

# **Sexual Misconduct Policy**

## **Concordia Theological Seminary, Fort Wayne, Indiana**

### **SEXUAL MISCONDUCT POLICY**

Concordia Theological Seminary (CTSFW), Fort Wayne, Indiana, is committed to providing all members of the Seminary community, including students, faculty, administrators and staff, with an environment where they may pursue their studies, work, careers and social interactions without being subjected to sexual harassment, sexual assaults, domestic violence, dating violence or stalking. As a Christian educational institution of The Lutheran Church—Missouri Synod (LCMS), CTSFW upholds the values taught in the Holy Scriptures, the Lutheran Confessions contained in the *Book of Concord* and the moral law of the Triune God as summarized in Luther's *Small Catechism*. All CTSFW students are expected to follow the "Seminary Regulations and Guidelines for Behavior" as found in the *Student Handbook*.

CTSFW prohibits sexual misconduct perpetrated by students, employees, supervisors or a third party for any reason based upon an individual's race, color, religion, genetic information, gender identity, national origin, ethnicity, sex (including same-sex), pregnancy, childbirth or related medical conditions, age, disability or any other category protected under federal, state or local law (protected class). In Indiana, the following also are a protected class: race, religion, color, sex, disability, national origin, ancestry, off-duty use of tobacco, use of a service animal by an employee with disability, veteran status and age (between 40 and 75).

**Violation of this policy will result in disciplinary action, up to and including immediate discharge.**

If you have any questions about what constitutes sexual misconduct or what behavior is prohibited by this policy, please see the list of definitions below or discuss your questions with the Vice President/Chief Operating Officer, the Dean of Students, your immediate supervisor or one of the contacts listed in this policy.

### **DEFINITIONS**

At a minimum, the term "**harassment**" as used in this policy includes any of the following activities pertaining to an individual's protected class:

**Offensive remarks**, comments, jokes, slurs, threats or verbal conduct

**Offensive pictures**, drawings, photographs, figurines, writings or other graphic images, conduct or communications, including text messages, instant messages, websites, voicemails, social media postings, emails, faxes and copies

**Offensive sexual remarks**, sexual advances or requests for sexual favors regardless of the gender of the individuals involved

**Offensive physical contact** including touching and gestures, regardless of the gender of the individuals involved

**Sexual Assault** is an offense that meets the definition of rape, fondling, incest or statutory rape as used in the FBI's Uniform Crime Reporting (UCR) Program. Sexual offenses are any sexual acts directed against another person, without the consent of the victim, including

instances where the victim is incapable of giving consent.

**Rape:** The penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.

**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 where the victim is incapable of giving consent because of his/her age or his/her temporary or permanent mental incapacity.

**Incest:** Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

**Statutory Rape:** Sexual intercourse with a person who is under the statutory age of consent.

**Domestic Violence:** A felony or misdemeanor crime of violence committed by a current or former spouse or intimate partner of the victim; by a person with whom the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner; by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

**Dating Violence:** 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 reporting party's statement and with consideration of the length of the relationship, the type of relationship and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition, dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

**Stalking:** Engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or suffer substantial emotional distress.

**Consent:** As Christians, we view sexuality to be a gift from God to be used according to His will and purpose. God has forbidden sexual union or intercourse outside of the marriage relationship between one man and one woman. Nonconsensual physical behavior is inappropriate and against God's Word. Consent cannot be coerced or compelled by duress, threat or force. Consent cannot be given by someone who, for any reason, cannot understand the facts, nature, extent or implications of the sexual situation occurring, including, but not limited to, those who are under the legal age of consent, asleep, unconscious, mentally or physically impaired through the effects of drugs or alcohol, or mentally impaired due to an intellectual or other disability. Consent cannot be assumed based on silence, the absence of "no" or "stop," the existence of a prior or current relationship or prior sexual activity

## **RETALIATION**

We also absolutely prohibit retaliation, which includes threatening an individual or taking any adverse action against an individual for reporting a possible violation of this policy or participating in an investigation conducted under this policy.

CTSFW supervisors and managers are covered by this policy and are prohibited from

engaging in any form of harassing, discriminatory or retaliatory conduct. No supervisor or other member of management has the authority to suggest to any applicant or employee that employment or advancement will be affected by the individual entering into (or refusing to enter into) a personal relationship with the supervisor or manager, or for tolerating (or refusing to tolerate) conduct or communication that might violate this policy. Such conduct is a direct violation of this policy.

Even non-employees are covered by this policy. We prohibit harassment, discrimination or retaliation of our employees in connection with their work by non-employees. Immediately report any harassing or discriminating behavior by non-employees, including contractor or subcontractor individuals. Any student or employee who experiences or observes harassment, discrimination or retaliation should report it using the steps listed below.

## **PROCEDURES**

**If you have any concern that this sexual misconduct policy may have been violated by anyone, you must immediately report the matter. Due to the very serious nature of sexual misconduct, you must report your concerns to one of the investigators listed below:**

- 1) **Dean of Students** at 260.452.2152 and 6600 N. Clinton Street, Fort Wayne, IN 46825-4996
- 2) **Academic Dean** at 260.452.2104 and 6600 N. Clinton Street, Fort Wayne, IN 46825-4996
- 3) **Human Resources Representative** at 260.452.2251 and 6600 N. Clinton Street, Fort Wayne, IN 46825-4996
- 4) **Associate Director of Deaconess Formation** at 260.452.2225 and 6600 N. Clinton Street, Fort Wayne, IN 46825-4996

The Controller, as the CTSFW Title IX Coordinator, will also be informed of all reports of sexual misconduct to ensure the effective implementation of this policy.

### **1. Reporting Complaints**

Reports, complaints, problems, grievances and questions regarding sexual misconduct should be reported to one of the investigators listed above. If you are not satisfied with speaking with one of the investigators listed above, then discuss your concern with the Vice President/Chief Operating Officer at 260.452.2269 and 6600 N. Clinton Street, Fort Wayne, IN 46825-4996. All investigators shall receive annual training on these issues including how to conduct an investigation. The complainant shall receive a written statement explaining his or her rights for protective measures and the availability of counseling or mental health services.

### **2. Filing of Reports of Complaints**

The investigator shall prepare a written summary of the reported incident or incidents based upon discussions with the complainant and encourage the complainant to preserve any evidence that may assist in proving that an offense has occurred. The complainant will be asked, but not required, to initial that summary as a means of verifying the facts. Additionally, if the complainant does not wish his or her identity to be revealed to the alleged offender, the investigator and others involved in investigating the complaint will strive to maintain confidentiality including the information on any protective measures

or accommodations provided to the complainant. The complainant will be advised by the investigator of the option of involving local law enforcement or not, as well as the option to provide assistance through CTSFW Public Safety in notifying local law enforcement. The confidentiality of the complainant will be protected as well as the complainant's personally identifying information to the extent that maintaining confidentiality would not impair the investigation or the institution's ability to provide protective measures.

### **3. Action Pending Investigation of a Complaint**

Upon receipt of a complaint the investigator, if the alleged offender is a Seminary employee, will notify the supervisor of the alleged offender or the Department Chair, in the case of a faculty member. These persons should be notified that a complaint has been received and will be investigated in a confidential manner. Depending upon the seriousness of the complaint, interim measures, including suspension of the alleged offender from work with pay, or from attendance in class, if determined by the investigator to be appropriate, may be taken before the complaint is fully investigated. All persons notified will be asked to maintain confidentiality. In addition to the above temporary actions, the faculty, staff and students of CTSFW shall comply with any reporting and other requirements of federal, state, and local laws and regulations.

### **4. Investigation of Complaint**

The investigator will examine the complaint by questioning the alleged offender and any witnesses identified by the complainant. Both the complainant and the alleged offender will have equal opportunities to have others present when questioned, including an advisor of their choice. After a thorough investigation, based upon the preponderance of evidence, the investigator will prepare a written report stating the investigator's conclusions. That report will include the complainant's name, a copy of the complaint, the names of any witnesses and their testimony, the name of the alleged offender and the investigator's ultimate determination and recommended disposition of the complaint, including any corrective action. The results of the investigation will be shared in writing with both the complainant and the alleged offender. The investigation shall be completed within a timely manner (e.g., 60 days).

### **5. Action on Investigative Findings**

If the investigation substantiates the complaint, corrective action will be taken. This may include, but is not limited to warning, reprimand, expulsion, dismissal, demotion or transfer of the offender, or a disciplinary notice in the personnel or student file of the offender. CTSFW will provide written notification to the complainant regarding options for available counseling and requesting a change in academic situation, living situation, transportation situation, working situation or protective measures, if they are reasonably available, regardless of whether a crime was reported to local law enforcement. Prior to the implementation of any such corrective action, the offender will be given the opportunity to rebut the investigation findings in an interview conducted by the investigator, and which also may include the Vice President/Chief Operating Officer, Dean of Students, the Academic Dean and the supervisor of the offender, if an employee. In addition, any corrective action shall be taken only following hearing and appeals procedures that apply to the individual offender. If the results of the investigation do not substantiate the complaint, both the complainant and

the alleged offender will be so advised. If the complainant(s) or the accused believes procedural errors have occurred during the formal procedures, an appeal may be made to the President of CTSFW, whose decision will be final. False or groundless accusations may result in disciplinary actions.

**6. Recording of Investigative Materials**

The personnel or student file of the alleged offender will state that an investigation was made and indicate the final outcome of the investigation. In addition, a confidential file shall be established for every sexual misconduct complaint made. It will include:

- a. the complainant's name, a copy of the complaint as described by the complainant, the names of witnesses and their testimony and the name of the alleged offender;
- b. a copy of the Investigative Report and determination of fact and recommendations made; and
- c. an indication of the disposition of the complaint, including any appeal process findings and disposition.

The Seminary will take such actions as it deems appropriate to prevent, correct and if necessary, discipline behavior which violates this policy. All members of the Seminary community at all levels are expected to cooperate in the investigative procedures. Any person within the community who conceals information or knowingly provides false or misleading information will be subject to disciplinary action. The determination by law enforcement whether or not to prosecute an offender or the outcome of a criminal proceeding does not determine whether a violation of Seminary policy has occurred. Records of Seminary proceedings may be subpoenaed for a criminal prosecution.

You will not be penalized or retaliated against for reporting sexual misconduct or other actions that you believe may violate this policy. Persons who violate this or any other Seminary policy are subject to discipline, up to and including discharge. We cannot resolve a potential policy violation unless we know about it. You are responsible for reporting possible policy violations to us so that we can take appropriate actions to address your concerns.