threatened further Sexual Misconduct or threatened violence against the victim or others, or (D) whether the Sexual Misconduct was committed by multiple wrongdoers;
- 3) whether the information reveals a pattern of perpetration (e.g., via illicit use of drugs or alcohol) at a given location or by a particular group or person;
- 4) the Respondent's right to receive information about the allegations if the information is maintained by the Seminary as an Education Record;
- 5) whether the victim is a minor; and
- 6) whether the Seminary possesses other means to obtain relevant evidence of the Sexual Misconduct (e.g., security cameras or security personnel, physical evidence).

The presence of one or more of these factors may lead the Seminary to investigate and, if appropriate, pursue disciplinary action. If none of these factors is present, the Seminary may honor the request for confidentiality.

- (ii) **Determination as to Whether a Confidentiality Request Can Be Granted.** The Title IX Coordinator will inform the person requesting confidentiality whether the Seminary intends to honor the request or whether the Seminary intends to pursue investigation and/or resolution in spite of the request.

**If the Seminary determines that it cannot maintain confidentiality,** it will inform the victim prior to starting an investigation and will, to the extent possible, only share information with people responsible for addressing the allegations. The Seminary will also take ongoing steps to protect the victim from Retaliation or harm and work with the victim to create a safety plan, if warranted, and assist the victim in accessing other services and interim measures (see Section 6.03(a)).

**If the Seminary honors the request for confidentiality,** the Seminary's ability to investigate and take reasonable action in response to an allegation of Sexual Misconduct may be limited. A Respondent is entitled to know the name of the accuser and information regarding the nature of the allegations in order to defend against the allegations, and is free to disclose information about the allegations, including the Complainant's identity thus, the Seminary may not be able both to adjudicate the Complaint and to maintain confidentiality during that process.

Even when the Seminary determines to abide by a request for confidentiality (and even if such request limits the Seminary's ability to take disciplinary action against the Respondent):

- 1)** To the extent practicable and appropriate, the Seminary will take prompt action to limit the effects of the alleged Sexual Misconduct and to prevent its recurrence. For instance, the Seminary may take appropriate interim measures to ensure an individual's safety even in the absence of a Seminary proceeding. The Seminary may also consider broader remedial action (such as increased monitoring, supervision, or security at locations where reported sexual violence occurred, increased education and prevention efforts, including to targeted population groups, and climate assessments).
- 2)** Information regarding the alleged Sexual Misconduct may be included in Seminary records, as necessary and appropriate.
- 3)** Seminary personnel will (and are obligated to) handle information regarding alleged Sexual Misconduct in accordance with applicable local, state, and federal laws. For example:
  - (A)** Under conditions of potential imminent harm to the community, the Seminary may be required by law to inform the community of the occurrence of the alleged incident(s) of Sexual Misconduct.
  - (B)** Information regarding the alleged Sexual Misconduct may be used as a statistical, anonymous report for data collection purposes under the Clery Act.
  - (C)** The Seminary may be required by state law to inform the Virginia Department of State Police or other applicable law enforcement agency authorities of the occurrence of the alleged incident(s) of Sexual Misconduct.

Please note that the Seminary cannot control disclosure by students or third parties.

## ARTICLE IV. HOW AND WHERE TO REPORT ALLEGED SEXUAL MISCONDUCT

Because Sexual Misconduct may in some instances constitute both a violation of Seminary policy and criminal activity, and because the Seminary grievance process is not a substitute for instituting legal action, **the Seminary encourages individuals to report alleged Sexual Misconduct promptly to Seminary officials and to law enforcement authorities, where appropriate.**

Individuals have the option not to report alleged Sexual Misconduct to campus officials or to law enforcement authorities.<sup>1</sup> The Seminary respects an individual's decision in regards to reporting; however, subject to the Confidentiality provisions outlined in Article III of this Policy, if the Seminary has actual knowledge of alleged Sexual Misconduct, the Seminary (1) will start an investigation even in the absence of a filed Complaint and/or (2) may notify appropriate law enforcement authorities if required or warranted by the nature of the information of which it becomes aware.

*For information about seeking medical assistance and emotional support, as well as important contact information for local law enforcement agencies, hospitals and other resources, see Exhibit A.*

### **Section 4.01** Reporting to Local Law Enforcement.<sup>2</sup>

*Individuals may report Sexual Misconduct directly to local law enforcement agencies by dialing 911.*

Individuals who make a criminal complaint may also choose to pursue a Seminary Complaint simultaneously. A criminal investigation into the matter does not release the Seminary from its obligation to conduct its own investigation to the extent a Complaint is made to the Seminary (nor is a criminal investigation determinative of whether Material Sexual Misconduct or other Seminary policy violations or misconduct, for purposes of this Policy, has occurred). However, any applicable Seminary investigation may be delayed temporarily while criminal investigators are gathering evidence and/or as otherwise requested by law enforcement. In the event of such a delay, the Seminary may take non-punitive interim measures when necessary to protect the alleged victim and/or the Seminary community.

Individuals may contact any of the following for assistance in filing a complaint with local law enforcement:

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<sup>1</sup> Note that individuals have an obligation under Virginia law to report certain abuse (known or suspected) of children to Commonwealth authorities. Please be aware that a disclosure pursuant to this Policy does not satisfy your obligation to report to Commonwealth authorities. The mandatory reporting requirement is codified at VA. ANN. CODE § 63.2-1509, - 1510.

<sup>2</sup> Please be aware that generally the Seminary is not responsible for informing local law enforcement agencies of alleged Sexual Misconduct of which it is aware; therefore, a report to the Seminary Campus Security pursuant to Section 2.02 (or any other Seminary office) will not automatically result in a report to local law enforcement. If it is determined, however, that the allegation, if true, may constitute a felony under Virginia law, then the Seminary or Campus Security will report the incident to the Commonwealth's Attorney in the relevant jurisdiction, but will not disclose the identity of victim without permission. If, however, the Seminary determines that disclosure of the incident and the victim's name is necessary to protect the health or safety of a student or other individuals, the Seminary shall immediately disclose such information to the law enforcement agency that would be responsible for investigating the alleged act of sexual violence. If this occurs, the Seminary shall notify the victim that such disclosure is being made.

- (a) **Seminary Security.** Security for the Seminary is located at W.S. Morton Library, Room 102, Richmond Campus. Seminary Security personnel are available by phone at 804-278-HELP (4357) from 6:00 p.m. until 4:00 a.m., seven days a week.
- (b) **Title IX Coordinator.** The Seminary's Title IX Coordinator is Michelle Walker. Her office is located on the Richmond Campus in Watts Hall, Room 103. Ms. Walker may be contacted during business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) by phone at 804- 278-4252 or by email at [mwalker@upsem.edu](mailto:mwalker@upsem.edu).
- (c) **Human Resources Office.** The Human Resources Office is located on the Richmond Campus in Watts Hall, Room 110. The Human Resources Office is available during business hours (7:30 a.m. to 4:00 p.m., Monday through Friday) by phone at 804-278-4209 or by email at [jcook@upsem.edu](mailto:jcook@upsem.edu).
- (d) **Academic Affairs / Academic Dean- Richmond.** The Office of the Vice President of Academic Affairs and Academic Dean – Richmond is located on the Richmond Campus in Watts Hall, Room 104. The office is available during business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) by phone at 804-278-4230 or by email at [kmcfayden@upsem.edu](mailto:kmcfayden@upsem.edu).
- (e) **Vice President and Dean of Students – Charlotte.** The Office of the Vice President and Dean– Charlotte is located on the Charlotte Campus in Thomas W. Currie, III Academic Hall, Room F105. The office is available during business hours (9:00 a.m. to 5:00 p.m., Tuesday through Saturday) by phone at 980-636-1669 or by email at [lmclennan@upsem.edu](mailto:lmclennan@upsem.edu).

Please note: Individuals may inform law enforcement authorities about Sexual Misconduct and discuss the matter with a law enforcement officer without making a Seminary Complaint. Individuals who make a criminal complaint may also choose to pursue a Seminary Complaint simultaneously.

#### **Section 4.02 Reporting to the Seminary.**

If you wish for information regarding Sexual Misconduct to be investigated and addressed pursuant to this Policy, you must disclose such information to the **Title IX Coordinator** or to a **Responsible Employee**. See the definition of "Responsible Employee" in *Exhibit B* for a list of the Seminary's Responsible Employees.

Responsible Employees are REQUIRED to address allegations of Sexual Misconduct (or relay the allegations to the Title IX Coordinator – or, if the Title IX Coordinator is implicated or at issue in the allegations, to the Deputy Title IX Coordinator). Individuals who are not Responsible Employees are not subject to the same requirement (and in some instances, such as is generally the case with Strictly Confidential Resources, are prohibited from reporting alleged Sexual Misconduct to others absent an express directive from the alleged victim to do so).

You may report information regarding Sexual Misconduct on your own behalf (i.e., as an alleged victim) OR on behalf of an alleged victim (i.e., as a Third-Party Reporter). However, *please note – at the time of filing a formal Complaint, a Complainant must be participating in or attempting to participate in an education program or activity of the Seminary in order for the Complaint to be covered by this Policy (although other Seminary policies and procedures may apply).*

If the Title IX Coordinator is the Respondent or is otherwise at issue in a Complaint, or if an individual is otherwise uncomfortable making a Complaint to the Title IX Coordinator, he or she may report alleged Sexual Misconduct to any other Responsible Employee.

No member of the Seminary community may discourage an individual from reporting alleged incidents of Sexual Misconduct. A Responsible Employee with any actual knowledge (including firsthand observation) about a known or suspected incident of Sexual Misconduct must report the incident to the Title IX Coordinator (or, if the Title IX Coordinator is implicated or at issue in the allegations, the Deputy Title IX Coordinator). No employee is authorized to investigate or resolve Complaints without the approval and involvement of the Title IX Coordinator or Deputy Title IX Coordinator.

Individuals may also file anonymous reports by calling Michelle Walker, Title IX Coordinator, at 804-278-4252 and leaving a message, or by mailing concerns to Title IX Coordinator, Attn: Michelle Walker, Watts Hall, 3401 Brook Road, Richmond, VA 23227. However, please know that it may be very difficult for the Seminary to follow up or take action on anonymous reports, where corroborating information is limited. Further, where a Complainant desires to initiate a grievance process (i.e., an investigation and adjudication of allegations) as is further described in this Policy, the Complainant cannot remain anonymous or prevent his or her identity from being disclosed to any Respondent (e.g., via the written notice of allegations, as is described in Section 6.02). Anonymous reports may be used for Clery Act data collection purposes.

Upon receiving any report of Sexual Misconduct, whether written, verbal or otherwise, the Title IX Coordinator shall contact the Complainant (if his or her identity can be ascertained from the report) and explain to the Complainant the options for filing a Complaint (if one has not already been filed) and the availability of supportive measures pursuant to Article VI.

## **ARTICLE V. PROVISIONS APPLICABLE TO ALL COMPLAINTS OF SEXUAL MISCONDUCT TO THE SEMINARY**

### **Section 5.01 Oversight.**

The Title IX Coordinator will be responsible for overseeing the prompt, fair, and impartial investigation and resolution of Complaints filed with or disclosed to the Seminary.

### **Section 5.02 Conflicts.**

**Section 5.03** If any administrator designated by this Policy to participate in the investigation or resolution of a Complaint is the Respondent, then the President will appoint another Seminary administrator to perform such person's duties under this Policy. (If the President is the Respondent, then the Title IX Coordinator will appoint another Seminary administrator to perform the duties of the President under this Policy, if any.)

### **Section 5.04 Advisors.**

Both the Complainant and the Respondent may have one advisor present to support and assist them throughout the Complaint process (including, but not limited to, during related prehearing meetings, during investigative interviews, and during any hearing or proceeding (for purposes of this section, "meetings")). The Complainant and the Respondent are not limited in their choice of an advisor. Advisors may be friends, victim advocates, attorneys, or others.

The Complainant and the Respondent may consult with their respective advisors during meetings, provided that such consultation is not disruptive. However, advisors may not have a speaking role during any meeting prior to any hearing. Further, advisor participation in any hearing will be limited and proscribed as is set forth in Seminary hearing guidelines, rules of order / procedure, and/or rules of decorum to be communicated to all parties prior to any hearing, consistent with Title IX. Absent reasonable accommodation for a disability (as defined by the Americans With Disabilities Act of 1990, as amended), the Complainant and the Respondent may not be accompanied by more than one advisor during meetings. In addition, an advisor's attendance at any meeting may be disallowed if the advisor fails to comply with the restrictions articulated or referenced herein, or the advisor's conduct otherwise warrants his or her removal, in the absolute and sole discretion of the Seminary.

For the avoidance of doubt, the Seminary may seek advice from the Seminary's ~~in-house or~~ outside counsel at any time and/or have the Seminary's counsel participate in and represent the Seminary in any meeting (including during any hearing or proceeding).

### **Section 5.05 Timing.**

The Seminary will make every reasonable effort to ensure that the investigation and resolution of a Complaint occurs in as timely and efficient a manner as possible. The Seminary's investigation and resolution of a Complaint (not including an appeal, if applicable) will generally be completed within ninety (90) calendar days of the receipt of the Complaint (or as soon as is reasonably practicable), absent extenuating circumstances (e.g., such as the need for language assistance, accommodation of disabilities, the absence of a party, or other complicating logistical or other factors) and/or any simultaneous criminal investigation, as noted in Section 4.01. Hearings, if any, will take place within thirty (30) calendar days of the conclusion of the investigation and issuance of a written

Investigative Report (or as soon as is reasonably practicable). If hearings have taken place, both the Complainant and the Respondent will receive a Final Outcome Letter (as defined in Section 7.03(a)) within thirty (30) calendar days of the conclusion of the hearings (or as soon as is reasonably practicable).

Any party may request an extension of any deadline by providing the Title IX Coordinator with a written request for an extension that includes reference to the duration of the proposed extension and the basis for the request. The Title IX Coordinator may modify any deadlines contained in this Policy as necessary and for good cause; in such case, the Title IX Coordinator will provide the Complainant and the Respondent with written notice of the modification and the reason for it. By way of example only, the need for parties, witnesses and other hearing participants to secure transportation, or for the Seminary to troubleshoot technology to facilitate a virtual hearing, may constitute good cause to postpone a hearing.

#### **Section 5.06 Documentation.**

The Seminary will retain documentation (including but not limited to the written Complaint, notifications, the Investigative Report, written findings of fact, petitions for appeal, notifications of decisions (including any Final Outcome Letter) and any written communication between the parties), for at least seven years. Documentation pertaining to expulsions or degree revocations will be retained indefinitely or in accordance with Seminary policy.

#### **Section 5.07 Confidentiality and Disclosure.**

In order to comply with FERPA, Title IX, and other applicable laws, and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the resolution processes are not open to the general public. Accordingly, documents prepared in anticipation of the informal and/or the formal resolution processes (including the Complaint, the Investigative Report, and notices and communications to or from the Complainant or the Respondent); documents, statements, or other information introduced in the interviews, meetings, and proceedings; and any Final Outcome letter may not be disclosed outside of those processes except as may be required or authorized by law.

For the avoidance of doubt, if it is determined that the Respondent committed Sexual Assault, Seminary policy does not prohibit the further disclosure of any Final Outcome Letter by either the Complainant or the Respondent.



## ARTICLE VI. THE PROCESS APPLICABLE TO ALL COMPLAINTS OF SEXUAL MISCONDUCT

### Section 6.01 STEP 1: A Report of Sexual Misconduct Becomes a Complaint.

A Complaint may be initiated in one of the following ways:

- (a) An alleged victim may file a written Complaint with the Seminary, or a third party may file a written Complaint on the alleged victim's behalf. An alleged victim may complete a Sexual Misconduct Complaint Form (see Exhibit C) or a written statement providing sufficient information for the Seminary to investigate the allegations contained in it (including but not limited to the name of the alleged victim, the name of the alleged wrongdoer, and the date, location and nature of the alleged Sexual Misconduct).
- (b) An alleged victim may meet in person with the Title IX Coordinator or his or her designee to report alleged Sexual Misconduct. In such a situation, the Title IX Coordinator will ask the alleged victim to complete a Complaint form provided by the Seminary or prepare a written statement, as noted in subsection (a) above.
- (c) The Seminary may determine, based on information of which it has actual knowledge, that it is necessary and/or appropriate for it to investigate the information available to it.

An alleged victim will be referred to as a "Complainant" and an alleged wrongdoer will be referred to as a "Respondent."

### Section 6.02 STEP 2: Notice of Allegations.

- (a) Following the initiation of a Complaint, the Title IX Coordinator will provide formal written notice to all know parties at least five (5) business days in advance of any initial interview by an Investigator per Section 6.05(c). *Note: This step may occur before, after or concurrently with Steps 3 and 4, as outlined below, in the absolute and sole discretion of the Seminary.*

The written notice will contain the following information:

- (i) Details of the allegations of Material Sexual Misconduct, including the identities of the parties involved, if known, the date and location of the incident, if known, and the conduct allegedly constituting Material Sexual Misconduct;
- (ii) A statement that the Respondent is presumed not responsible for the alleged Material Sexual Misconduct and that a determination of responsibility will be made at the conclusion of the grievance process;
- (iii) An explanation of the Seminary's formal grievance process as established by this Policy, including a summary of possible sanctions in the event the Respondent is found responsible for the alleged Material Sexual Misconduct;
- (iv) An explanation of the Seminary's informal resolution process as established by this Policy;
- (v) A statement that the parties may select an advisor of their choice (but are not required to do so), and that the advisor may be an attorney;



- (vi) A statement that the parties' chosen advisors (if any) may inspect and review evidence gathered during the Investigation directly related to the allegations raised in the Complaint, as is set forth in more detail in Section 6.05(f) of this Policy; and; and
  - (vii) A statement that knowingly making false statements or knowingly submitting false information during the grievance process is a violation of this Policy and Union's Policies and Procedures Booklet policies applicable to students and employees regarding personal behavior, honesty and integrity.
- (b) If, during the course of the Investigation, the Seminary decides to investigate allegations of Material Sexual Misconduct that were not included in the initial written notice, the Seminary will provide notice of the additional allegations to all known parties.
  - (c) Further, the Seminary may consolidate formal complaints as to allegations of Material Sexual Misconduct against more than one Respondent, or by more than one Complainant against one or more Respondents, or what amount to counter-complaints by one party against the other, where the allegations arise out of the same facts or circumstances.

### **Section 6.03 STEP 3: Evaluation of Interim Supportive Measures and Removal**

Following the initiation of a Complaint (and at any point during the complaint, investigation, or disciplinary processes – *including prior to any initial meetings or interviews*, if the Title IX Coordinator deems it necessary for the protection of any member of the Seminary community), the Title IX Coordinator will determine which, if any, of the following measures and/or actions should be taken:

- (a) **Interim Supportive Measures.** When warranted to restore or preserve a party's equal access to education, protect the safety of all parties as well as the Seminary's educational environment, or to deter sexual harassment, the Title IX Coordinator may implement one or more interim supportive measures, if appropriate and/or reasonably available, including but not limited to a range that includes the following:
  - (i) Issuing mutual no-contact and/or no-trespass orders to prevent any contact between or among the Complainant, the Respondent and/or others;
  - (ii) Issuing, in some circumstances, one-way no-contact and/or no-trespass orders (e.g., to help enforce a restraining order, preliminary injunction, or other order of protection issued by a court or other governmental authority);
  - (iii) Changing a Complainant's or a Respondent's on-campus housing, if any, to a different on-campus location and providing assistance from Seminary personnel in completing the relocation;
  - (iv) Arranging to dissolve a campus housing contract and offering a pro-rated refund;
  - (v) Providing the Complainant or Respondent with an escort to ensure that he or she can move safely between classes, work and/or activities;
  - (vi) Increasing security and monitoring of certain areas of the Seminary campus;

- (vii) Changing a Complainant's or a Respondent's work arrangements, locations or schedules;
- (viii) Changing academic arrangements, locations or schedules (such as moving the Complainant or the Respondent from one class section to another);
- (ix) Rescheduling or modifying class work, assignments and examinations;
- (x) Modifying or extending deadlines;
- (xi) Arranging for the Complainant or Respondent to withdraw from or take an incomplete in class without penalty;
- (xii) Providing academic support services;
- (xiii) Providing alternative course completion options;
- (xiv) Permitting a temporary withdrawal from the Seminary;
- (xv) Permitting a temporary leave of absence from work; and
- (xvi) Providing counseling services via external providers.

The Title IX Coordinator shall consider the totality of the circumstances when evaluating the implementation of supportive measures, including, without limitation, the wishes of the Complainant and the potential hardship on the Respondent caused by any proposed measures. Interim supportive measure must be non-disciplinary, non-punitive, and not unreasonably burdensome to the other party. The Seminary may continue providing any interim supportive measure even in the event a Respondent is found not responsible for Material Sexual Misconduct.

The Seminary may continue providing any interim supportive measure even in the event a Respondent is found not responsible for Material Sexual Misconduct. Further, supportive measure may be available with or without the filing of a formal Complaint.

As is noted in Section 3.02(b)(ii), if a formal Complaint is not filed but a Complainant desires supportive measures, the Seminary can keep the Complainant's identity confidential (including from the Respondent), unless disclosing the Complainant's identity is practically necessary to provide supportive measures in and of itself (e.g., where a no-contact order is appropriate and the Respondent would need to know the identity of the complainant in order to comply with the no-contact order, or security is informed about a no-contact order in order to help enforce its terms).

**(b) Interim Removal.**

- (i) **Student Respondents.** When a student Respondent's alleged actions or behaviors immediately threaten the physical health or safety of the Complainant, employees, other students, and/or the Seminary community, the Title IX Coordinator may remove a Respondent from its educational program or any other Seminary activity (including Seminary clubs, organizations and student government positions) prior to the adjudication of the Complaint pursuant to this Policy.

Removal may include but is not limited to requesting that the Academic Dean or his or her designee (A) impose on the Respondent an administrative withdrawal from the Seminary, or (B) suspend the Respondent's participation in a Seminary activity.

The Title IX Coordinator will notify the Respondent of the proposed interim measure(s) in writing. These interim actions may be appealed to the Vice President Finance & Administration or his or her designee (available by phone at 804-278- 4205 or email at jbritton@upsem.edu and located on the Richmond Campus in Watts Hall, Room 112). The decision of the Vice President Finance & Administration regarding the imposition of these actions will be final.

- (ii) **Employee Respondents.** When an employee Respondent's alleged actions or behaviors immediately threaten the physical health or safety of the Complainant, students, other employees, and/or the Seminary community, the Title IX Coordinator may request that the individual authorized to make personnel decisions regarding the employee at issue take such steps as are reasonable, appropriate, and necessary to restrict the Respondent's presence or movement on campus.

In addition, when an employee Respondent's alleged actions or behaviors affect the safety, health, or general welfare of the Complainant, students, other employees, and/or the Seminary community, or as is otherwise deemed appropriate by the Seminary in light of the specific circumstances involved, the Title IX Coordinator may request that the individual authorized to make personnel decisions regarding the employee at issue temporarily adjust the job duties of the Respondent or place him or her on administrative leave (paid or unpaid).

The Title IX Coordinator will notify an employee Respondent of the proposed interim measure(s) in writing (to the extent necessary to implement those measures). These interim actions may be appealed to the Seminary's Human Resources Specialist, Jamie Cook (available by phone at 804-278-4209 or by email at jcook@upsem.edu and located on the Richmond Campus in Watts Hall, Room 110). The decision of the Human Resources Specialist regarding the imposition of these actions will be final.

#### **Section 6.04 STEP 4: Initial Meetings with the Title IX Coordinator.**

- (a) **Complainant's Initial Meeting with the Title IX Coordinator.** As soon as is reasonably practicable, the Title IX Coordinator will contact the Complainant (generally via official Seminary email and by the best known phone number) to schedule an initial meeting to discuss the Complaint and avenues for its resolution. (If a third party reported the alleged Sexual Misconduct on behalf of the Complainant, the Title IX Coordinator will attempt to meet with such person and gather information from him or her before speaking with the Complainant.)

During this initial meeting, the Title IX Coordinator will explain the availability of supportive measures and will document the reasons why supportive measures are or are not provided.

Following the meeting with the Complainant, the Title IX Coordinator will, if applicable, promptly determine the interim supportive measures to be provided to the Complainant during the pendency of the investigative and resolution processes (such as those listed in Section 6.03(a)). Such determination will promptly be communicated to the Complainant (no later than it is communicated to the Respondent) and, to the extent that it affects him or her, the Respondent.

The Complainant may, within seven (7) calendar days of the meeting with the Title IX Coordinator, submit a new or supplemental written statement of position regarding the alleged Sexual Misconduct to the Title IX Coordinator.

- (b) Respondent's Initial Meeting with the Title IX Coordinator.** As soon as is reasonably practicable following the Title IX Coordinator's initial meeting with the Complainant, the Title IX Coordinator will contact the Respondent (generally via official Seminary email and by the best known phone number) to schedule an initial meeting with the Respondent to discuss the Complaint, to inform the Respondent of any interim measures already determined and being provided to the Complainant that directly affect the Respondent, and to discuss the process for resolving the Complaint.

During this initial meeting, the Title IX Coordinator will explain the availability of supportive measures and will document the reasons why supportive measures are or are not provided.

Following the meeting with the Respondent, the Title IX Coordinator will, if applicable, promptly determine the interim measures to be provided to the Respondent during the pendency of the investigative and resolution processes (such as those listed in Section 6.03(a)). Such determination will promptly be communicated to the Respondent (no later than it is communicated to the Complainant) and, to the extent that it affects him or her, the Complainant.

The Respondent may, within seven (7) calendar days of the meeting with the Title IX Coordinator, submit a new or supplemental written statement of position regarding the alleged Sexual Misconduct to the Title IX Coordinator.

#### **Section 6.05 STEP 5: The Investigation.**

- (a) Effect of Corollary Criminal Investigation.** As is noted in Section 4.01, the Seminary's investigation may be delayed temporarily while criminal investigators are gathering evidence and/or as otherwise requested by law enforcement. In the event of such a delay, the Seminary may take interim measures when necessary to protect the Complainant, other parties and/or the Seminary community.

Neither the results of a criminal investigation nor the decision of law enforcement to investigate or decline to investigate a matter is determinative of whether Material Sexual Misconduct, for the purposes of this Policy, has occurred.

- (b) The Title IX Coordinator's Initial Determination.** As soon as is practicable, following the Title IX Coordinator's receipt of a Complaint of Sexual Misconduct, the Title IX Coordinator will promptly appoint one or more Investigators to investigate the Complaint (who may include, among others, the Deputy Title IX Coordinator), unless it is clear on the

face of the Complaint that no reasonable grounds exist for believing that the conduct at issue (even if proved) constitutes Material Sexual Misconduct. Further, a Complaint must also be dismissed if the conduct alleged did not occur in the Seminary's education program or activity, or did not occur against a person in the United States.

In addition, the Title IX Coordinator may dismiss a Complaint or any allegations in it if at any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegations in it, the Respondent is no longer enrolled or employed by the Seminary, or specific circumstances prevent the Seminary from gathering evidence sufficient to reach a determination as to the formal Complaint or the allegations in it (for example, where a Complainant refuses to participate in the formal or information resolution process - but has not sent written notice stating that he or she wishes to withdraw the Complaint).

In the event that the Complaint was made by a Third-Party Reporter, the Title IX Coordinator will also consider the following factors in determining whether it is reasonable to assign Investigators to investigate the Complaint:

- (i) The source and nature of the information;
- (ii) The seriousness of the alleged incident;
- (iii) The specificity of the information;
- (iv) The objectivity and credibility of the source of the information;
- (v) Whether the individuals allegedly subjected to the Sexual Misconduct can be identified; and
- (vi) Whether those individuals wish to pursue the matter.

In the event that the Title IX Coordinator determines that dismissal is warranted, he or she will close the Complaint, document the closure, and promptly provide written notification of the closure and the rationale for the closure to the Complainant and the Respondent.

The Complainant and/or the Respondent may appeal the Title IX Coordinator's decision to dismiss a Complaint in accordance with Section 7.03(c) of this Policy.

If the Title IX Coordinator appoints an Investigator(s), he or she will share their names and contact information with the Complainant and the Respondent, and will forward the Complaint to the Investigator(s).

Within three (3) business days of such appointment, the Investigator(s), the Complainant, or the Respondent may identify to the Title IX Coordinator in writing alleged conflicts of interest posed by assigning such Investigator(s) to the matter. The Title IX Coordinator will carefully consider such statements and will assign different individuals as Investigators if it is determined that a material conflict of interest exists.

- (c) **Investigator Activities.** Upon receipt of the Complaint, Investigator(s) will promptly begin their investigation, taking such steps as:

- (i) Conducting interviews with the Complainant, the Respondent, and third-party witnesses (including expert witnesses, where applicable) and summarizing such interviews in written form;
- (ii) Visiting, inspecting, and taking or reviewing photographs at relevant sites where applicable; and
- (iii) Collecting and preserving relevant evidence (in cases of corresponding criminal complaints, this step may be coordinated with law enforcement agencies) where applicable.

Throughout the investigation, the Investigator(s) will remain neutral. Further, per Title IX regulation § 106.45, there is a general presumption that the Respondent is not responsible for the alleged conduct at issue until a determination regarding responsibility is made.

- (d) **Parties' Ability to Gather and Submit Relevant Evidence.** Except as outlined in Section 2.02 regarding non-retaliation, Section 6.03 regarding any non-contact, no-trespass or other applicable interim supportive measures and/or removal, and Section 8.02(c) regarding Complainant and Respondent contacts, the Seminary will not restrict the ability of the Complainant and Respondent to discuss the allegations made in the Complaint, or to gather or present relevant evidence. The Complainant and Respondent may submit inculpatory and exculpatory evidence to the Investigator(s), including from fact and expert witnesses.

Note: This provision in no way immunizes a party from abusing the right to discuss the allegations under investigation by, for example, discussing those allegations in a manner that exposes the party to liability for defamation or related privacy torts, in a manner that constitutes witness "tampering" (for instance, by attempting to alter or prevent a witness's testimony), or in a manner that constitutes unlawful retaliation.

- (e) **Prohibition on Submission of Privileged Information and Medical Records.** The Investigator(s) will not allow submission of or rely on questions or evidence that constitute, or seek disclosure of, information protected by a legally recognized privilege, unless the holder of such privilege has voluntarily waived the privilege. In addition, the Investigator(s) cannot access, consider, disclose, or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist, and which are made and maintained in connection with the provision of treatment to the party, unless that party provides voluntary, written consent to do so.
- (f) **Parties' Ability to Inspect Evidence.** Prior to the creation of a written Investigative Report, the Investigator(s) will send the Complainant and Respondent any evidence obtained as part of the investigation that is directly related to the allegations raised in the Complaint. This includes evidence that the Seminary does not intend to rely on in reaching a determination regarding responsibility, as well as inculpatory or exculpatory evidence. The Complainant and Respondent shall have ten (10) business days to submit a written response to the evidence. The Investigator(s) will consider any written response received prior to completing the Investigative Report.
- (g) **The Investigative Report.** The Investigator(s) will complete a written investigative report that includes items such as the written Complaint, any written statements of position, summaries of all interviews conducted, photographs, descriptions of relevant evidence, and

a detailed report of the events in question (the "Investigative Report"). The Investigator(s) will share the Investigative Report with the Title IX Coordinator, who will make it (concurrently) available to the Complainant and the Respondent (and their respective chosen advisors, if any) to review. The Investigative Report will be made available to the parties and their respective advisors (if any) at least ten (10) business days prior to any hearing or other time of determination of responsibility.

All parties to whom the Investigative Report is distributed pursuant to this Policy must maintain it in confidence (even after the resolution of the Complaint); the Investigative Report may only be disclosed as is contemplated by this Policy or as otherwise required or allowed by applicable law.

Note: Any Investigative Report may include recommended finding and conclusions, but will not include a determination regarding responsibility (which is made by the Title IX Coordinator, Hearing Board or other applicable decision-makers as is further described below following an objective evaluation of the evidence).

**(h) The Title IX Coordinator's Evaluation of the Investigative Report.**

The Title IX Coordinator will evaluate the Investigative Report and will direct that the Complaint will proceed to adjudication according to the procedures set forth in Article VII (or Article VIII) below *unless* it is clear from the Investigative Report that no reasonable grounds exist for believing that the conduct at issue (even if proved) constitutes Material Sexual Misconduct. Further, a Complaint must also be dismissed if the conduct alleged did not occur in the Seminary's education program or activity, or did not occur against a person in the United States.

In addition, the Title IX Coordinator may dismiss a Complaint or any allegations in it if at any time during the investigation or hearing a Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the Complaint or any allegations in it, the Respondent is no longer enrolled or employed by the Seminary, or specific circumstances prevent the Seminary from gathering evidence sufficient to reach a determination as to the formal Complaint or the allegations in it (for example, where a Complainant refuses to participate in the formal or information resolution process - but has not sent written notice stating that he or she wishes to withdraw the Complaint).

The Title IX Coordinator will specify which allegations and, if applicable, which other related alleged misconduct (as outlined in Section 2.04), will go forward for resolution under this Policy.

If the Title IX Coordinator determines that dismissal is warranted, then the Title IX Coordinator will close the Complaint, document the closure, and promptly provide written notification of the closure and the rationale for the closure to the Complainant and the Respondent.

The Complainant and/or the Respondent may appeal the Title IX Coordinator's decision to dismiss a Complaint in accordance with Section 7.03(c) of this Policy.



**Section 6.06 STEP 6: Determination of Formal Versus Informal Resolution.**

At any time before the Hearing Board provides notice of a hearing in accordance with Section 7.02(b)(ii), the Complainant may elect to resolve his or her Complaint through the informal resolution process in accordance with Article VIII of this Policy, provided that the Respondent agrees to such resolution in writing. However, informal resolution will not be available if the Complainant is a student and the Respondent is a faculty or staff member. A Complaint that is not closed pursuant to the Title IX Coordinator's evaluation of the Investigative Report will proceed to formal resolution in accordance with Article VII of this Policy.



## **ARTICLE VII. FORMAL RESOLUTION**

### **Section 7.01 Acknowledgement of Responsibility / Desire for Early Resolution.**

At any time prior to the date of any hearing, the Respondent may elect to fully or partially acknowledge his or her actions, take full or partial responsibility for the alleged Sexual Misconduct, and/or otherwise express a desire for implementation of proposed sanctions by the Seminary. In such a situation, the Title IX Coordinator will propose sanction(s) for the Respondent. If the Complainant and the Respondent agree to such proposed sanction(s), then the Complaint will be resolved without a hearing and without any further rights of appeal by any party.

If either the Complainant or the Respondent objects to such proposed sanction(s), then a Hearing Board will convene for the purpose of determining responsibility (or for the exclusive purpose of determining a sanction, as applicable) in accordance with Section 7.02(c)(i) and/or 702(c)(ii) of this Policy, as applicable. The responsibility determination may be appealed pursuant to Section 7.03(b) of this Policy.

### **Section 7.02 The Formal Resolution Process.**

In the case of a formal resolution, a Hearing Board will conduct a live hearing in which the Complainant and the Respondent will be entitled to present evidence. At the conclusion of the hearing, the Hearing Board will make a determination regarding the responsibility of the Respondent regarding the allegations made against him or her. If the Hearing Board concludes that the Respondent is responsible, then the Hearing Board will determine the sanctions that the Seminary will impose against the Respondent.

Further, as noted above in Section 6.02, the Seminary may consolidate formal complaints as to allegations of Material Sexual Misconduct for hearing against more than one Respondent, or by more than one Complainant against one or more Respondents, or what amount to counter-complaints by one party against the other, where the allegations arise out of the same facts or circumstances.

#### **(a) Empaneling of the Hearing Board.**

- (i) The Hearing Board.** The Vice President Finance & Administration will appoint the members of the "Hearing Board," to include three faculty and/or staff members, of which one will be designated as the Chair. The Hearing Board may not consist of the Title IX Coordinator, the Deputy Title IX Coordinator, or the Investigator(s) that investigated the matter before the Hearing Board. The Title IX Coordinator (or his or her designee) will share the Complaint and the Investigative Report (redacted, if applicable, pursuant to Section 6.05(e)) with the Hearing Board and, if only a portion of the misconduct alleged in the Complaint justifies continuing to the hearing process, the Title IX Coordinator (or his or her designee) will specify which part(s) of the alleged misconduct will be the subject of the hearing.
- (ii) Notice of Composition of the Hearing Board.** Promptly after the appointment of the members of the Hearing Board, the Title IX Coordinator (or his or her designee) will provide concurrent written notice to the Complainant and the Respondent setting forth the names of the individuals selected to serve on and chair the Hearing Board. If only a portion of the alleged misconduct justifies continuing to the hearing

process, the Title IX Coordinator (or his or her designee) will also specify in the notice which part(s) of the alleged misconduct will be the subject of the hearing.

The parties may challenge the participation of any member of the Hearing Board by submitting a written objection to the Title IX Coordinator within three (3) business days of receipt of the notice of the composition of the Hearing Board. Such objection must state the specific reason(s) for the objection. The Title IX Coordinator will evaluate the objection and determine, in consultation with the Vice President Finance & Administration, whether to alter the composition of the Hearing Board. Failure to submit a timely and proper objection will constitute a waiver of any right of objection to the composition of the Hearing Board. Any changes in the composition of the Hearing Board will be provided in writing to both parties prior to the date of the hearing.

**(b) Hearing Policies and Procedures.**

- (i) Submission of Witness and Exhibit Lists and Named Advisor.** Within ten (10) business days of receipt of the notice of composition of the Hearing Board, the Seminary's hearing representative (and the Complainant and the Respondent, if such parties desire to call witnesses and present evidence as well) shall provide the Chair with a written list of witnesses, if any, that they intend to call at the hearing, a brief written description of each proposed witness's connection to and/or knowledge of the issues in dispute, and a brief written description of any documentary evidence that they intend to present at the hearing.

Further, within ten (10) business days of receipt of the notice of composition of the Hearing Board, the Complainant and Respondent must inform the Chair in writing whether the party intends to bring an advisor of choice to the hearing, as allowed pursuant to subsection (v) below.

- (ii) Notice of the Hearing.** Not less than five (5) business days but not more than fifteen (15) business days after delivery of notice of the composition of the Hearing Board to the parties, the Hearing Board will provide a separate notice to each of the Seminary's hearing representative, the Complainant, the Respondent, and any witnesses identified by the parties, requesting such individual(s) to appear before the Hearing Board. The notice should set forth, as applicable, the date, time, and location of the hearing (which ordinarily will be no more than thirty (30) calendar days following the conclusion of the investigation and issuance of a written Investigative Report). In its notices, the Hearing Board will provide the names of the witnesses intended to be called at the hearing by the parties, and the evidence identified by the parties.
- (iii) Failure to Appear.** If the Complainant and/or the Respondent fails to appear before the Hearing Board if requested to do so, and such party was provided proper notice of the hearing as set forth above, then absent extenuating circumstances, the Hearing Board will proceed to determine the resolution of the Complaint.
- (iv) No Contact Prior to the Hearing.** Except as otherwise expressly authorized in advance by the Title IX Coordinator (e.g., for limited, necessary normal work or

academic related interactions), the Complainant and the Respondent may not contact each other outside of the hearing, even to discuss the hearing.

- (v) **Support Advisors of Choice.** As provided in Section 5.03, both the Complainant and the Respondent may select an advisor to assist them during the hearing. If either party has not selected an advisor for the hearing, the Seminary will appoint them a trained advisor for the hearing (who may, but is not required to be, an attorney).

Note: The Seminary is not required to and will not appoint an advisor for the Complainant or Respondent at any other point of the formal or informal resolution process.

- (vi) **Presentation of Evidence.** The Seminary's hearing representative (and the Complainant and the Respondent, if desired, through their advisors) will have an opportunity to present witnesses and evidence to the Hearing Board. The Seminary's hearing representative (and the Complainant and the Respondent, if desired, through their advisors) will also have an opportunity to cross-examine the other party's witnesses, including the other party. The witnesses, including the parties, may choose not to testify, or not to face cross-examination. However, the Hearing Board may not rely on a non-cross-examined statement when making its determination of responsibility. Also, the Hearing Board may not base a responsibility determination solely on the absence of a witness during a hearing or the refusal of a party to face cross-examination.

For the avoidance of doubt, the Seminary may seek advice from the Seminary's in-house or outside counsel at any time and/or have the Seminary's counsel participate in and represent the Seminary in any meeting (including during any hearing or proceeding, as a hearing representative or otherwise).

Note: Title IX regulations expressly preclude a party from conducting cross-examination personally; the only method for conducting cross-examination is by a party's advisor.

- (vii) **Evidentiary Matters.**

- 1) **Relevancy.** The parties may object to the relevancy of a question directed at a witness by the other party. In this circumstance, the Chair must determine if the question is relevant before the witness answers the question.

- 2) **Complainant's Prior Sexual Conduct or Predisposition.** Evidence of the Complainant's sexual history or predisposition will not be permitted at the hearing, with the following exceptions:

- (A) Evidence about the Complainant's prior sexual behavior may be offered to prove that someone other than the respondent committed the conduct alleged by the complainant; and

- (B) Evidence about specific incidents within the Complainant’s and Respondent’s sexual history may be offered to prove that the sexual activity at issue in the hearing was consensual.

(viii) **Technology.**

- 1) **Closed-Circuit Technology.** If the Chair, in consultation with the Title IX Coordinator, deems it appropriate, the Chair will arrange for the parties to attend the hearing from different locations, and to allow both parties and the Hearing Board to hear and see live testimony via closed-circuit technology.
- 2) **Recording.** The Chair will arrange for the audio and/or visual recording of the hearing. This recording will be the property of the Seminary, but each party is entitled to inspect and review it after the hearing. The Appeals Officer may use the recording as part of the appeal process.

(c) **Responsibility Determinations and Sanctions.**

(i) **The Decision of the Hearing Board Regarding Responsibility.**

- 1) **Responsibility Determination.** Following the conclusion of the hearing, the Hearing Board will confer and, by majority vote, determine whether the evidence (including the information provided in the Investigative Report, the evidence presented at the hearing, and the testimony of the parties and witnesses) establishes that it is highly probable<sup>3</sup> that the Respondent committed Material Sexual Misconduct (and/or that any party committed any other related misconduct, as is outlined in Section 2.04).
- 2) **Written Decision.** Within thirty (30) calendar days following the conclusion of the hearing (or as soon as is reasonably practicable), the Hearing Board will prepare a written decision that explains its responsibility finding. The Hearing Board will provide this decision concurrently to the parties and the Title IX Coordinator. This decision will include:
  - (A) Identification of the allegations potentially constituting Material Sexual Misconduct that the Hearing Board adjudicated;
  - (B) A description of the procedural steps the Seminary took, from the receipt of the formal Complaint through the responsibility 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 this Policy to the facts. If the Respondent is found Responsible, the Hearing Board will specify the

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<sup>3</sup> In other words, the standard of proof for this adjudication will be the “clear and convincing evidence” standard.

specific type(s) of Material Sexual Misconduct for which the Respondent is found Responsible (for example, Sexual Assault, Stalking, etc.).

**(E)** A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the Seminary imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the Seminary's educational programs and activities will be provided by the Seminary to the Complainant; and

**(F)** The Seminary's procedures and permissible bases for the parties to appeal.

**(ii) Decision of the Hearing Board Regarding Sanctions.** If the Hearing Board renders a finding of "Responsible," it will determine recommended appropriate sanctions to be imposed on the Respondent.

**(1) Generally.** Sanctions for a finding of responsibility depend upon the nature and gravity of the misconduct, any record of prior discipline for Sexual Misconduct, or both. Sanctions include, but are not limited to, the following: withholding a promotion or pay increase, reassigning employment, terminating employment, temporary suspension without pay, compensation adjustments, expulsion or suspension from the Seminary, disciplinary probation, mandated counseling, parental notification, and/or educational sanctions (such as community service, reflection paper(s), and/or fines) deemed appropriate by the Hearing Board. The Hearing Board will determine sanctions by giving consideration to whether a given sanction will (a) bring an end to the violation in question, (b) reasonably prevent a recurrence of a similar violation, and (c) remedy the effects of the violation.

**(2) Implementation of Sanctions.** Sanctions imposed are not effective until the resolution of any timely appeal pursuant to Section 7.03. However, if it is advisable in order to protect the welfare of the Complainant, the Seminary community or other parties, the Hearing Board may recommend and/or the Title IX Coordinator may determine that any sanctions be implemented and effective immediately and continue in effect until such time as the appeal process is exhausted.

**(iii) Corrective Action and Final Accommodations.**

**1)** The Title IX Coordinator will be responsible for ensuring that the Seminary promptly implements the sanctions imposed by the Hearing Board.

**2)** In addition to any sanctions imposed on the Respondent, the Title IX Coordinator will also determine if any additional accommodations should be provided to the Complainant. If so, the Title IX Coordinator will communicate such decision to the Complainant, and, to the extent that it affects him or her, to the Respondent. Such accommodations may include, but are not limited to, those listed in Section 6.03(a) of this Policy.

- 3) The Title IX Coordinator will also take steps, where necessary, to prevent the further harassment of or any retaliation against the Complainant or third parties, by, for example, informing them about how to report subsequent issues or concerns, following up with them to ensure that there are no subsequent problems, providing training for the school community, and providing Sexual Misconduct or other counseling. The Title IX Coordinator will also, where appropriate, take steps to prevent the harassment of the Respondent.
- 4) The Title IX Coordinator will take prompt corrective action if the Complainant experiences retaliation or is subjected to further Sexual Misconduct or if the original sanctions imposed on the Respondent are ineffective to protect the safety and wellbeing of the Complainant, other members of the Seminary community or other parties.

### **Section 7.03 Appeals.**

- (a) **Appeal Statement.** The Complainant and/or the Respondent may appeal the dismissal of a Complaint by the Title IX Coordinator, or the decision of the Hearing Board regarding *responsibility*, as applicable, within ten (10) business days from the date the Title IX Coordinator or Hearing Board issues a written decision (i.e., the “Final Outcome Letter”).

Note: There shall be no appeal of the decision of the Hearing Board regarding sanctions (e.g., that the severity of the sanction imposed is allegedly incommensurate to the gravity of the Sexual Misconduct).<sup>4</sup>

Appeals of any Complaint dismissal decision of the Title IX Coordinator must be made in writing to the Vice President Finance & Administration. Appeals of any decision of the Hearing Board regarding responsibility must be made in writing to the Title IX Coordinator. The party filing the appeal (the “Appellant”) must include an explanation of the reason for the appeal consistent with Sections 7.03(b) or (c) of this Policy, as applicable. The Title IX Coordinator will promptly inform the other party of the filing of the appeal.

(b) **Appeals of the Decision of the Hearing Board Regarding *Responsibility*.**

- (i) **Grounds for Appeal.** The only permissible grounds for an appeal regarding *responsibility* are:
- 1) A procedural irregularity that may have affected the outcome of the matter;
  - 2) New evidence that was not reasonably available at the time the determination regarding responsibility was made that could affect the outcome of the matter; and

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<sup>4</sup> Notwithstanding anything in this paragraph to the contrary, if the final sanctions set by the Hearing Board include a sanction of termination of a member of the faculty, then the faculty member may further appeal the final sanction in accordance with the Faculty Manual.

- 3) The Title IX Coordinator, Deputy Title IX Coordinator, Investigator(s), a member of the Hearing Board, or any other applicable decision-maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent involved in the matter, that could have affected the outcome of the matter.

Note: When the Seminary accepts or initiates a formal Complaint, that action does not place the Title IX Coordinator, Deputy Title IX Coordinator, Investigator(s), Hearing Board members, or other decision-makers in a position adverse to the Respondent; the Seminary is simply initiating an investigation based on allegations of which the Seminary has been made aware. Likewise, deciding that allegations do or do not warrant investigation or other action does not necessarily show bias or prejudgment of the facts for or against a Complainant, Respondent or any other party.

- (ii) **Appeals Officer.** The Seminary President will serve as the “Appeals Officer,” unless otherwise designated by the Title IX Coordinator. An Appeals Officer may not include the Title IX Coordinator, the Deputy Title IX Coordinator, any members of the Hearing Board, or the Investigator(s) that investigated the matter before the Appeals Officer. The Title IX Coordinator (or his or her designee) will share the Complaint, the Investigative Report, the written findings of the Hearing Board, and the Appellant’s appeal statement with the Appeals Officer.
- (iii) **Appeal Opposition Statement.** The party that has not filed the appeal (the “Appellee”) may file a written statement to the Appeals Officer within ten (10) business days of receipt of the other party’s written appeal. This statement should explain why the Appellant’s basis for an appeal is improper and/or why the Hearing Board’s decision should stand. The Title IX Coordinator (or his or her designee) will promptly provide the Appellee’s statement to the Appellant.
- (iv) **Appeals Officer Decision.** Within thirty (30) calendar days of the receipt of the appeal (or as soon as is reasonably practicable), the Appeals Officer will make a determination that (a) the decision of the Hearing Board should stand, or (b) the decision of the Hearing Board should be modified and/or overturned. In either case, the Appeals Officer should issue a written explanation of his or her reasoning in reaching a decision. The Appeals Officer should provide his or her decision concurrently to the Complainant, the Respondent, and the Title IX Coordinator.
- (v) **Result of Appeal Decision.** In the event that the Appeals Officer determines that the decision of the Hearing Board should be modified and/or overturned, the Appeals Officer will specify, after consultation with the Title IX Coordinator and other Seminary administrators, as necessary, the appropriate steps to be taken to come to a final resolution of the Complaint (which may or may not include an additional hearing before a different Hearing Board).

(c) **Appeals of the Decision of the Title IX Coordinator to *Dismiss a Complaint*.**

- (i) **Grounds for Appeal.** The only permissible grounds for an appeal regarding *dismissal of a Complaint* by the Title IX Coordinator in accordance with Section 6.05(b) or 6.05(h) are:



- 1) A procedural irregularity that may have affected the outcome of the matter;
- 2) New evidence that was not reasonably available at the time the dismissal decision was made that could affect the outcome of the matter; and
- 3) The Title IX Coordinator or other applicable dismissal decision-maker had a conflict of interest or bias for or against complainants or respondents generally, or the individual Complainant or Respondent involved in the matter, that could have affected the outcome of the matter.

Note: When the Seminary decides not to accept or initiate a formal Complaint or to dismiss a Complaint, that action does not place the Title IX Coordinator, Deputy Title IX Coordinator, Investigator(s) or other decision-makers in a position adverse to the Respondent; the Seminary is simply dismissing a Complaint based on allegations of which the Seminary has been made aware. Likewise, deciding that allegations do not warrant investigation or other action does not necessarily show bias or prejudgment of the facts for or against a Complainant, Respondent or any other party.

- (ii) **Appeals Officer.** The Seminary President will serve as the “Appeals Officer,” unless otherwise designated by the Title IX Coordinator. An Appeals Officer may not include the Title IX Coordinator or the Deputy Title IX Coordinator. The Title IX Coordinator will share the Complaint, his or her documentation of the closure / dismissal, his or her written notification of the closure / dismissal and the rationale for it as provided to the Complainant and the Respondent, and the Appellant’s appeal statement with the Appeals Officer.
- (iii) **Appeal Opposition Statement.** The party that has not filed the appeal (the “Appellee”) may file a written statement to the Appeals Officer within ten (10) business days of receipt of the Appeal. This statement should explain why the Appellant’s basis for an appeal is improper and/or why the Title IX Coordinator’s decision should stand. The Title IX Coordinator will promptly provide the Appellee’s statement to the Appellant.
- (iv) **Appeals Officer Decision.** Within thirty (30) calendar days of the receipt of the appeal (or as soon as is reasonably practicable), the Appeals Officer will make a determination that (a) the decision of the Title IX Coordinator should stand, or (b) the decision of the Title IX Coordinator should be overturned. In either case, the Appeals Officer should issue a written explanation of his or her reasoning in reaching a decision. The Appeals Officer should provide his or her decision concurrently to the Complainant, the Respondent, and the Title IX Coordinator.
- (v) **Result of Appeal Decision.** In the event that the Appeals Officer determines that the decision of the Title IX Coordinator to dismiss the Complaint should be overturned, the Seminary will proceed with investigation of the Complaint, or, in the event that investigation was completed prior to dismissal as is set forth in Section 6.05(h), formal resolution as provided in Article VII of this Policy.



## **ARTICLE VIII. INFORMAL RESOLUTION**

Informal resolution is only appropriate if (i) a Complaint has been filed; and (ii) both the Complainant and the Respondent agree to such resolution in writing. Complaints alleging Sexual Misconduct by a faculty or staff member against a student are not eligible for informal resolution.

Informal resolution may not be selected for less than all of the misconduct alleged in the Complaint (for example, the parties may not choose to resolve a claim of Sexual Assault according to the formal resolution process but use the informal resolution process for all other claims). If the parties agree to informal resolution (and informal resolution is appropriate for all of the claims at issue), then all of the claims must be resolved according to the informal resolution process.

The Complainant has the right to terminate the informal resolution process at any time and proceed with formal resolution. Further, the Title IX Coordinator may, in his or her absolute and sole discretion where appropriate, terminate or decline to initiate informal resolution, and proceed with the formal resolution process instead. In such cases, statements or disclosures made by the parties in the course of the informal resolution process may be considered in the subsequent formal resolution proceedings.

### **Section 8.01 Respondent's Acknowledgement of Responsibility.**

As is noted in Section 7.01 above, and separate from the information resolution process outlined below in Section 8.02, at any time prior to the date of any hearing, the Respondent may elect to fully or partially acknowledge his or her actions, take full or partial responsibility for the alleged Sexual Misconduct, and/or otherwise express a desire for implementation of proposed sanctions by the Seminary. In such instances, the procedures outlined in Section 7.01 shall apply.

### **Section 8.02 The Informal Resolution Process.**

- (a) The Facilitator.** When the Complainant's Complaint is to be resolved according to the informal resolution process, the Title IX Coordinator (or his or her designee) will appoint an informal resolution process facilitator (the "Facilitator") to oversee the process.
- (b) Notice of Informal Resolution.** The Facilitator will provide concurrent written notice to the Complainant and the Respondent, which includes the allegations; the requirements of the informal resolution process; and any consequences resulting from participating in the informal resolution process. The notice will also set forth the date, time, and location of the informal resolution. The parties may consent to informal resolution at any time after a Complaint is filed, but no party is required to consent to informal resolution. If only a portion of the alleged misconduct justifies continuing to informal resolution, the Title IX Coordinator will also specify in the notice which part(s) of the alleged misconduct will be the subject of the informal resolution process.

Any party may challenge the participation of the Facilitator by submitting a written objection to the Title IX Coordinator within three (3) business days of receipt of the notice of the informal resolution process. Such objection must state the specific reason(s) for the objection. Failure to submit a timely and proper objection will constitute a waiver of any right of objection. The Title IX Coordinator will evaluate the objection and determine whether to assign a different Facilitator. Any substitution of the individual serving as the

Facilitator will be provided in writing to both parties prior to the date of the informal resolution.

- (c) **No Contact Prior to Informal Resolution.** Except as otherwise expressly authorized in advance by the Title IX Coordinator (e.g., for limited, necessary normal work or academic related interactions), the Complainant and the Respondent may not contact each other outside of the informal resolution process, even to discuss the process.
- (d) **Attendance.** If the parties agree to invoke informal resolution, both the Complainant and the Respondent are expected to attend the informal resolution. If either party fails to appear at the informal resolution, and such party was provided proper notice of the informal resolution as set forth above, then absent extenuating circumstances, the Facilitator may direct that resolution of the Complaint be determined according to the formal resolution process set forth in Article VII or may reschedule the informal resolution.
- (e) **The Informal Resolution.**
  - (i) **The Parties' Rights.** During the informal resolution process, the parties may:
    - 1) engage one another in the presence of, and facilitated by, the Facilitator;
    - 2) communicate their feelings and perceptions regarding the incident and the impact of the incident (either by communicating directly with one another or by communicating indirectly through the Facilitator; and/or
    - 3) relay their wishes and expectations regarding the future.
  - (ii) **Advisors of Choice.** As provided in Section 5.03, both the Complainant and the Respondent may have an advisor present to support and assist them during the informal resolution process (but are not required to do so).
  - (iii) **Resolution.** During the informal resolution, the Facilitator will attempt to facilitate the parties' resolution of the Complaint. If this process results in a resolution between the parties and the Facilitator, and the Title IX Coordinator finds the resolution to be appropriate under the circumstances (giving consideration to the extent to which the resolution will protect the safety of the Complainant and the entire school community), the informal disciplinary procedure will be concluded and the Complaint will be closed. Informal resolution may include disciplinary measures.

## **EXHIBIT A**

### **Suggested Actions for Victims of Sexual Assault**

While all types of Sexual Misconduct are inappropriate and taken seriously by the Seminary, actions involving Sexual Assault (as defined in Exhibit B) are particularly concerning. Thus, if you are the victim of a Sexual Assault, the Seminary's first priority is to help you take steps to address your safety, medical needs, and emotional well-being. You are encouraged to take the following actions, as applicable, regardless of whether you have made a decision about whether to pursue criminal or Seminary complaint.

#### **1. Ensure Your Physical Safety.**

You may seek help from **local law enforcement agencies**. You may also contact **Union Presbyterian Seminary Security**. Seminary Security personnel can assist you with contacting local law enforcement and can help you obtain transportation to the local law enforcement office. Security staff are on duty at the Richmond Campus location from 6:00p.m to 4:00a.m. seven days a week.

#### **2. Seek Medical Assistance and Treatment.**

Local options for medical care include Retreat Doctor's Hospital, VCU Main Hospital, Bon Secours St. Mary's Hospital, and Henrico Doctor's Hospital in Richmond, or any of the Novant Health or Atrium Health centers in Charlotte. It is crucial that you obtain medical attention as soon as possible after a Sexual Assault to determine the extent of physical injury and to prevent or treat sexually transmitted diseases (such as HIV). Medical facilities can also screen for the presence of sedative drugs such as Rohypnol or GHB (date-rape drugs). Employees at the Seminary can help with contacting the closest facility to receive medical services.

#### **3. Obtain Emotional Support**

**The Seminary's Chaplains** can help victims sort through their feelings and begin the recovery process. Chaplains are trained to provide crisis intervention on short-term and emergency issues, as well as spiritual support. Chaplain assistance is free of charge to all students. In some instances, the law may require the disclosure of information shared by students with Chaplains. However, absent a legal mandate to the contrary, Chaplain services are strictly confidential, are not part of students' academic records, and will not be reported to other Seminary personnel.

#### **4. Obtain Information / Report Misconduct**

You are encouraged to report incidents of Sexual Assault to the Seminary's Title IX Coordinator or other designated Seminary individuals or offices as outlined in the Sexual Misconduct Policy (even if you have filed a report directly with law enforcement). Further information about how to report Sexual Assault is provided in this Policy. Seminary personnel can help you access resources and can provide you with support and information, including information on the Seminary's procedures for investigating and addressing instances of Sexual Assault.

## **Important Contact Information** **RICHMOND CAMPUS**

### **Seminary Resources**

The Seminary's **Title IX Coordinator** is Michelle Walker, whose office is in Room 103 of Watts Hall (3401 Brook Road). Ms. Walker may be contacted during business hours (Monday through Friday, 8:30 a.m. to 5:00 p.m.) by phone at 804-278-4252 or by email at [mwalker@upsem.edu](mailto:mwalker@upsem.edu).

The **Seminary's Security Office** is located in W.S. Morton Library, Room 102 at 3406 Chamberlayne Avenue and is available by phone at 804-278-HELP (4357). Seminary Security staff are available from 5:00 p.m. until 5:00 a.m., seven days a week. Individuals may also call 911 for local law enforcement assistance.

The **Seminary's Academic Dean – Richmond** is Kenneth McFadden, whose office is located in Watts Hall, Room 104 (3401 Brook Road) and is available by phone at 804-278-4230 or by email at [kmcfayden@upsem.edu](mailto:kmcfayden@upsem.edu). Dr. McFadden is available from 8:30 a.m. to 5:00 p.m. Monday through Friday.

The **Seminary's Human Resources Office** is located in Suite 112, Watts Hall (3401 Brook Road) and is available by phone at 804-278-4209. The office is staffed from 7:30 a.m. to 4:00 p.m. Monday through Friday.

### **Community Resources**

**Local Law Enforcement Agencies** can be reached by calling **911**.

#### **Local Hospitals:**

- **Retreat Doctor's Hospital:**  
2621 Grove Avenue **(804-254-5100)**.
- **VCU Main Hospital:**  
1250 East Marshall **(804-828-9000)**.
- **Bon Secours St. Mary's Hospital:**  
5801 Bremono Road **(804-285-2011)**.
- **Henrico Doctor's Hospital:**  
1602 Skipworth Road **(804-289-4500)**.

The **Family Education Center**, a local counseling service, is located at 5403 Chamberlayne Avenue in Richmond and is available by phone at 804-261-7979.

The **YWCA of Richmond** is located at 6 North 5<sup>th</sup> Street in Richmond. Its non-emergency number is **804-643-6761** and its 24-hour hotline is **804-612-6126**.

## **Important Contact Information** **CHARLOTTE CAMPUS**

### **Seminary Resources**

The Seminary's **Title IX Coordinator** is Michelle Walker, whose office is located in Richmond. Ms. Walker may be contacted during business hours (Monday through Friday, 8:30 a.m. to 5:00 p.m.) by phone at 804-278-4252 or by email at [mwalker@upsem.edu](mailto:mwalker@upsem.edu).

The **Title IX Deputy Coordinator and Charlotte Campus Dean of Students** is Lisa McLennan, whose office is located at Thomas W. Currie, III Academic Hall, Room F105 (5141 Sharon Road) and is available by phone at 980-636-1669 or by email at [lmclennan@upsem.edu](mailto:lmclennan@upsem.edu). Dean McLennan is available from 9:00 a.m. to 5:00 p.m. Tuesday through Saturday.

The **Seminary's Human Resources Office** is located in Richmond, but is generally available by phone at 804-278-4209 from 7:30 a.m. to 4:00 p.m. Monday through Friday.

### **Community Resources**

**Local Law Enforcement Agencies** can be reached by calling **911**.

#### **Local Hospitals:**

- **Novant Health Presbyterian Medical Center:** 200 Hawthorne Lane **(704-384-4000)**.
- **Atrium Health Carolinas Medical Center:** 1000 Blythe Boulevard **(704-355-2000)**.

**Charlotte Children and Family Services Center:** **704-332-9034**

**24/7 Domestic Violence Hotline:**  
**704-332-2513**

**Presbyterian Samaritan Counseling Center** is located at 5203 Sharon Road in Charlotte and is available by phone at **704-554-9900**.

**Safe Alliance** is located at 601 East Fifth Street in Charlotte. Its non-emergency number is **704-332-9034**.

## **EXHIBIT B**

### **Definitions**

- (a) Appeals Officer.** “Appeals Officer” is defined in Section 7.03(b)(ii) and (c)(ii). All Appeals Officers will receive regular professional training in hearing practices and procedures. More specifically, any Appeals Officer will receive annual training on (1) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (2) how to conduct an impartial and equitable hearing process.
- (b) Clery Act.** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (the “Clery Act”) is a federal statute codified at 20 U.S.C. § 1092(f), with implementing regulations in the U.S. Code of Federal Regulations at 34 C.F.R. § 668.46. The Clery Act requires all colleges and universities that participate in federal financial aid programs to keep and disclose information about crime on and near their respective campuses.
- (c) Complainant.** A “Complainant” is an alleged victim of Sexual Misconduct who files a Complaint or on whose behalf a Complaint is filed.
- (d) Complaint.** A “Complaint” is an allegation of Sexual Misconduct asserted against another party and initiated pursuant to Section 6.01.
- (e) Consent.** “Consent” is informed, freely and actively given, and mutually understandable words or actions that indicate a willingness to participate in mutually agreed-upon sexual activity. Consent is mutually understandable when a reasonable person would consider the words or actions of the parties to have manifested a clear and unambiguous agreement between them to engage in certain conduct with each other. Consent cannot be gained by ignoring or acting in spite of the objections of another.

Consent cannot be inferred from:

- (i)** Silence, passivity, or lack of resistance alone;
- (ii)** A current or previous dating or sexual relationship alone (or the existence of such a relationship with anyone else);
- (iii)** Attire;
- (iv)** The buying of dinner or the spending of money on a date; or
- (v)** Consent previously given (i.e., consenting to one sexual act does not imply consent to another sexual act).

Consent is not effective if it is obtained through the use of physical force, violence, duress, deception, intimidation, coercion, or the threat, expressed or implied, of bodily injury. Whether a party used intimidation or coercion to obtain Consent will be determined by reference to the perception of a reasonable person found in the same or similar circumstances.

Consent may never be given by:

- (1)** Minors, even if the other participant did not know the minor’s age.

- (2) Mentally disabled persons, if their disability was reasonably knowable to a sexual partner who is not mentally disabled.
- (3) Persons who are Incapacitated. The use of alcohol or drugs does not diminish one's responsibility to obtain Consent and does not excuse conduct that constitutes Sexual Misconduct under this Policy.

If at any time during a sexual act any confusion or ambiguity is or should reasonably be apparent on the issue of consent, it is incumbent upon each individual involved in the activity to stop and clarify the other's willingness to continue and capacity to consent. Neither party should make assumptions about the other's willingness to continue.

- (f) **Dating Violence.** "Dating Violence" means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such a relationship shall be determined based on the Complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of Domestic Violence.
- (g) **Day.** A "day" is a business day, *unless otherwise specified in this Policy.*
- (h) **Deputy Title IX Coordinator.** The Seminary's "Deputy Title IX Coordinator" is Lisa McLennan, Vice President and Dean of Students whose office is located at Thomas W. Currie, III Academic Hall, Room F105 (5141 Sharon Road) and is available by phone at 980-636-1669 or by email at [lmclennan@upsem.edu](mailto:lmclennan@upsem.edu). Dean McLennan is available from 9:00 a.m. to 5:00 p.m. Tuesday through Saturday.

The Deputy Title IX Coordinator works under the oversight of the Title IX Coordinator to assist with the handling of Title IX-related Complaints. The Title IX Coordinator may, at his or her discretion, assign an alternate Deputy Title IX Coordinator as the assigned Deputy Title IX Coordinator in connection with a given Complaint.

The Deputy Title IX Coordinator will receive regular professional training in resolution practices and procedures. More specifically, the Deputy Title IX Coordinator will receive annual training on (1) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (2) how to conduct an impartial and equitable resolution process.

- (i) **Domestic Violence.** "Domestic Violence" includes felony or misdemeanor crimes of violence committed by:
  - (i) a current or former spouse of the victim,
  - (ii) a person with whom the victim shares a child in common,
  - (iii) a person who is cohabiting with or has cohabited with the victim as a spouse or intimate partner,
  - (iv) a person similarly situated to a spouse of the victim under applicable state domestic or family violence laws, or
  - (v) any other person against an adult or youth victim who is protected from that person's acts under applicable state domestic or family violence laws.
- (j) **Education Record.** "Education Record" has the meaning assigned to it under FERPA.



- (k) **FERPA.** The Family Educational Rights and Privacy Act (“FERPA”) is a federal statute codified at 20 U.S.C. § 1232g, with implementing regulations at 34 § C.F.R. 99. FERPA protects the privacy of student Education Records. FERPA grants to eligible students the right to access, inspect, and review Education Records, the right to challenge the content of Education Records, and the right to consent to the disclosure of Education Records.
- (l) **Hearing Board.** “Hearing Board” is defined in Section 7.02(a)(i). All members of the Hearing Board will receive regular professional training in hearing practices and procedures. More specifically, the members of the Hearing Board will receive annual training on (1) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (2) how to conduct an impartial and equitable hearing process.
- (m) **Incapacitated.** “Incapacitated” means lacking the physical and/or mental ability to make informed, rational judgments. A person may be Incapacitated for a variety of reasons, including but not limited to being asleep or unconscious, having consumed alcohol or taken drugs, or experiencing blackouts or flashbacks.
- (n) **Investigative Report.** “Investigative Report” is defined in Section 6.05(g).
- (o) **Investigators.** “Investigators” are neutral fact-finders who are designated by the Title IX Coordinator to investigate a Complaint. Investigators will be trained annually on (1) reasonable and appropriate investigative techniques, (2) issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and (3) how to conduct an impartial and equitable investigation.
- (p) **Material Sexual Misconduct.** “Material Sexual Misconduct” is Sexual Misconduct that, taking into account the totality of the circumstances, is sufficiently serious and significant to warrant adjudication under, and discipline pursuant to, this Policy. For purposes of clarity, Material Sexual Misconduct is conduct that meets the definition of “sexual harassment” set forth in 34 C.F.R. § 106.30. Specifically, to determine whether Sexual Misconduct rises to the level of Material Sexual Misconduct, consideration will be given to the following criteria: (1) the type, frequency and duration of the conduct (the more severe the conduct, the less the need to show a repetitive series of incidents, particularly if the conduct is physical), (2) the identity of and relationship between the alleged victim and the Respondent, (3) the number of individuals involved, (4) the age and sex of the alleged victim and the Respondent, (5) the location of the incidents and the context in which they occurred, and (6) whether there have been similar incidents involving others.
- (q) **Personally Identifiable Information.** “Personally Identifiable Information” (as that term is defined by FERPA) includes, but is not limited to:
- (i) a student's name;
  - (ii) the name of a student's parent(s) or other family members;
  - (iii) the address of a student or a student's family;
  - (iv) a personal identifier, such as a student's social security number, student number, or biometric record;
  - (v) other indirect identifiers, such as a student's date of birth, place of birth, or mother's maiden name;
  - (vi) other information that, alone or in combination, is linked or linkable to a specific student and that would allow a reasonable person in the Seminary community, who

does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or

- (vii) information requested by a person whom the Seminary reasonably believes knows the identity of the student to whom the Education Record relates.
- (r) **Rape.** "Rape" is the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the Consent of the victim.
- (s) **Respondent.** A "Respondent" is an individual who has been accused in a Complaint of committing Sexual Misconduct.
- (t) **Responsible Employee.** A "Responsible Employee" is an employee of the Seminary who has the obligation to report to the Title IX Coordinator any Complaints or allegations of Sexual Misconduct of which he or she has actual knowledge. Strictly Confidential Resources are not Responsible Employees.

The following individuals are the Seminary's Responsible Employees:

- (i) All Vice Presidents, Assistant Vice Presidents, Associate Vice Presidents and Deans;
  - (ii) All Deputy Title IX Coordinators;
  - (iii) All Human Resources staff;
  - (iv) All non-student employees serving in a supervisory role (including, for purposes of clarity, all employees who supervise activities or programs that involve direct contact with students, such as advisors to recognized student organizations); and
  - (v) All contracted Seminary Security staff.
- (u) **Retaliation.** "Retaliation" means any adverse action threatened or taken against a person because he or she has filed, supported, or provided information in connection with a Complaint of Sexual Misconduct, including but not limited to direct and indirect intimidation, threats, and harassment.
  - (v) **Sexual Assault.** "Sexual Assault" means any actual, attempted, or threatened sexual act with another person without that person's Consent. By way of example and not limitation, Sexual Assault includes:
    - (i) Fondling (the touching of the private body parts of another person for the purpose of sexual gratification, without the Consent of the victim, including instances in which the victim is incapable of giving Consent because of his or her age or because he or she is temporarily or permanently Incapacitated),
    - (ii) Incest (sexual intercourse between persons who are related to each other within degrees wherein marriage is prohibited by state law),
    - (iii) Statutory Rape (sexual intercourse with an individual under the statutory age of consent, as defined by state law), and
    - (iv) Rape.
  - (w) **Sexual Exploitation.** "Sexual Exploitation" means any act of taking non-Consensual, unjust or abusive sexual advantage of another person for one's own advantage or benefit or to



benefit or advantage anyone other than the person being exploited. Sexual Exploitation includes, but is not limited to:

- (i) Causing or attempting to cause another person to be Incapacitated in order to gain a sexual advantage over such person;
  - (ii) Prostituting another person (i.e., personally gaining money, privilege, or power from the sexual activities of another);
  - (iii) Non-Consensual videotaping, photographing, or audio-taping of sexual activity and/or distribution of these materials via media such as, but not limited to, the Internet;
  - (iv) Exceeding the boundaries of Consent (e.g., allowing another person to observe Consensual sex without the knowledge of or Consent from all participants);
  - (v) Voyeurism; and
  - (vi) Knowingly or recklessly transmitting a sexually transmitted disease (including HIV) to another individual.
- (x) **Sexual Harassment.** “Sexual Harassment” is any unwelcome verbal, nonverbal, written, electronic, or physical conduct of a sexual nature that is severe, pervasive, and objectively offensive. Examples of Sexual Harassment include instances in which:
- (i) Submission or consent to the behavior is reasonably believed to carry consequences for the individual’s education, employment, on-campus living environment, or participation in a Seminary activity. Examples of this type of sexual harassment include:
    - (1) pressuring an individual to engage in sexual behavior for some educational or employment benefit, or
    - (2) making a real or perceived threat that rejecting sexual behavior will carry a negative educational or employment consequence for the individual.
  - (ii) The behavior is so severe, pervasive, and objectively offensive that it has the effect of denying the individual access to the Seminary’s education programs or activities by creating an intimidating, hostile, or demeaning environment for employment, education, on-campus living, or participation in a Seminary activity. Examples of this type of sexual harassment include:
    - (1) one or more instances of Sexual Assault;
    - (2) persistent unwelcome efforts to develop a romantic or sexual relationship;
    - (3) unwelcome sexual advances or requests for sexual favors;
    - (4) unwelcome commentary about an individual's body or sexual activities;
    - (5) repeated and unwelcome sexually-oriented teasing, joking, or flirting; and
    - (6) verbal abuse of a sexual nature.

Sexual Harassment also includes acts of intimidation, bullying, aggression or hostility based on gender or gender-stereotyping, even if the acts do not involve conduct of a sexual nature.

- (y) **Sexual Intimidation.** “Sexual Intimidation” includes but is not limited to:
- (i) Threatening, expressly or impliedly, to commit a sexual act upon another person without his or her Consent,
  - (ii) Stalking or cyber-stalking, and
  - (iii) Engaging in indecent exposure (intentionally exposing one’s sexual organs in public) with the intention of alarming, distressing, and/or offending others.
- (z) **Sexual Misconduct.** “Sexual Misconduct” means any unwelcome conduct of a sexual nature, including any conduct or act of a sexual nature perpetrated against an individual without Consent. Sexual Misconduct can occur between strangers or acquaintances, including people involved in an intimate or sexual relationship. Sexual Misconduct can be committed by men or by women, and it can occur between people of the same or different sex. The Seminary encourages reporting of all Sexual Misconduct. Sexual Misconduct includes but is not limited to:
- (i) Dating Violence;
  - (ii) Domestic Violence;
  - (iii) Sexual Assault;
  - (iv) Sexual Exploitation;
  - (v) Sexual Harassment;
  - (vi) Sexual Intimidation; and
  - (vii) Stalking.
- (aa) **Stalking.** “Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others or suffer substantial emotional distress.
- For purposes of this definition, “course of conduct” means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property; “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim; and “substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- (bb) **Strictly Confidential Resource.** “Strictly Confidential Resource” is defined in Section 3.01(a).
- (cc) **Third-Party Reporter.** A “Third-Party Reporter” is an individual who reports or files a Complaint alleging that another individual is the victim of Sexual Misconduct.
- (dd) **Title IX Coordinator.** The Seminary’s Title IX Coordinator is Michelle Walker, whose office is located on the Richmond Campus in Watts Hall, Room 103. Michelle Walker may be contacted by phone at 804-278-4252 or by email at [mwalker@upsem.edu](mailto:mwalker@upsem.edu). The Title IX Coordinator has ultimate oversight responsibility for handling Title IX–related complaints

and for identifying and addressing any patterns or systemic problems involving Sexual Misconduct. The Title IX Coordinator is available to meet with individuals who are involved with or concerned about issues or Seminary processes, incidents, patterns, or problems related to Sexual Misconduct. All allegations involving Sexual Misconduct should be directed to the Title IX Coordinator.

The Title IX Coordinator will receive regular professional training in resolution practices and procedures. More specifically, the Title IX Coordinator will receive annual training on issues related to Dating Violence, Domestic Violence, Sexual Assault, and Stalking, and how to conduct an impartial and equitable resolution process.

**EXHIBIT C**

**SEXUAL MISCONDUCT COMPLAINT FORM**

Today's date: \_\_\_\_\_

**Information Regarding the Complainant:**

Name of the Complainant: \_\_\_\_\_

Complainant's Phone Number: \_\_\_\_\_

The Complainant is (please check one):       a faculty member                       a student  
    a staff member                                       not affiliated with the Seminary

For faculty, staff, & students, indicate whether  current or  former

**Information Regarding the Respondent:**

Name of the Respondent: \_\_\_\_\_

The Respondent is (please check one):       a faculty member                       a student  
    a staff member                                       not affiliated with the Seminary

For faculty, staff, & students, indicate whether  current or  former

**Information Regarding the Alleged Sexual Misconduct:**

**Time and date of the alleged Sexual Misconduct:** \_\_\_\_\_

**Location of the alleged Sexual Misconduct:**

on campus: \_\_\_\_\_

off campus: \_\_\_\_\_

**Witnesses or third parties who may have information regarding the alleged Sexual Misconduct:**

\_\_\_\_\_  
\_\_\_\_\_

**Please provide a brief description of the alleged Sexual Misconduct:**

*You may wish to consider including, among other things, some or all of the following information in your description: the gender of the parties, the relationship between the parties, whether one or more of the parties were under the influence of alcohol or drugs at the time of the alleged Sexual Misconduct, whether the Respondent used pressure or force (physical or otherwise) in the course of the alleged Sexual Misconduct, and the frequency (if applicable) of the alleged Sexual Misconduct.*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*Please feel free to use the reverse side of this form or separate pages to continue your description, if desired.*

**Signature of the Complainant:** \_\_\_\_\_