Luther College
Interim Sexual Harassment Policy
Title IX POLICY: Sexual Harassment

Policy Statement
Luther College is committed to creating and maintaining a safe and healthy environment where all members of its community—students, faculty, staff, and visitors—are treated with respect and dignity. Therefore, the College will not tolerate sexual harassment in any form. Sexual harassment is not only an act against an individual; it is also an act that affects the entire College community. Acts of sexual harassment are inconsistent with our educational mission.

1. Glossary

- **Actual Knowledge** means notice of sexual harassment or allegations of sexual harassment to the Title IX Coordinator or any Official with Authority of the College.

- **Advisor** means a person chosen by a party, or appointed by the College only if a party does not have an advisor at hearing, to accompany the party to meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if any.

- **Alternative Resolution** is an *Informal Process* in which the college uses voluntary informal procedures such as shuttle negotiations or restorative practices to reach resolution.

- **Campus Appeal Board** is composed of three members including one faculty member, one student, and the Vice President and Dean for Student Life. The appeals board will consider party appeals in regard to a decision reached by the Hearing Board.

- **Campus Security Authority (CSA)** is an official of the College who has significant responsibility for students and/or campus activities, including but not limited to student housing, student discipline, athletics, and student organizations. CSAs must report all information known about campus-related crimes defined in the Jeanne Clery Act to Campus Safety and Security and/or the Title IX Coordinator. Some of these crimes include Sexual Assault (Rape, Fondling, Incest) and Dating Violence, Domestic Violence, and Stalking). Employees at Luther who are considered a CSA are: Wellness Staff, Student Activities Staff, Athletic Directors, Coaches, Ensemble Directors, and CGL Staff as well as any faculty or staff member who advises a student organization.

- **Complainant** means an individual who is alleged to be the victim of conduct that could constitute sexual harassment. At the time of filing the complaint, a complainant must be participating in or attempting to participate in the education program or activity of the College.

- **Complaint (formal)** means a document filed/signed by a Complainant or signed by the Title IX Coordinator alleging harassment against a Respondent.

- **Confidential Resource** means an employee, person, or entity who by a legal privilege, professional obligation, or otherwise must maintain confidence of communications,
including reports of discrimination or harassment. At Luther College confidential resources are Health Service, Counseling Service, and College Ministries. Confidential resources may report when substantial information is presented as a serious threat to self or others or in situations/cases as required by law.

- **Confidentiality** exists in certain relationships privileged or protected by law, including those who provide services related to medical and clinical care, mental health providers (Health Service), counselors (Counseling Service), and ordained clergy (Campus Ministries). Confidentiality is distinct from privacy (see below).

- **Day** means a business day when the College is in normal operation. The College’s normal hours of operation are Monday-Friday, 8:00-5:00 PM, excluding days when the campus is closed.

- **Education program or activity** means locations, events, or circumstances where the College exercises substantial control over both the Respondent and the context in which the alleged sexual harassment occurs.

- **Employee** refers to any member of the faculty or any regular staff employee, or any temporary staff employee whose primary relationship to the College is one an employee. (This does not include RAs for work-study.)

- **Formal Grievance Process** means a method of formal resolution through a live hearing designated by the College to address conduct that falls under Title IX as described within the policies included below, and which complies with the requirements of 34 CFR Part 106.45.

- **Hearing Board (“Board”)** refers to those who have decision-making and sanctioning authority within the College’s Formal Grievance process. The Board is comprised of faculty, staff and students.

- **Investigator** means a person or persons charged by the College with gathering facts about an alleged violation of this Policy, assessing relevance, synthesizing the evidence, and compiling this information into a final investigation report and file of directly related evidence.

- **Notice of Outcome** a letter stating the conclusion based on the preponderance of evidence standard.

- **Official with Authority** (OWA) means an employee of the College explicitly vested with the responsibility to implement corrective measures for Policy violations on behalf of the College.

- **Parties** are the Complainant(s) and Respondent(s), collectively.

- **Privacy** means that information related to a complaint will be shared with a limited number of Luther College employees who “need to know” in order to assist in the assessment,
investigation, and resolution of the report. Privacy is distinct from confidentiality (see above).

- **Remedies** are post-finding actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the College’s educational program.

- **Report** means that an employee, student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of sexual harassment, and/or retaliatory conduct.

- **Respondent** means an individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment or retaliation.

- **Required Referral** Employees of the College who are not confidential resources and not an OWA or CSA are expected to make “required referrals,” meaning that all non-confidential employees must submit information obtained about known or suspected sexual harassment to the Title IX Coordinator or any other member of the Title IX team. In some situations, the name of the Complainant may not be required, but it would be expected that the employee would share resources with the Complainant as directed by the Title IX Coordinator.

- **Resolution** means the result of an Informal or Formal Grievance Process.

- **Sanction** means a consequence imposed by the College on a Respondent who is found to have violated this policy. Sanctions may be educational or punitive.

- **Sexual Harassment** has the meaning stated at 34 CFR § 106.30 and includes the offenses of quid pro quo, sexual harassment, sexual assault, stalking, and dating violence and domestic violence.

- **Student** includes all persons taking courses at Luther College, either full time or part time. Persons who withdraw or are suspended after allegedly violating the Code of Conduct, who are not officially enrolled for a particular term but who have a continuing relationship with Luther College or who have accepted offers of admission are considered students, as are persons who are living in Luther College residence halls, although not enrolled in this institution.

- **Title IX Coordinator** is the official designated by Luther College to ensure compliance with Title IX and the College’s Title IX program. References to the Coordinator throughout this policy may also encompass a designee of the Coordinator for specific tasks.

- **Title IX Team** refers to the Title IX Coordinator, any deputy coordinators, and any member of the Title IX Process including investigators, chairs, and those coordinating supportive measures.
2. Rationale for Policy

The core purpose of this policy is the prohibition of all forms of sexual harassment, which includes sexual assault, dating, domestic violence, and stalking. Maintaining a safe environment requires that any sexual behavior be consensual. Special emphasis is placed on violence prevention, providing support to those who may have been victimized, fair and equitable report/complaint resolution process, and ensuring enforcement of institutional policy and law. The College seeks to balance the rights, needs, and privacy of those students and employees who may have been victimized, as well as those students or employees who have been accused, while maintaining the health and safety of the campus community.

This policy describes prohibited conduct; identifies resources and support provided to survivors; establishes procedures for reporting alleged incidents; and articulates the College’s commitment to preventing violations and responding appropriately when incidents do occur.

3. Applicable Scope

To establish a procedure for preventing and remediating reports and complaints of sexual harassment, which includes sexual assault, dating violence, domestic violence, and stalking as defined herein, as well as retaliation against an individual for exercising rights under this policy. It is intended to ensure that the College’s policies and procedures related to sexual harassment are interpreted and applied consistently with Title IX, the Clery Act, and other applicable law.

The College’s scope under Title IX is limited to its educational programs or activities, as well as any building owned or controlled by a student organization that is officially recognized by the College, such as a fraternity or sorority. The College’s scope under Title IX is also limited to conduct against a person that occurs in the United States.

Any person may file a complaint alleging sexual harassment against a student or employee of the College. If a report or complaint falls under the College’s scope under Title IX, the College will utilize this policy and the related procedures to respond to claims of sexual harassment and will not proceed under any other College policy or procedure if doing so would interfere with any right or privilege provided to a party under Title IX. If the College determines that a report or complaint does not fall under the College’s scope under Title IX, the College may still take action for such alleged conduct based on the nature of the alleged conduct, including under the College’s Bias Incident, Hate Act, Hate Crime, Discrimination, and Harassment Policy and Procedures. Additionally, if the Respondent is unknown or is not a member of the College’s community, the Title IX Coordinator will assist the Complainant in identifying appropriate campus and local resources and support options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report. Further, even when the Respondent is not a member of the College’s community, supportive measures, remedies, and resources may be accessible to the Complainant by contacting the Title IX Coordinator. In addition, the College may take other actions as appropriate to protect the Complainant against third parties, such as barring individuals from College property and/or events by issuing a No Trespass Order. When the Respondent is enrolled in or employed by another institution, the Title IX Coordinator can assist the
Complainant in liaising with the appropriate individual at that institution, as it may be possible to
allege violations through that institution’s policies. Similarly, the Title IX Coordinator may be able to
coordinate for a student or employee Complainant who experiences discrimination in an externship, study abroad program, or other environment external to the College where sexual harassment or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

All vendors serving the College through third-party contracts are subject to the policies and
procedures of their employers. This includes Sodexo employees who work in Dining Services and Ricoh employees who work in the Mail Center and Document Center.

4. Title IX Coordinator

Kasey Nikkel serves as the Title IX Coordinator and oversees implementation of the College’s policy
on sexual harassment. The Title IX Coordinator has the primary responsibility for coordinating the
College’s efforts related to the intake, investigation, resolution, and implementation of supportive
measures to stop, remediate, and prevent sexual harassment and retaliation prohibited under this
policy.

5. Independence and Conflict-of-Interest

The Title IX Coordinator manages the Title IX Team and acts with independence and authority free
from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under this policy
and these procedures. The members of the Title IX Team are appointed and trained to ensure they
are not biased for or against any party in a specific case, or for or against Complainants and/or
Respondents, generally.

To raise any concern involving bias, misconduct or conflict of interest by the Title IX Coordinator,
contact the Director of Human Resources, Marsha Wenthold, at mwenthold@luther.edu or
(563)387-1415. Concerns of bias, a potential conflict of interest, discrimination, or misconduct by
any other Title IX Team member should be raised with the Title IX Coordinator.

6. Administrative Contact Information

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

Kasey Nikkel
Title IX Coordinator
Human Resources
Main 30
(563) 387-1825
Email: kasey.nikkel@luther.edu
Web: https://www.luther.edu/titleix/
A party may also contact the Assistant Secretary for Civil Rights of the United States Department of Education.

Inquiries may be made externally to:
Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: https://www2.ed.gov/about/offices/list/ocr/index.html

For complaints involving employees: (EEOC).
EEOC Headquarters
131 Main Street, NE
Washington, D.C. 20507
Customer Service Hotline: (800) 669-4000
Email: info@eeoc.gov
Web: https://www.eeoc.gov/

7. Steps to Take Immediately Following Sexual and/or Physical Violence

Many people who experience sexual and/or physical violence do not know where to turn for help or what steps to take. The choices about which options to explore rest with the victim, and those who experience sexual or physical violence should consider the following steps:

1. **Contact local law enforcement** (911). The Title IX Coordinator, Deans of Student Life, or another member of the Title IX Team can assist with contacting law enforcement, but no victim/supervisor is required to contact law enforcement. You can also file a report with Safety and Security by calling (563) 387-2111 (available 24X7).

2. **Seek immediate medical attention.** Those who experience sexual and/or physical violence are strongly encouraged to **seek immediate medical attention** at an area hospital or medical clinic, such as:

   - Winnesheik Medical Center (563) 382-2911
   - Riverview Center (sexual assault advocacy) (563) 380-3332
   - Helping Service (domestic and partner violence advocacy)(563) 387-1720

Please be aware that hospital personnel may be obligated to contact proper authorities regarding reported violence. Although you are not obligated to do so, those who experience sexual and/or physical violence are highly encouraged to take advantage of victim’s services to help understand options for off-campus proceedings and receive counseling.
3. **Preserve Evidence.** In the event of a sexual assault, if at all possible, do not change clothes, shower, bathe, douche, defecate, or urinate prior to seeking medical attention. Emergency room personnel are trained to check for injuries and collect physical evidence. It is important to preserve evidence for the proof of a violation of this Policy or of a crime should you decide to pursue charges through law enforcement. If you have not changed clothes, bring a change of clothes with you to the hospital, if possible. A SANE nurse will likely keep the clothes you are wearing as evidence. Do not disturb the scene—leave all sheets, towels, etc. that may bear information for the police to collect. You should also consider preserving texts, emails, social media posts, or other documentation as evidence for either a College resolution process or law enforcement action.

4. **Confidential Resources.** If a Complainant would like support from confidential resources, the Complainant may speak with:

   **On-Campus Confidential Resources:**
   - Health Service, X1045 located in Larsen Hall
   - Luther College Counseling Service, X1375 located in Larsen Hall
   - Campus Ministries, X1040 located in CFL

   **Off-Campus Confidential Resources:**
   - Winneshiek Medical Center (563) 382-2911 *(SANE exams covered free of charge within 5 days)*
   - Riverview Center (sexual assault advocacy) (563) 380-3332
   - Helping Service (domestic and partner violence advocacy)(563) 387-1720

   **National Confidential Helplines:**
   - National Sexual Assault Helpline (800) 656-HOPE(4673)
   - National Resource Center for Domestic Violence (800) 799-SAFE (7233)
   - The Trevor Project (866) 488-7386

   **Legal Resources:**
   - Iowa Coalition Against Sexual Assault & Domestic Violence (515) 244-7424
   - Iowa Public Defender: (515) 242-6158

   Iowa, through the office of the Crime Victims Assistance Division, recognizes how culture, language, race, trauma, and healing can intersect with victimization. Below you will find a list of cultural specific centers available in our state:

   **Amani Community Services**
   - Services for African American Survivors
   - Crisis Line: (888) 983-2533
   - Office: (319) 232-5660
   - Website: [www.amani-cs.org](http://www.amani-cs.org)

   **Deaf Iowans Against Abuse (DIAA)**
Services for Deaf, Hard of Hearing and Deaf-Blind Survivors
Crisis Line - V/VP: (319) 531-7719
Crisis Line - Text ONLY: (515) 661-4015
Email: help@diaiowa.org
Website: www.diaiowa.org

Latinas Unidas por un Nuevo Amanecer (LUNA)
Bilingual services for Latina/o/x/e survivors.
Office: (515) 271-5060
Crisis Line: (866) 256-7668

Resources for Indigenous Survivors (RISE)
Services for Native women, children, and families
Crisis Line - Toll-Free: (855) 840-7362
Crisis Line - Call or Text: (641) 481-0334
Website: www.meskwaki.org/RISE/

Monsoon Asians & Pacific Islanders in Solidarity
Services for Asian and Pacific Islander survivors
Crisis Line: (866) 881-4641
Iowa City Office: (319) 466-9000
Website: www.monsooniowa.org

Nisaa African Women’s Project
Services for African Immigrants and Refugee communities
Crisis Line: (844) 269-6203
Iowa City Office: (319) 338-7617
Website: www.nisaa-afs.org

All of the above-listed organizations will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in extreme cases of immediacy of threat or danger—or when required to disclose by law or court order.

Luther College Counseling Service (for students) and/or the Employee Assistance Program (for employees) are available to help free of charge and may be consulted on an emergency basis during normal business hours.

8. Reports/Complaints of Sexual Harassment and/or Retaliation to the College

Individuals making a Report or Complaint of sexual harassment and/or retaliation may use any of the following options:
(1) Report, or give verbal notice to, the Title IX Coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address listed for the Title IX Coordinator.

(2) Report online, using the Sexual Violence reporting form. Anonymous reports are accepted but can give rise to a need to investigate. The College tries to provide supportive measures to all Complainants, which is impossible with an anonymous report. Because Reporting carries no obligation to file a formal complaint, and as the College respects Complainant requests not to pursue formal complaints unless clearly unreasonable, a Complainant is encouraged to make a report that allows the College to discuss and/or provide supportive measures.

(3) File a Report with Safety and Security by calling (563) 387-2111 (available 24X7).

(4) File a Formal Complaint with the Title IX Coordinator. A Formal Complaint means a document filed/signed by the Complainant or signed by the Title IX Coordinator alleging a policy violation by a Respondent. A Formal Complaint may be filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information in the section immediately above, or as described in this section. As used in this paragraph, the phrase “document filed by a Complainant” means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the College) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the complaint. If a Formal Complaint is submitted in a form that does not meet this standard, the Title IX Coordinator will contact the Complainant to ensure that it is filed correctly.

9. Interim Supportive Measures

Luther College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual harassment and/or retaliation. Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the College’s education program or activity, including measures designed to protect the safety of all parties or the College’s educational environment, and/or deter sexual harassment, and/or retaliation.

The Title IX Coordinator promptly makes reasonable non-punitive supportive measures available to the parties upon receiving notice or a complaint. The Title IX Coordinator works with the Complainant to ensure that their wishes are taken into account with respect to the supportive measures that are planned and implemented.

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

These actions may include, but are not limited to:
Students Interim Supportive Measures:
Safety
● Mutual No Contact Directive
● Campus Escorts
● Assistance in reporting to law enforcement
● Non-disclosure of campus directory information

Housing-protective measures after individualized analysis
● Assistance in finding alternative on-campus housing
● In an unusual circumstance, permission to reside off campus

Well-being
● Encourage medical attention
  ○ Sexual Assault Nurses Exam is free within 5 days of the incident and does not process through insurance; available at Winneshiek Medical Center
  ○ Health Service offers free STI testing and prophylactics
● Referral to on-campus confidential resources: Health Service, Counseling Service, and College Ministries
● Referral to advocacy services: Riverview Center or Helping Services
● Referral to the Director of Case Management
● Modifications to work schedule, ensemble or practice schedule
● Personal leave of absence or voluntary withdrawal from campus

Academic (Partnered with SASC)
● Faculty notification (not disclosing the nature of the incident)
● Coordination of change in class schedule or section
● Excused absences for circumstances directly related to the harassment such as medical care or meeting with an investigator
● Extended deadlines for assignments or rescheduling exams
● Accessing academic support (e.g., tutoring)
● Arranging for course withdrawals or incomplete(s)
● Assistance or referral to Financial Aid for the preservation of academic scholarships, music scholarships, financial aid awards, or study abroad programs
● Referral to CIES for matters involving student visas

Employee Interim Supportive Measures

Well-being
● Referral to the Employee Assistance Program
● Encouragement to seek medical attention
  ○ Sexual Assault Nurses Exam is free within 5 days of the incident and does not process through insurance; available at Winneshiek Medical Center
● Referral to advocacy services: Riverview Center or Helping Services
● Modification to work schedule
● Leave of absence
Safety

- Mutual No Contact Directive
- Campus Escorts
- Assistance in reporting to law enforcement

No Contact Directives are enforced after an agreement is signed; violations for non-compliance can be processed as disciplinary. For more information see the College policy on No Contact Directives.

In addition, a party may seek an order of protection, “no-contact” order, restraining order, or similar order issued by a criminal or civil process. Individuals interested in seeking a court-issued Order of Protection should contact the Winneshiek County Clerk of Court (Winneshiek County Courthouse, 201 W. Main St., Decorah, IA, (563) 382-0603. If an individual obtains an order of protection from a court in Iowa, the Title IX Coordinator should receive a copy to be aware of any limitations or restrictions and to develop a plan to abide by the court order. The College cannot enforce a violation of a court order, but can assist an individual in contacting law enforcement to report a violation. If any terms of a court order are unclear in their application to the campus environment, it is up to the parties to seek clarification through the court – the College cannot render a legal opinion or give advice other than to develop a plan to reasonably prevent violations of the order.

10a. Emergency Removal (Student)

The Vice President and Dean for Student Life, the Title IX Coordinator, or their designee may issue an emergency removal of a student Respondent upon receiving a report of sexual harassment and prior to the resolution of a Formal Complaint process as a temporary measure, if a Respondent is reasonably believed to pose an immediate threat to the physical health or safety of any student or other member of the Luther Community.

College personnel requested to review and assess risk and provide an individualized analysis of the emergency removal may include but not be limited to: Dean for Student Life, Title IX Coordinator, Associate Dean of Students, Director of Campus Safety and Security, Director of Counseling Service, and/or other Title IX Team Members.

Notice of Emergency Removal

The Student Life Office or Title IX Office will notify the Respondent in writing as soon as possible after being notified of the alleged misconduct. The notice will include:

1. The basis for the temporary emergency removal
2. The process to challenge the decision
3. Appropriate contact information for questions about the terms and conditions of removal such as retrieving property from residential housing, room and board, etc. Appropriate College personnel may be informed when deemed necessary. Personnel may include but not be limited to, student’s faculty, advisor, campus safety and security personnel, residential life personnel, and/or coaches.

Continued Academic Progress
At times and at the discretion of the Vice President and Dean for Student Life or Title IX Coordinator, the student may not be able to access academic or social buildings of the College, during those times the respondent may explore opportunities for alternative coursework. It is the responsibility of the student to contact faculty members for their consideration to work on a continued academic success plan.

**Challenge of the Emergency Removal**
Respondents receiving notice of emergency removal may challenge the decision by meeting with the Vice President and Dean for Student Life or designee and presenting reasons against the emergency removal. Unless otherwise noted, the emergency removal will remain in effect until resolution of the case.

**Student Presence on Campus While Separated from the College**
Students who have been separated from the College through emergency removal, academic dismissal, suspension for disciplinary reasons, or for medical reasons do not have the rights and privileges accorded to full-time enrolled Luther students. Such students are expected to absent themselves from campus and to visit only with permission, given in advance, by the Student Life Office. Failure to abide by this expectation may adversely affect the decision to readmit a student.

**10b. Administrative Leave (employees)**
The Title IX Coordinator, in consultation with Human Resources and/or Academic Dean and consistent with applicable policies, procedures, and/or agreements, may issue an administrative leave for an employee respondent from the employee’s work environment or classroom. Employees may be subject to emergency removal when:
- The employee is a person of interest in a law enforcement investigation involving a criminal sex offense
- The employee is considered a direct threat to self or others, or
- The employee is the subject of an egregious allegation of sexual harassment that impacts the employee’s ability to work effectively.

In most cases involving employees, the College will initiate an investigation into the allegation to determine relevant facts of the case prior to an issuance of an emergency removal. However, for more egregious allegations the College may act on the administrative withdrawal based on the initial report as a temporary measure. In most cases, the employee will be placed on paid leave.

**Employee Presence on Campus While Separated from the College**
Employees who have been separated from the College for administrative leave or disciplinary reasons do not have the rights and privileges of other employees. Luther College may restrict access to the employee’s Luther email, networks, or other College property. Such employees are expected to absent themselves from campus and to visit only with permission, given in advance, by the Human Resources office. Failure to abide by this expectation may be treated as insubordination.

**11. Promptness**
All reports of sexual harassment are acted upon promptly by the College once it has received actual knowledge or a Formal Complaint. Typically, complaints can take 60-90 business days from receipt of a Formal Complaint to resolve. There may be exceptions and extenuating circumstances that could cause a resolution to take longer, but the College will avoid all undue delays within its control.

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

12. Privacy, Parental Notification and FERPA

The Family Educational Rights and Privacy Act (FERPA) is a federal law protecting the privacy of student education records.

As a college, it is our philosophy that student record management is consistent with FERPA guidelines, so we treat the students as the people who are primarily privileged to authorize the release of their student record information. Consistent with FERPA, there are certain circumstances (see below) when with or without consent of the student the College may connect with parents or guardians. In most cases, the college will only share information when the student has signed a release form specifying circumstances related to Title IX be shared. Circumstances under FERPA in which a situation may be disclosed with or without consent:

- Threat to the safety of self or others, or
- Significant concern for health requiring further medical evaluation

For circumstances involving notification, parents/guardians may be notified by phone or in writing. Students who are financially independent (confirmed with the Financial Aid Office) may be considered exempt from parent/guardian notification.

Overall, the College will keep confidential the identity of any individual who has made a report or complaint of sexual harassment, or has been identified as the perpetrator or respondent to any such report or complaint, or is a witness to any complaint or investigation, except as required to carry out the purposes of this policy (including the conduct of any investigation, hearing, or judicial proceeding), applicable law, or as permitted by FERPA. The college believes incidents relating to sexual harassment are of a private nature and will generally not disclose information to individuals not directly involved with or without a responsibility finding. At times, may share with other appropriate officials on a need to know basis or legitimate educational interest, consistent with FERPA and/or to carry out the provisions of this policy. This typically includes the Student Life office, Title IX office, Student Academic Support Center (academic supportive measures only) Director and Assistant Director of Campus Safety and Security, and, if necessary, the Threat Assessment Team. The circle of people with this knowledge will be kept as tight as possible to preserve the parties’ privacy.

The privacy of employee records will be protected in accordance with Human Resources policies. Only a small group of officials who need to know will typically be told about the complaint,
including but not limited to: Human Resources office, Title IX office, the appropriate vice president, Campus Safety and Security, and, if necessary, the Threat Assessment Team. The circle of people with this knowledge will be kept as tight as possible to preserve the parties’ privacy. An employee’s supervisor is not typically notified of circumstances related to Title IX.

13. **Time Limits on Reporting**

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

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

When a report/complaint is affected by significant time delay, the College will typically apply the policy expectations in place at the time of the alleged misconduct and the procedures in place at the time of report/complaint.

14. **Online Harassment and Misconduct**

The policies of Luther College are written and interpreted broadly to include online and cyber manifestations of any of the behaviors prohibited below, when those behaviors occur in an educational program or activity, for instance in using the College’s networks, technology, or equipment.

While the College may not control websites, social media, and other venues in which harassing communications are made, when such communications are reported to the College, it will engage in a variety of means to attempt to address and mitigate the effects, whether under this policy or otherwise.

Members of the community are encouraged to be good digital citizens and to refrain from online misconduct, such as feeding anonymous gossip sites, sharing inappropriate content via social or online media, unwelcome sexting, revenge porn, breaches of privacy, or otherwise using the ease of transmission and/or anonymity of the Internet or other technology to harm another member of the College’s community. For more information please review the [Social Media Policy](#).

15. **Definition of Prohibited Sexual Harassment**

   a. **Sexual Harassment Defined**

   Consistent with Title IX, Luther College has adopted the following definition of Sexual Harassment in order to address the unique environment of an academic community, which consists not only of employer and employees, but of students as well.

   Acts of sexual harassment are defined as being committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity of those involved.
Sexual Harassment, as an umbrella category, includes the offenses below:

1) Quid Pro Quo:
   a. an employee of the College
   b. conditions the provision of an aid, benefit, or service of the College,
   c. on an individual’s participation in unwelcome sexual conduct; and/or

2) Hostile Environment:
   a. unwelcome conduct,
   b. on the basis of sex,
   c. determined to be so severe, and
   d. pervasive, and,
   e. objectively offensive,
   f. that it effectively denies a person equal access to the College’s educational program or activity.

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

3) Sexual assault, defined as:
   a) Rape:
      i) 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,
      ii) without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent, whether due to incapacity or due to being below the statutory age of consent.
   b) Fondling:
      i) The touching of the private body parts of another person (buttocks, groin, breasts),
      ii) for the purpose of sexual gratification,
      iii) without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.
   c) Incest:
      i) Sexual intercourse,
      ii) between persons who are related to each other within the degrees wherein marriage is prohibited by law.

4) Dating Violence: Violence committed by a person who has been in a romantic or intimate relationship with another. 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. Violence can occur in relationships regardless of gender.
5) Domestic Violence: Felony or misdemeanor crime of violence committed by:
   i. A current or former spouse or intimate partner of the victim
   ii. A person with whom the victim shares a child in common
   iii. A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner
   iv. Person similarly situated to a spouse of the victim under the laws of the State of Iowa or the jurisdiction in which the incident reported occurred and
   v. Any other person against an adult or youth victim who is protected from that person’s act under the laws of the State of Iowa

6) Stalking, defined as:
   a. engaging in a course of conduct,
   b. towards another person, that would cause a reasonable person to
      i. fear bodily injury to themselves or another; or
      ii. Suffer substantial emotional distress.

For the purposes of this definition—
   (i) A course of conduct means two or more acts,
   (ii) Reasonable person means a reasonable person under similar circumstances, and
   (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

b. Consent, Incapacitation, Coercion, and Force

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

Consent is:
   ● knowing, and
   ● voluntary, and
   ● clear permission
   ● by word or action
   ● to engage in each specific sexual activity.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction, but a display of clear communication (word or action) is necessary. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. A person can withdraw consent at any time during sexual activity by expressing in words or actions that they no longer want the act to continue, and, if that happens, the other person must stop immediately.
Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Past consent to engage in sexual activity cannot be presumed to be consent to engage in sexual activity in the future. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced. A current or previous intimate relationship is not sufficient to constitute consent.

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

Consent in relationships must also be considered in context. When parties consent to BDSM (bondage, discipline/dominance, submission/sadism, masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the College’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to the policy that assumes non-kink relationships as a default.

Consent is not effective if a party is incapacitated, or it results from the use of fraud, force, threats, intimidation, or coercion.

**Incapacitation:**

Incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction). Incapacitation can result from the use of alcohol or other controlled substances; disoriented, helpless, asleep, or unconscious; or from mental or physical incapacity. Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

It is a defense to a sexual harassment policy violation that the Respondent neither knew nor should have known the Complainant to be incapacitated. “Should have known” is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment. It is not an excuse that the individual respondent of sexual harassment was intoxicated and, therefore, did not realize the incapacity of the other.

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

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

**c. Expectations Regarding Unethical Relationships**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as faculty member or staff member and student or supervisor and employee). These relationships may, in reality, be less consensual than perceived by the individual whose position confers power or authority. Similarly, the relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Circumstances may change, and conduct that was once welcome may, at some point in the relationship, become unwelcome.

Even when both parties have initially consented to romantic or sexual involvement, the possibility of a later allegation of a relevant Policy violation still exists. Luther College does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of the College. However, for the personal protection of members of this community, relationships in which power differentials are inherent (e.g., faculty-student, staff-student) are strongly discouraged. They may also violate standards of professionalism and/or professional ethics.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or otherwise evaluative role over the other party are inherently problematic and employees are required to consider seriously the exploitative possibilities within such relationships. Therefore, persons with direct supervisory or otherwise evaluative responsibilities who are involved in such relationships must bring these relationships to the timely attention of Human Resources and/or the Title IX Coordinator. The existence of this type of relationship will likely result in removing the supervisory or evaluative responsibilities from the employee or shifting a party from being supervised or evaluated by someone with whom they have established a consensual relationship. When an affected relationship existed prior to the adoption of this policy, the duty to notify Human Resources still pertains.

**16. Definition of Prohibited Retaliation**

Retaliation occurs when an individual harasses or intimidates another person because that other person filed a complaint, participated in the resolution process of a violation of this Policy, supported a Complainant or Respondent, and/or acted in good faith to oppose conduct that constitutes a violation of this Policy. Harassment or intimidation includes but is not limited to threats or actual violence against the person or the person’s property, adverse educational or employment consequences, ridicule, taunting, bullying, or ostracism. Retaliation is prohibited under this Policy and is expressly prohibited by Title VII, Title IX, and other state and federal laws.
Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a resolution proceeding under this policy and procedure does not constitute retaliation, provided that a determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith.

Acts of alleged retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Luther College is prepared to take appropriate steps to protect individuals who fear that they may be subjected to retaliation.

17. Employee Duty to Refer

Luther College employees are expected to report actual or suspected sexual harassment to appropriate officials immediately.

Luther College Safety and Security Staff, Deans from Student Life, Human Resources Staff, President’s Cabinet, Deputy Title IX Coordinators, and Residence Life Staff (including Resident Assistants) must report and share all information known to the Title IX Office as they are considered an Official with Authority. OWAs must disclose all information about sexual harassment that they know, including the identities of the parties, so they are not a confidential resource.

All other employees of Luther College are obligated to provide a Required Referral. Required Referrals help ensure the college keeps the campus safe by allowing the Title IX Office to identify patterns of behavior by individuals in our community and/or other concerning behavior that needs to be addressed and remedied. Disclosing to the Title IX Coordinator the names and details of those involved in an incident allows the College to share all the options in greater detail tailored to the individual needs of the Complainant.

Additionally, at the request of a Complainant, a report may be given by a non-confidential employee to the Title IX Coordinator anonymously, without identification of the parties. The employee making the Required Referral may not remain anonymous. The employee must consult with the Title IX Coordinator on that assessment without revealing personally identifiable information. In situations where the Title IX Coordinator believes that a compelling threat to health or safety could exist, the Required Referral employee must reveal the names of the parties. The employee providing the Required Referral must provide an electronic copy of a Complainant Packet to the anonymous Complainant to share supportive measures, resources, and options as guided by the Title IX Coordinator. If the employee is uncomfortable or unwilling to provide that service then the employee must ensure that students or employees who experience sexual harassment are put in contact with the people best equipped to help them, such as the Title IX Coordinator, by disclosing the name of the parties. Anonymous notice will be investigated by the College to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided. However, anonymous notice typically limits the College’s ability to investigate, respond, and provide remedies, depending on what information is shared.

Generally, disclosures in climate surveys, anonymous social media posts, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide reports that must be referred to the Title IX Coordinator by employees unless the Complainant clearly indicates that they desire a report to be made or a seek a specific response from the College.
Failure of not reporting to the Title IX Office, as described above in this section, to report an incident of sexual harassment of which they become aware is a violation of College Policy and can be subject to disciplinary action for insubordination.

18. When a Complainant Does Not Wish to Proceed

If a Complainant does not wish for their name to be shared, does not wish for an investigation to take place, is unresponsive to outreach from Title IX Coordinator or Deputy Title IX Coordinator or does not want a Formal Complaint to be pursued, they may make a request for confidentiality or not to proceed under a Formal Complaint to the Title IX Coordinator, who will evaluate that request in light of the duty to ensure the safety of the campus and to comply with state or federal law.

The Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Title IX Coordinator may sign a Formal Complaint to initiate a grievance process when it is not clearly unreasonable to do so. In making this decision, the Title IX Coordinator must consider the effect that non-participation by the Complainant may have on the availability of evidence and the College’s ability to pursue a Formal Grievance Process fairly and effectively.

When the Title IX Coordinator executes the written complaint, they do not become the Complainant. The Complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy. The Complainant retains all rights of a Complainant under this Policy irrespective of their level of participation.

In cases in which the Complainant requests confidentiality/no formal action and the circumstances allow the College to honor that request, the College will offer supportive measures, and remedies to the Complainant and the community, but will not otherwise pursue formal action.

If the Complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date. Upon making a complaint, a Complainant has the right and can expect, to have allegations taken seriously by the College, and to have the incidents investigated and properly resolved through these procedures.

19. Federal Timely Warning Obligations

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

The College will ensure that a Complainant’s name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.
20. False Allegations and Evidence

Deliberately false and/or malicious accusations under this policy, as opposed to allegations which, even if erroneous, are made in good faith, are a serious offense and will be subject to appropriate disciplinary action.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence after being directed to preserve such evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under College policy.

21. Amnesty for Parties and Witnesses

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

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

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

Amnesty may not apply to more serious allegations such as physical abuse of another or illicit drug distribution. The decision not to offer amnesty is based on neither sex nor gender, but on the fact that collateral misconduct is typically addressed for all students within a progressive discipline system, and the rationale for amnesty – the incentive to report serious misconduct.

Students: Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underaged student who has been drinking or using marijuana might hesitate to help take an individual who has experienced sexual misconduct to College officials.)

The College maintains a policy of amnesty for students who offer help to others in need. While policy violations cannot be overlooked, the College may provide the student with referrals for assessments and/or treatment recommendations with no official disciplinary finding, rather than punitive sanctions, to those who offer their assistance to students to support their well-being.

Employees: Sometimes, employees are hesitant to report harassment or discrimination they have experienced for fear that they may get in trouble themselves. For example, an employee who has violated the consensual relationship policy and is then assaulted in the course of that relationship might hesitate to report the incident to College officials.
The College may, at its discretion, offer employee Complainants amnesty from such policy violations (typically more minor policy violations) related to the incident. Amnesty may also be granted to Respondents and witnesses on a case-by-case basis.

22. Federal Statistical Reporting Obligations

Reports may be required to document this report for general Clery Act statistics depending on the type of incident and general location (on or off campus or in the surrounding area). The personally identifiable information of parties would remain anonymous for these statistical purposes for the Annual Security Report and daily campus crime log.
RESOLUTION PROCESS FOR ALLEGED VIOLATIONS OF THE POLICY ON SEXUAL HARASSMENT
(KNOWN AS FORMAL PROCESS)

1. Overview

Luther College will act on any Formal Complaint of a violation of the policy on Sexual Harassment received by the Title IX Coordinator or any other Official with Authority that falls within the scope of Title IX by applying these procedures, known as “Formal Grievance Process.”

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

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

Sodexo, Ricoh, or other contracted employees are subject to the terms of their agreements/employees’ rights to the extent those agreements do not conflict with federal or state compliance obligations.

For details relating to disability accommodations in the College’s resolution process, please contact the Title IX Coordinator. At times, the Title IX Coordinator will need to consult with the Coordinator of Disability Services or Human Resources.

2. Report or Complaint

When the College receives a report of potential discrimination or harassment, in most cases outreach will be done by the Title IX Coordinator with the Complainant to identify reporting options (discussed in another section) within and outside the College and to offer supportive measures.

Upon receipt of a formal complaint of a violation of this policy, the Title IX Coordinator will promptly conduct an initial assessment to determine the next steps the College needs to take. The College will initiate at least one of three responses:

1. Provide the Complainant with assistance and support only, based on the Complainant’s request that the College not take action, where that request is not clearly unreasonable.
2. Determine that the circumstances satisfy the jurisdictional requirements of Title IX at 34 CFR 106.45 and resolve the complaint under this Policy’s informal or formal resolution procedures.
3. Determine that the circumstances do not satisfy the jurisdictional requirements of Title IX at 34 CFR 106.45 and dismiss the complaint under Title IX, but resolve the complaint under other policies and procedures, as applicable.

The investigation and grievance process will determine whether or not the Policy has been violated. If so, the College will promptly implement effective remedies designed to ensure that it is not deliberately indifferent to sexual harassment, its potential recurrence, or effects.
a. Dismissal (Mandatory and Discretionary)

The College must dismiss a formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

1) At the time of filing the formal Complaint, a Complainant is not participating in or attempting to participate in the education program or activity of the College; and/or

2) The conduct alleged in the formal Complaint would not constitute sexual harassment as defined in the Policy above, even if proven; and/or

3) The conduct alleged did not occur in an educational program or activity of the College, nor did it occur in any building owned or controlled by a student organization that is officially recognized by the College; and/or

4) The conduct did not occur against a person in the United States.

The College may dismiss a formal complaint or any allegations therein if, at any time during the investigation or hearing:

1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal Complaint or any allegations therein; or

2) The Respondent is no longer enrolled in or employed by the College; or

3) Specific circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal Complaint or allegations therein.

Upon dismissing the Complaint, the College will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the parties. This dismissal decision is appealable by any party. A Complainant who decides to withdraw a Complaint may later request to reinstate or refile it.

Dismissing a complaint under Title IX may be procedural, and does not limit the College’s authority to address a complaint with an appropriate process and remedies. If the Title IX Coordinator determines that the misconduct alleged does not fall within the scope of Title IX, other policies such as the College’s Bias Incident, Hate Act, Hate Crime, Discrimination, and Harassment Policy may apply and the matter may be referred for resolution.

3. Counterclaims

The College permits the filing of counterclaims but uses an initial assessment, described above, to assess whether the allegations in the counterclaim are made in good faith. The College is obligated to ensure that the grievance process is not abused for retaliatory purposes. Counterclaims by the Respondent may be made in good faith, but are, on occasion, also made for purposes of retaliation. Counterclaims made with retaliatory intent will not be permitted.
Counterclaims determined to have been reported in good faith will be processed using the grievance procedures below. Investigation of such claims may take place after resolution of the underlying initial allegation, in which case a delay may occur.

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

4. Right to an Advisor

The parties may each have an Advisor of their choice, at their expense, present with them for all meetings and interviews within the resolution process, if they so choose. The parties may select whoever they wish to serve as their Advisor. The party should choose an Advisor who can be consistently available to attend meetings during business hours. The College will attempt to schedule meetings at mutually convenient times, but cannot unduly delay the process to accommodate an Advisor with limited availability.

The College may permit parties to have one additional support Advisor in the waiting room for a hearing, such as an advocate, upon special request to the Title IX Coordinator 5 business days in advance of the hearing. The decision to grant this request is at the sole discretion of the Title IX Coordinator and will be granted equitably to all parties should each party request it.

a. Who Can Serve as an Advisor

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

The Title IX Coordinator will also offer to assign an Advisor for any party if the party so chooses. If the parties choose an Advisor from the pool available from the College, the Advisor will be trained by the College and be familiar with the College’s resolution process.

If the parties choose an Advisor from outside the pool of those identified by the College, the Advisor may not have been trained by the College and may not be familiar with the College’s policies and procedures.

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

b. Advisors in Hearings/College-Appointed Advisor

Under U.S. Department of Education regulations applicable to Title IX, the opportunity to conduct cross-examination is provided during the hearing. Cross-examination must be conducted by the parties’ Advisors; the parties are not permitted to directly cross-examine each other or any witnesses. If a party does not have an Advisor for a hearing, the College will appoint an Advisor for the limited purpose of conducting any cross-examination.
A party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the party’s Advisor will not conduct cross-examination, the College will dismiss that Advisor and appoint one. If the College must appoint an Advisor, the selection of the Advisor will be in the College’s sole discretion.

c. Advisor’s Role

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

d. Pre-Interview Meetings

All Advisors must sign a Luther College Advisor Agreement Form prior to serving for a case as to understand the role and the College’s policies and procedures. Advisors are not able to speak for the parties during the investigative process.

e. Advisor Violations of College Policy

All Advisors are subject to the same College policies and procedures, whether they are attorneys or not. Advisors are expected to advise their party without disrupting proceedings. Advisors should not address College officials in a meeting or interview. The Advisor may not make a presentation or represent their party during any meeting or proceeding and may not speak on behalf of the party to the Investigator(s) or other Luther College Hearing Board members except during a hearing proceeding and specifically to conduct cross-examination.

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

If an Advisor disrupts or otherwise fails to respect the limits of the Advisor role, the meeting will be ended or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor’s non-compliance and future role.

f. Expectations of an Advisor

The College generally expects an Advisor to adjust their schedule to allow them to attend the College meetings when planned, but may change scheduled meetings to accommodate an Advisor’s inability to attend, if doing so does not cause an unreasonable delay and is still completed with typical business hours. The College may also make reasonable provisions to allow an Advisor who cannot attend in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.
g. Sharing Information with the Advisor

The College expects that the parties may wish to have the College share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor, but the Advisor will be under the same expectations of privacy as the party. Doing so may help the parties participate more meaningfully in the resolution process.

These records may not be shared with third parties, disclosed publicly, or used for purposes not explicitly authorized by the College. The College may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by the College’s privacy expectations. The College may require both parties and their Advisors to enter into a written agreement prohibiting the use or dissemination of evidence for any purpose other than those directly related to the parties’ participation in the resolution process.

5. Resolution Processes

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings in accordance with the College policy. The College asks for discretion in minimizing the sharing of information so as to respect the sensitivity of this matter for all parties.

a. Alternative Resolution

Situations involving sexual misconduct are unique and present myriad difficulties for the students involved. Although Luther College believes that the formal grievance process is best equipped to address sexual misconduct within our community, the college recognizes that in some cases the parties’ needs may be best met by more flexible processes. Accordingly, the college has established a structured Alternative Resolution model that focuses on remedies, support, and accountability outside of the traditional grievance process as an additional option for Complainants. The Alternative Resolution is designed to eliminate the prohibited behavior, prevent its recurrence, and remedy its effects in a manner that meets the needs of the Complainant while still maintaining the safety of the overall campus community.

Alternative Resolution is not appropriate in every case. Both parties must participate voluntarily in hopes of reaching a resolution agreement. Luther College will never pressure a Complainant or Respondent to participate in an Alternative Resolution or to agree to any particular outcome. To initiate Informal Resolution, a Complainant needs to submit a Formal Complaint with the Title IX Coordinator. If a Respondent wishes to initiate alternative resolution, they should notify the Title IX Coordinator. Complaints in which the Respondent is an employee may not be resolved with Informal Resolution.

In situations that present elevated risk to the campus community, the College may proceed with a formal conduct process even if the Complainant would prefer an alternative resolution. Those situations may include but not limited to:

- weapon was used or threatened
- escalating behavior (such as relationship violence)
- premeditated predatory behavior
• minor (or other vulnerable adults) involved
• repeated pattern of behavior that suggests likelihood of future policy violations

Additionally, the Title IX Coordinator may consider the following factors to assess whether Alternative Resolution is appropriate, or which form of Alternative Resolution may be most successful for the parties:

• The parties’ motivation to participate
• Civility of the parties
• Emotional investment/intelligence of the parties
• Rationality of the parties
• Goals of the parties
• Willingness of the parties to participate in “good faith”
• Adequate resources to invest in Alternative Resolution (time, staff, etc.)

The Title IX Coordinator must endorse the process itself and approve the agreed-upon outcome. Informal Resolution can include two different approaches:

• When the parties agree to resolve the matter through an alternative resolution mechanism including shuttle negotiation;
• When the Respondent acknowledges causing harm and desires to participate in the resolution process;

To initiate Alternative Resolution, a Complainant needs to submit a formal Complaint. If a Respondent wishes to initiate Alternative Resolution, they should contact the Title IX Coordinator to so indicate.

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

Participation in either format of Alternative Resolution is voluntary, so both parties have the right to terminate the alternative resolution at any time. If the Alternative Resolution fails, the Complainant may elect to revert the case back to an investigation phase of a formal grievance process. If any information is shared, discovered, or documented by the facilitator during an alternative resolution, that information will not be shared with the investigator if a formal process is initiated.

Participation in this process does not constitute a responsible finding of a policy violation and therefore is not reflected on a student’s disciplinary record. Alternative Resolution often focuses on active accountability when addressing harm caused.

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

The College will obtain voluntary, written confirmation of the Alternative Resolution Agreement Form that all parties wish to resolve the matter through Alternative Resolution before proceeding and will not pressure the parties to participate.

If the Alternative Resolution is successful, the Title IX Coordinator will review the terms of the agreement and will draft a formal document confirming the agreement. Both parties will sign the agreement and will receive a copy of it. A resolution agreement is not final until both parties and the Title IX Coordinator have signed the formal agreement document. Results of Complaints resolved by Informal Resolution or Alternative Resolution are not appealable, and the parties will no longer have recourse to the formal student conduct process for the incident.

Alternative Resolution agreements are binding on both parties. If either party fails to adhere to and meet the expectations of the alternative resolution agreement, they may be charged with Failure to Comply with directions of a Luther College official(s) as outlined in the Code of Conduct.

If the Respondent is found responsible for any violations of this policy in the future, information regarding the prior incident processed through the alternative resolution may be used in the sanctioning phase for the subsequent report. The Title IX Office will be responsible for maintaining records of all reports and conduct referred for the Alternative Resolution.

1. **Restorative Justice Resolution**

Restorative justice is a process in which the Respondent acknowledges harm caused by their actions; to the best of their ability, repairs the harm they caused to harmed parties and the community; and works to rebuild trust by showing an understanding of the harm, addressing personal issues, and building positive social connections. Restorative justice involves direct interactions between the parties involved (and others impacted) and is only appropriate in situations in which the Respondent is willing to take active accountability for their actions.

2. **Shuttle Negotiated Resolution**

Shuttle negotiation is a structured negotiation process in which a college facilitator, usually the Title IX Coordinator or case manager appointed by the Title IX Coordinator, helps the parties reach an agreement that meets their needs. Shuttle negotiation does not involve any direct interaction between the parties and is most effective in situations in which the Complainant has specific needs.

To determine whether a shuttle negotiation would be appropriate, the facilitator will meet with each party individually. Through these discussions, the facilitator will develop a list of topics over which negotiations will take place and attempt to identify any irreconcilable conflicts between the parties. Topics for discussion will vary based on the individual situation, but possibilities include academic course enrollments, residence hall selection, student work-study assignments, no-contact directives, an apology letter, and whether a student conduct policy violation will be assessed.
If the parties and the facilitator separately agree that a shuttle negotiation is likely to be productive, the facilitator will initiate the negotiation. The Complainant and Respondent, each with an Advisor of their choice if desired, will be assigned to separate rooms. The facilitator will pass back and forth between the parties, discussing their needs and concerns. If there are issues that prevent the parties from participating in negotiations this way, the facilitator may instead choose to conduct the negotiation by telephone, video conference, or other means.

If the parties are able to come to terms on an agreement, the facilitator will document those terms and confirm them with the parties. Once the parties sign the document, the resolution is final.

5. Title IX Personnel

The Formal Grievance Process relies on Title IX Personnel to carry out the process.

   a. Title IX Personnel

Title IX Personnel are trained annually, and can serve in the following roles, at the direction of the Title IX Coordinator:

   - To provide appropriate intake of and initial guidance pertaining to complaints
   - To act as an Advisor to the parties
   - To serve in a facilitation role in informal resolution or Alternative Resolution if appropriately trained in appropriate resolution modalities
   - To perform or assist with an initial assessment
   - To investigate complaints
   - To serve as a hearing chair (process administrator and facilitator, non-voting)
   - To serve as the Luther College Hearing Board regarding the complaint
   - To serve as a Campus Appeal Board members

   b. Title IX Team

While the Title IX Team is typically trained in a variety of skill sets and can rotate among the different roles listed above in different cases, the College can also designate permanent roles for individuals in the team, using others as substitutes or to provide greater depth of experience when necessary. This process of role assignment may be the result of particular skills, aptitudes, or talents identified in members of the team that make them best suited to particular roles.

   c. Title IX Team, Chairs, Employee Grievance Investigators, Hearing Board Members and Appeal Board Members

These individuals receive annual training based on their respective roles on the topics of 1) impartiality, 2) avoiding prejudgment of facts at issue, 3) conflicts of interest and bias, 4) the College’s resolution processes, 5) issues of relevance and evidence, 6) the scope of the College’s educational programs and activities, 7) types of harassment and discrimination; and (8) how to conduct an investigation and hearing process that protects the rights, well-being, and safety of the
parties, provides an equitable process for all parties involved, and promotes accountability. The materials used to train these individuals are publicly posted here: https://www.luther.edu/titleix/training-materials/  


Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints two investigators to conduct the investigation, usually within two (2) business days of determining that an investigation should proceed.

The Title IX Coordinator will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them if desired. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- The identity of the involved parties (if known)
- The misconduct being alleged
- The date and location of the alleged incident(s) (if known)
- The policies implicated
- A statement that the College presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- Information on the right to an Advisor of their choosing
- A statement informing the parties that the College’s Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process
- Detail on how the party may request disability accommodations during the interview process and formal grievance process
- The name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have
- The parties’ rights to review and comment on investigative evidence.

Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges. Parties will also be provided advance notice in writing of the date, time, location, participants, and purpose of any interview, hearing, or meeting in the investigation and resolution process.

7. Resolution Timeline

The College will make a good faith effort to complete the resolution process within sixty-to-ninety (60-90) business days, including appeal. This timeline can be extended as necessary for appropriate cause by the Title IX Coordinator, who will provide notice and rationale for any extensions or delays to the parties and an estimate of how much additional time will be needed to complete the process.
The investigation phase of the process is completed expeditiously, normally within thirty (30) business days, though some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability, and volume of witnesses, law enforcement involvement, etc.

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

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

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

8. Criminal Process

The College Formal Grievance Process and the criminal process are not mutually exclusive. This means that an individual may pursue both complaint avenues at the same time, and students and employees are encouraged to do so for any act of sexual misconduct that may constitute a crime. If appropriate, the College may postpone temporarily its proceedings so as not to interfere with law enforcement.

The College will produce records in response to a lawfully issued subpoena or court order without the student or employee’s consent. When student records are requested the College will notify students of its intent to comply with as required by the FERPA regulations at 34 CFR § 99.31(a)(9). The purpose of this advance notification requirement is to afford the student an opportunity to contest the subpoena in court.

9. Ensuring Impartiality

Any individual materially involved in the administration of the resolution process including the Title IX Coordinator, Investigator(s), and Hearing Board members may neither have nor demonstrate a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will review the assigned Investigators to ensure impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another Title IX personnel will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should
be raised with the Director of Human Resources.

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

The College operates with the presumption that the Respondent is not responsible for the reported misconduct unless and until the Respondent is determined to be responsible for a policy violation by the applicable standard of proof.

10. Steps in the Investigation Process

All investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve interviews with all relevant parties and witnesses, and obtaining available relevant evidence, both inculpatory and exculpatory.

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

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

- Interview the Complainant and Respondents separately. Each party will be asked to participate in an initial interview and may be asked to participate in a follow-up interview(s) as needed.
- When participation of a party is expected, provide that party with written notice of the date, time, and location of the meeting.
- Interview all available, relevant witnesses and conduct follow-up interviews as necessary.
- Allow each party the opportunity to suggest relevant witnesses.
- Allow each party the opportunity to request an expert witness at the party’s personal expense.
- Complete the investigation promptly and without unreasonable deviation from the intended timeline.
- Provide regular status updates to the Title IX Coordinator throughout the investigation.

Neither party will be restricted in their ability to discuss the allegations or to gather and present relevant evidence; provided, however, that such communications shall not constitute harassment of or retaliation against any party.

Prior to the completion of the investigation report, the Complainant and Respondent and, unless directed otherwise by the respective parties, their Advisor, will be provided the opportunity to inspect all evidence directly related to the allegations of the formal complaint, including both inculpatory and exculpatory evidence, and evidence that the College does not intend to rely on in reaching a determination. The College may require both parties and their Advisors to enter into a
written agreement prohibiting the use or dissemination of evidence for any purpose other than those directly related to the parties’ participation in the resolution process.

Complainant and Respondent will be given at least ten (10) days to inspect and review the evidence collected during the College’s investigation and to submit a written response the Investigator(s) will consider in preparing a final investigation report. The parties can waive all or part of this inspection period.

The final investigation report will summarize the information and include any documents gathered. The investigative report will not include determination of responsibility for the complaint itself. Complainant and Respondent will be given at least an additional ten (10) days after receiving a copy of the College’s final investigation report to respond to the investigation report, in writing. In their written response to the investigation report, Complainant and Respondent may provide written comments regarding the relevance of the evidence included in or excluded from the investigation report, provide factual or other corrections to the report, and otherwise provide context for the report.

The final investigation report will be distributed, concurrently, to both of the parties and the Title IX Coordinator at least ten (10) days prior to a hearing to determine responsibility.

11. Role and Participation of Witnesses in the Investigation

Luther College encourages all individuals with relevant information to participate in the resolution process, and will support their participation. However, the College does not compel students to participate. Witnesses who are employees of the College are expected to cooperate with and participate in the College’s investigation and resolution process.

While in-person interviews for parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Zoom, Google Hangout, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictate a need for remote interviewing. The College will take appropriate steps to reasonably ensure the security/privacy of remote interviews.

12. Recording of Interviews

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

13. Evidentiary Considerations in the Investigation and Hearing

The investigation does not consider questions and evidence about the Complainant’s sexual predisposition or prior sexual behavior unless such questions and evidence are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or if the questions and evidence concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove consent.
The Investigator(s) will only access, consider, disclose, or otherwise use a party’s treatment records made or maintained by a health care provider, or other records protected under a legally recognized privilege if the party provides the investigator(s) with voluntary, written consent to do so.

14. Referral for Hearing

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

The Title IX Coordinator will select an appropriate Chair (non-voting member) for the Luther College Hearing Board, considering factors such as availability, conflict of interest, and whether the Respondent is an employee or a student. On a case-by-case basis, the College reserves the right to contract with outside legal representation to chair individual cases.

15. Hearing Board Composition

For cases in which the Respondent is a student: A quorum for the hearing board consists of five voting members with at least one student, one faculty member, and the Chair. The Chair and Title IX Coordinator will appoint the board members, considering factors such as availability, conflict of interest, and whether the Respondent is faculty or staff.

For cases in which the Respondent is an employee: A quorum for the hearing board consists of three voting members, with at least one staff member and at least one faculty member. The Title IX Coordinator and Chair will appoint the board members, considering factors such as availability, conflict of interest, and whether the Respondent is a faculty or staff member.

16. Disciplinary History

Previous disciplinary action of any kind involving the Respondent may be considered in determining an appropriate sanction upon a determination of responsibility. This information is only considered at the sanction stage of the process.

17. Evidentiary Standard

After post-hearing deliberation, the hearing board renders a determination based on the preponderance of the evidence; whether it is more likely than not that the Respondent violated the Policy as alleged.

18. Notice of Hearing and Charges

No less than ten (10) days prior to the hearing, the Chair or the Title IX Coordinator will send notice of the hearing and charges to the parties.

The notice will contain:
● The time, date, and location of the hearing.
● Information about the option for the live hearing to occur with the parties located in separate rooms using technology that enables the Hearing Board and parties to see and hear a party or witness answering questions. Such a request must be raised with the Chair or Title IX Coordinator at least five (5) days prior to the hearing.
● A list of all those who will attend the hearing, along with an invitation to object to any Hearing Board Members on the basis of demonstrated bias. This must be raised with the Title IX Coordinator at least five (5) days prior to the hearing.
● Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
● A statement that if any party or witness called does not appear at the scheduled hearing, the hearing may be held in their absence, and the party’s or witness’s testimony and any statements given prior to the hearing likely will not be considered by the Hearing Board. For compelling reasons, the Chair may reschedule the hearing.
● Notification that the parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The party must notify the Title IX Coordinator at least five (5) days prior to the hearing if they do not have an Advisor, and the College will appoint one. Each party must have an Advisor present.
● An invitation to contact the Title IX Coordinator to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, at least five (5) days prior to the hearing.
● Parties may not bring mobile phones or electronic/recording devices into the hearing.

Hearings for possible violations that occur near or after the end of an academic term (for example, during finals, break periods, January Term, or over the summer) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution timeline and goal for resolution.

19. Alternative Hearing Participation Options

If a party or parties prefer not to attend or cannot attend the hearing in person, the party should request alternative arrangements from the Title IX Coordinator or the Chair at least five (5) days prior to the hearing.

The Title IX Coordinator or the Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Chair know at least five (5) days prior to the hearing or in ideal situations during the investigation so that appropriate arrangements can be made.

20. Pre-Hearing Preparation

The Chair, after any necessary consultation with the parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent
documentary evidence, and the final investigation report to the parties at least five (5) days prior to the hearing.

At least five (5) calendar days before the hearing, the Chair will notify the parties in advance which witnesses (including Complainant or Respondent) the Hearing Board would like to be present at the hearing. The Chair or designee will notify these witnesses of the hearing date and time and that their presence has been requested. Any witness called by the Chair will also be expected to answer questions from the parties.

- When notifying the parties of these witnesses, the Chair will also request the parties identify any additional witnesses they wish to have present at the hearing for cross-examination.
- The Chair or designee will notify relevant witnesses of the hearing date and time and that their presence has been requested by the party for cross-examination.

Any witness (including expert witnesses) scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions, unless all parties and the Chair assent to the witness’s participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may either delay the hearing or notify the parties that they may file an appeal to have the evidence considered.

The parties will be given a list of the Hearing Board members at least ten (10) business days in advance of the hearing unless recusals occur. All objections to any hearing board members must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) days prior to the hearing. Hearing Board members will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

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

During the ten (10) day period prior to the hearing, the parties have the opportunity for continued review on the final investigation report and available evidence.

21. Pre-Hearing Meetings

The Chair, in consultation with the Title IX Coordinator, may convene a pre-hearing meeting(s) with the parties to invite them to submit the questions or topics they wish to ask or discuss at the hearing, so that the Chair can consider and discuss their relevance ahead of time. However, this advance review discussion does not preclude a party from introducing evidence or an Advisor from asking any cross-examination question at hearing.
The Chair, with the agreement of both parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the investigation report or during the hearing.

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

The pre-hearing meeting(s) will not be recorded.

22. Hearing Procedures

At the hearing, the Hearing Board has the authority to hear and make determinations on all allegations of sexual harassment and/or retaliation. Participants at the hearing may include the Chair, hearing board members, the Investigator(s) who conducted the investigation, the parties or organizational representatives when an organization is the Respondent, Advisors to the parties, any called witnesses, the Title IX Coordinator, legal counsel retained by the College, and anyone providing authorized accommodations or assistive services.

The Chair or Title IX Coordinator will answer all questions of procedure. Anyone appearing at the hearing to provide information (such as a witness, expert witness, or investigator) will respond to questions on their own behalf.

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

23. Joint Hearings

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

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

24. The Order of the Hearing – Introductions and Explanation of Procedure

The Chair explains the procedures and introduces the participants.

The Chair conducts the hearing according to a hearing script. The Chair facilitates the recording, witness logistics, party logistics, curation of documents, separation of the parties, and other
administrative elements of the hearing process with assistance provided by the Title IX Coordinator. The hearing typically begins with opening statements from the parties sharing vital content, series of questioning, questioning of witnesses, cross-examination, final questioning, and closing statements.

25. Testimony and Questioning

At times, the Investigator(s) may be present at hearings and questioned, the parties and witnesses may provide relevant information in turn, beginning with the Complainant and then in the order determined by the Chair. The parties/witnesses will submit to questioning by the Hearing Board and then by the parties through their Advisors (“cross-examination”).

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

The Chair may explore arguments regarding relevance with the Advisors, on or off the record, if the Chair so chooses. The Chair will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Chair will explain any decision to exclude a question as not relevant.

The Chair has final say on all questions and determinations of relevance. The Chair may consult with the Title IX Coordinator or legal counsel on any questions of admissibility. The Chair may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Chair has ruled on a question.

26. Refusal to Submit to Cross-Examination and Inferences

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

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

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

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

The Chair, the parties, their Advisors, and appropriate administrators of the College will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Title IX Coordinator.

28. Deliberation, Decision-making, and Standard of Proof

The Hearing Board will deliberate in closed session to determine whether the Respondent is responsible or not responsible for the policy violation(s) in question. A simple majority vote is required to determine the finding. The preponderance of the evidence standard of proof is used. The Title IX Coordinator may be invited to attend the deliberation by the Chair, but is there only to facilitate procedurally and take notes, not to address the substance of the allegations.

The Hearing Board will review any pertinent conduct history provided by the Assistant Dean and Director of Student Rights and Responsibilities or the Director of Human Resources. Then the Board will determine the appropriate sanction(s).

29. Notice of Outcome

The Chair, in collaboration with the Title IX Coordinator, will prepare a written Notice of Outcome detailing the determination, rationale, the evidence used in support of its determination, the evidence disregarded, credibility assessments, and any sanctions.

At the discretion of the Title IX Coordinator, the Notice of Outcome may be reviewed by legal counsel. The Chair will then share the Notice of Outcome simultaneously with the parties and their Advisors.

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

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

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

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent’s disciplinary history
- The Respondent’s role and level of responsibility at the College
- Previous allegations or allegations involving similar conduct
- The need for sanctions/responsive actions to bring an end to the discrimination, harassment, and/or retaliation
- The need for sanctions/responsive actions to prevent the future recurrence of discrimination, harassment, and/or retaliation
- The need to remedy the effects of the discrimination, harassment, and/or retaliation on the Complainant and the community
- The impact on the parties
- Institutional precedent for how similar infractions have been addressed
- Any other information deemed relevant by the Hearing Board

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

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

a. Student Sanctions

The following are the range of sanctions that may be imposed upon students or organizations singly or in combination:

- **Unilateral No Contact Directive:** A mandate to have no avoidable contact with one or more individuals. May include restrictions from being present in another student’s classes, residence hall, or student organizations.
- **Educational Sanctions:** A directive to complete specified educational programs or projects to better comprehend the misconduct and its effects.
- **Mental Health or Substance Abuse Evaluation:** A mandate to meet with and engage in either College-sponsored or external counseling to better comprehend the behavior and its effects or contributing factors thereto, such as substance abuse, anger management, or other mental health issues.
- **Probation:** A written reprimand for violation of institutional policy, providing for more severe disciplinary sanctions in the event that the student or organization is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact directives, and/or other measures deemed appropriate.
- **Residence Hall Suspension:** Termination of a student’s right to live or be present in College-owned housing for a definite period of time.
- **Suspension:** Termination of student status for a definite period of time not to exceed three
years and/or until specific criteria are met. Students who return from suspension are automatically placed on probation through the remainder of their tenure as a student at Luther College.

- **Expulsion**: Permanent termination of student status and revocation of rights to be on campus for any reason or to attend College-sponsored events.
- **Organizational Sanctions**: Deactivation, loss of recognition, loss of some or all privileges (including College registration) for a specified period of time.
- **Other Actions**: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

In all cases, the Hearing Board and Campus Appeals Board reserve the right to broaden or lessen any range of recommended sanctions to address mitigating circumstances or repeated or egregious behavior.

b. **Employee Sanctions**

The following are the range of sanctions that may be imposed upon employees singly or in combination:

- Unilateral No-Contact Directive
- Educational sanctions
- Required counseling
- Imposition of performance improvement plan
- Probation
- Loss of annual pay increase
- Loss of oversight or supervisory responsibility
- Demotion or job reassignment
- Suspension, with or without pay
- Revocation or denial of tenure for a specified period of time
- Termination of employment
- **Other Actions**: In addition to or in place of the above sanctions, the College may assign any other sanctions as deemed appropriate.

In all cases, the Hearing Board and Campus Appeals Board reserve the right to broaden or lessen any range of recommended sanctions to address mitigating circumstances or repeated or egregious behavior.

31. **Withdrawal or Resignation While Charges Pending**

Should a student decide to not participate in the resolution process, the process may proceed absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from the College, the resolution process ends, as the College no longer has disciplinary jurisdiction over the withdrawn student. The student who withdraws or leaves while the process is pending may not return to Luther College. A hold will be placed on their ability to be readmitted. They may also be barred from College property and/or events.
However, the College will continue to address and remedy any systemic issues, variables that may have contributed to the alleged violation(s), and any ongoing effects of the alleged harassment, discrimination, and/or retaliation.

If the student Respondent takes a temporary leave for a specified period of time (e.g., one semester or term), the resolution process will continue remotely and that student is not permitted to return to the College unless and until all resolution terms have been satisfied.

During the resolution process, the College may put a hold on a responding student’s record or dean’s disciplinary certification that a disciplinary matter is pending.

Employees: Should an employee Respondent resign with unresolved allegations pending, the resolution process ends, as the College no longer has disciplinary jurisdiction over the resigned employee. The employee who resigns with unresolved allegations pending is not eligible for rehire by the College, and the records retained by Human Resources will reflect that status. All College responses to future inquiries regarding employment references for that individual will include that the former employee resigned during a pending disciplinary matter.

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

32. Appeals

1. A decision reached by the Hearing Board may be appealed by either party to the Campus Appeals Board within seven days of the decision. Such appeals shall be in writing, stating the basis for the appeal, and shall be delivered to Corey Landstrom, Vice President and Dean for Student Life, at Dahl Centennial Union 266 or via email at clandstrom@luther.edu.

2. Except as required to explain the basis of new information, an appeal shall be limited to a review of the verbatim record of the hearing and supporting documents for one or more of the following purposes:

   a. Deviations from designated procedures within the investigation or adjudication processes, which could have affected the outcome

   b. A conflict of interest or the bias of the Title IX Coordinator, investigator or member of the Hearing Board sufficient to have affected the outcome

   c. To determine whether the sanctions imposed were appropriate for the violation of the Policy which the student or employee was found to have committed

   d. To consider new information or other relevant facts not brought out in the original hearing, sufficient to alter a decision, because such information and/or facts were not known or available to the person appealing at the time of the original hearing
If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeals Board Chair and the parties will be notified in writing of the denial and the rationale.

3. The Campus Appeals Board comprises three members including one faculty member, typically the Chair of the Faculty Interest Committee; one student, typically the President of the Luther College Student Senate; and the Vice President and Dean for Student Life. For cases in which the Respondent is an employee, the Title IX Coordinator will appoint a replacement for the student member. If a member of the Campus Appeals Board has a conflict of interest, the Title IX Coordinator will appoint a replacement. When appointing replacement members to the Campus Appeals Board, the Title IX Coordinator will consider the role of the Respondent, availability, and conflicts of interest. During times when classes are not in session, an appeal may be reviewed by the Vice President and Dean for Student Life, who shall make an individual determination on the appeal.

4. The non-appealing party (if any) must be notified in writing of the appeal, and given an opportunity to provide a written statement challenging or supporting the appeal.

The Appeals Board Chair will collect any additional information needed and all documentation regarding the approved grounds and the subsequent responses to be shared with the Appeals Board, and the Appeals Board will render a decision in no more than ten (10) days, barring exigent circumstances. All decisions are by majority vote and apply the preponderance of the evidence standard.

A Notice of Appeal Outcome will be sent to all parties simultaneously including the decision on each approved ground and rationale for each decision. The Notice of Appeal Outcome will specify the finding on each ground for appeal, any specific instructions for remand or reconsideration and any sanctions. If an appeal is upheld by the Campus Appeals Board, the matter shall be returned to the original Hearing Board for re-opening of the case to allow reconsideration of the original determination. If an appeal is upheld with respect to sanctions, the Campus Appeals Board may adjust sanctions or choose to refer the case back to the Hearing Board for consideration of sanctions. If an appeal is not upheld, the matter shall be considered final and binding upon all involved.

a. Sanctions Status During the Appeal

Any sanctions imposed as a result of the hearing will be in effect during the appeal process. Supportive measures may be reinstated, subject to the same supportive measure procedures above.

b. Appeal Considerations

- Appeals are not intended to provide for a full re-hearing (de novo) of the allegation(s). In most cases, appeals are confined to a review of the written documentation, recording of the original hearing and pertinent documentation regarding the specific grounds for appeal.
- An appeal is not an opportunity for the Campus Appeal Board to substitute their judgment for that of the original Hearing Board merely because they disagree with the finding and/or
sanction(s).

- The Campus Appeals Board may consult with the Title IX Coordinator on questions of procedure or rationale, for clarification, if needed. Documentation of all such consultation will be maintained.
- Appeals granted based on new evidence should normally be remanded to the original Investigator(s) and/or Hearing Board for reconsideration. Other appeals may be remanded at the discretion of the Title IX Coordinator or, in limited circumstances, decided on appeal.
- Once an appeal is decided, the outcome is final: further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new hearing). When appeals result in no change to the finding or sanction, that decision is final.
- In rare cases where a procedural or substantive error cannot be cured by the original Hearing Board (as in cases of bias), the appeal may order a new hearing with a new Hearing Board.
- The results of a new hearing can be appealed, once, on any of the available appeal grounds.
- In cases in which the appeal results in reinstatement to the College or resumption of privileges, all reasonable attempts will be made to restore the Respondent to their prior status, recognizing that some opportunities lost may be irreparable in the short term.

All faculty members subject to termination by the Luther College Hearing Board and upheld by the Campus Appeals Board reserve the right to procedures outlined in section 410 of the Faculty Handbook.

33. Long-Term Remedies/Other Actions

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

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

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

For long-term support or measures parties may be referred to other campus resources such as Case Management or Disability Services.
When no policy violation is found, the Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure there is no effective denial of educational access.

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

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the Hearing Board and Campus Appeals Board.

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

A Respondent will only be eligible for readmission from suspension when compliance is achieved to the satisfaction of the Title IX Coordinator.

35. Sexual Harassment Outside the Policy’s Scope and Definitions

If a formal complaint is filed which alleges sexual harassment which falls outside the scope and definitions of this Policy and is dismissed, the Title IX Coordinator will refer the complaint as appropriate for adjudication under another policy or process, such as the College’s Bias Incident, Hate Act, Hate Crime, Discrimination, and Harassment Policy and Procedures, as long doing so would not interfere with any right or privilege provided to a party under Title IX.

To the extent the complaint alleges dating violence, domestic violence, or sexual assault which fall outside the scope of the Policy (e.g., the alleged conduct occurred outside the United States or without substantial control over the respondent and the context in which the conduct occurred), the College shall nonetheless provide the following procedural rights to the parties in the applicable adjudication process:

1. The parties will each have the opportunity to participate in the investigatory and disciplinary process which is overseen by properly trained individuals.
2. The parties will each have the opportunity to be advised by a personal Advisor of their choice, at their expense, at any stage of the process and to be accompanied by that advisor at any meeting or hearing. An advisor may only consult and advise his or her advisee, but not speak for the advisee at any meeting or hearing, except as expressly provided for in applicable procedures.
3. Decisions will be based on the preponderance of evidence standard. In other words, the investigator or adjudicator will determine if it more likely than not that the respondent violated the applicable policy.
4. The parties will be notified simultaneously in writing of the outcome of any disciplinary proceeding, as well as any changes to those results or disciplinary actions prior to the time that such results become final.
5. If there is a right to appeal, the right is granted co-equally to the parties and the right will be explained in the applicable procedures. The parties will be notified simultaneously in writing of the final outcome of an appeal, if applicable.
College sanctions for such misconduct could include the range of sanctions detailed above.

36. Recordkeeping

Luther College will maintain for a period of at least seven (7) years records of:

1. Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation
2. Any disciplinary sanctions imposed on the Respondent
3. Any remedies provided to the Complainant designed to restore or preserve equal access to the College’s education program or activity
4. Any appeal and the result therefrom
5. Any Informal Resolution and the result therefrom
6. All materials used to train Title IX Coordinators, Investigators, Hearing Board members, Campus Appeals Board members, and any person who facilitates an Informal Resolution process. The College will make these training materials publicly available on the College’s Title IX website
7. Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment, including:
   a. The basis for all conclusions that the response was not deliberately indifferent
   b. Any measures designed to restore or preserve equal access to the College’s education program or activity
   c. If no supportive measures were provided to the Complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

36. Revision of this Policy and Procedures

This Policy and procedures supersede any previous policy(ies) and will be reviewed and updated annually by the Title IX Coordinator. The College reserves the right to make changes to this document as necessary, and once those changes are posted online, they are in effect.

During the resolution process, the Title IX Coordinator may make minor modifications to procedures in order to preserve the fairness owed the parties. The Title IX Coordinator may also vary procedures materially with notice (on the institutional website, with the appropriate effective date identified) upon determining that changes to law or regulation require policy or procedural alterations not reflected in this Policy and procedures.

If government laws or regulations change – or court decisions alter – the requirements in a way that impacts this document, this document will be construed to comply with the most recent government regulations or holdings.
This policy is not a contract and does not create legally enforceable protections based on contract, quasi-contract, or third-party beneficiary status.

This interim policy and procedures are effective August 14, 2020.

THE FOLLOWING STATEMENT MUST APPEAR IN ANY VERSION OF THIS MODEL USED BY A LICENSEE:

ATIXA 2020 ONE POLICY, TWO PROCEDURES MODEL
USE AND ADAPTATION OF THIS MODEL WITH CITATION TO ATIXA IS PERMITTED THROUGH A LIMITED LICENSE TO LUTHER COLLEGE
ALL OTHER RIGHTS RESERVED.
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