

# LUTHER COLLEGE

## **Annual Security Report and Fire Safety Report**

**2020**

Luther College  
700 College Drive  
Decorah, IA 52101

# Clery Act - Annual Security Report - Luther College

In 1990 the United States Congress passed legislation commonly known as the Campus Security Act. It is now known as the Clery Act (*The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*). It directed campuses to compile and publish statistics about campus crime, and publish campus policies and practices related to safety and security issues. This report as well as information in the Student Handbook is published in compliance with that legislation. Since the original legislation, there have been changes in regulation and interpretation; the most notable is the Higher Education Amendments of 1998 and the reauthorization of the Violence Against Women Act in 2013. The regulations are complicated and sometimes confusing. The first section of numbered statements in this report is organized to be somewhat parallel with the order of legislated requirements. Following the statistics, there are some clarifications that will help interpret the statistics; readers are encouraged to inquire about this report and the federal regulations.

1. **Reporting and Preparation.** Students, or others, should make reports to either the Campus Security Office, the Residence Life Office (including residence hall staff), or the Office of Student Engagement regarding crimes they witness or suspect, or in the event of any emergency. Campus Security Authorities may also receive reports of crimes.
  - Luther College, via the Office of Student Engagement, Residence Life, or Campus Safety and Security offices, will advise the community when they become aware of criminal activity that is considered to be a threat to the immediate safety of the community. These timely warnings may be done via electronic alerts such as email, text message, social media, web postings, or other means of mass communication.
  - Annual crime statistics in compliance with the Clery Act are prepared annually, and distributed no later than October 1, by the Office of Student Engagement Office, in cooperation with Campus Safety and Security, Residence Life, local police, and other campus offices that may have knowledge of criminal activity.
  - As noted above, criminal activity should be reported to Campus Safety and Security, Residence Life, Student Engagement, or the Decorah Police Department. Crimes may be reported on a confidential (not to be construed as anonymous) basis, requesting inclusion in the annual crime statistics to Campus Safety and Security or the Office of Student Engagement. In this case, confidential reporting shall be defined as reports that are filed or verbally reported, and deemed to be legitimate, but for which no particular action is requested by the reporting party.
2. **Facilities.** Campus buildings are on a lock and unlock schedule set by Campus Safety and Security through each department or building occupant. Residence halls have an electronic card access system, and are locked 24 hours/day. Residence Life staff are on duty in residence halls during evening hours. All other buildings are locked and unlocked by Campus Safety and Security or building staff. Buildings are opened at predetermined times to accommodate their use by staff and students. Campus Safety and Security personnel check non-residential buildings on a regular basis. These precautions cannot prevent all potential intruders from being in buildings, so

students and staff should practice good personal safety, assist in keeping locked doors closed, and alert officials when there is suspicious activity.

- Campus Safety and Security staff checks lighting facilities on campus and offers suggestions for improved lighting or other safety needs to the Risk Management and Safety Committee and/or Facilities. The campus community may contact Campus Safety and Security regarding such issues or students may contact the Student Senate's Campus Betterment Committee.

### 3. Security and Law Enforcement

- The Luther College Campus Safety and Security Office is located on the main level of the Dahl Centennial Union. Security personnel may be reached by calling (563) 387-2111.
- Campus Safety and Security staff are campus security personnel, who are not deputized or have arrest authority. Although Campus Safety and Security and the Office of Student Engagement review reports of crimes, Luther does not have a fully investigative security staff; therefore, members of the campus community might receive a more complete investigation of criminal activity when they report such activity to the local police who have more extensive investigative resources. The working relationship and communication with the local Decorah Police Department is strong, and includes cooperation on safety, emergency notifications, investigations, and more.
- The campus community is encouraged to report crimes to the above noted resources.

### 4. Type and Frequency of Programs

Students and staff are annually provided Student Handbook information and information related to the Clery Act. Via this report, the community is encouraged to use common sense in safety and security practices, and report criminal and suspicious activity. The Campus Security and Security Office has a public bulletin board with safety and security information available, including the daily crime logs.

#### Crime Prevention and Training

In an effort to promote safety and foster a campus climate intolerant of sexual misconduct, the College makes the following preventative programming and response resources available:

- Think About It: All first-year and transfer students were required to complete an online substance and sexual abuse training program that prepares students to confront and prevent serious campus problems. This course takes an interconnected view of the issues of substance abuse, hook-up culture, sexual violence, and healthy relationships. All faculty and staff also went through a similar online course aimed at helping them identify problematic situations in the workplace and support survivors of sexual violence.
  - 486 new and transfer students completed a required online EVERFI-Sexual Assault Prevention course. 94% completion. (by Jessica Jepsen-Rupp and Nan Hibbs)
  - 13 new international students completed live virtual training on healthy relationships and consent. (by Jessica Rupp and Kasey Nikkel)

- Health 100: Lifetime Health and Wellness: All Luther College students are required to complete Health 100, a for-credit course. The course includes training on healthy relationships, consent in sexual encounters, and bystander intervention.
- CORE (Culture of Respect and Empowerment): All new students are required to attend this program, which includes a theatrical presentation performed by a student acting group. This dynamic program encourages students to confront issues of consent, healthy relationships, and bystander responsibility. student actors performed on topics of consent, healthy relationships, substances, mental health, diversity & inclusion, and being an active bystander. On-campus (Jake Dyer) and off-campus support were available during and after the performance. Sponsored by Case Management, Office of Student Engagement, and partnered with Bob Larson (emeriti) and Prof. Jane Hawley in the VPE department.
- Escalation workshops: Counseling Service offers these workshops that help students learn to identify warning signs of relationship violence and how they can step in and help. The film that is part of the workshop provides a powerful example that ignites an open conversation that many students may not have had with one another before.
- Norse Against Sexual Assault: Luther College supports Norse Against Sexual Assault, a collaborative student organization that works with faculty, administration, and advocates to raise awareness about sexual assault at Luther College and in society at large. NASA plays a leading role in the Fall Week of Action and April Sexual Assault Awareness Month.
- Independent Victim Advocates: Luther College regularly hosts independent victim advocates from the Riverview Center, which works with survivors of sexual assault, and Helping Services for Northeast Iowa, which works with survivors of domestic abuse. These advocates hold office hours, participate in educational and awareness programs, and lead confidential survivor support groups.
- Sexual Assault Prevention Module: 559 student-athletes completed the sexual assault prevention module AND in-person compliance training including the topic of sexual misconduct by the Title IX Coordinator per the requirements of the NCAA. 18 teams in total.
- Campus Climate Sexual Assault survey was issued in April 2020. Sexual Assault surveys are considered a best practice in higher education to gain insights into the prevalence of sexual assault and students' attitudes and experiences related to the campus climate during their tenure at Luther. We believe the best way to address a difficult issue is to better understand the problem with attested data. The survey was administered through the Higher Education Data Sharing (HEDS) consortium, which compares Luther's results with those of 91 peer institutions and also allows us to track changes over time. This survey was first administered at Luther College in 2017.

Training is conducted annually for all investigators, adjudicators, and others who directly address incidents of sexual violence. These trainings include information regarding nonconsensual sexual contact, non-consensual sexual intercourse, stalking, dating violence, and domestic violence. This training also includes a trauma-informed training to help our employees recognize and understand the impact of trauma on sexual violence survivors.

All students receive an overview of the College's policies on Student Sexual Misconduct, Alcohol and Other Drugs, and Bias Incident, Hate Act, Hate Crimes, Discrimination and Harassment at the beginning of the fall semester. This overview provides information on reporting crimes and violations of college policies.

Resident Assistants were trained on August 25, 2020 on the Student Policy on Sexual Misconduct and their role in both prevention and receiving reports of alleged violations of the aforementioned policy. Students received detailed information regarding the policy, confidential resources, and reporting expectations regarding their role.

Virtual Red Folder training for employees to cover student distress, sexual misconduct, and appropriate campus referrals. (Meg Hammes and Janet Hunter).

Paideia faculty (30) received training on student well being involving incidents of Title IX (Meg Hammes and Kasey Nikkel).

Pastor/pastoral staff (12) at Zumbro Lutheran Church received policy and support training as they offer support of the Rochester Hub (Bob Harri and Kasey Nikkel).

The Luther College Hearing Board received training in relation to the Student Policy on Sexual Misconduct and their role in adjudicating formal complaints. The training included trauma-informed response, sexual assault examinations and detailed overview of consent (September 1, 2020).

Additional trainings were provided to the College's Harassing Conduct Officers.

Various groups or offices may offer additional safety and security notices and programs throughout the year.

5. **Crime Statistics** as required by this legislation are included in this report.
6. **Reporting Areas.** Luther does not have recognized student groups or organizations, residing as such, in the local community; hence there is no monitoring by local police of such groups. For the purposes of statistical crime reporting, reporting areas have been divided into four reporting areas: on campus, residence halls, non-campus, and public property. The on-campus area is comprised of all central campus property. Non-campus includes outlying property owned by the College but not utilized in direct support of the education mission.
7. **The Alcohol and Other Drug Policy** for students is included at the end of this report. It is available in the Student Handbook.

For employees, the college includes the following statements in both the Faculty and Staff Handbooks.

The college prohibits its employees (“employees” or “employee” includes student workers in this policy) from reporting to work or performing work for the college while impaired by or under the influence of illegal drugs or alcohol.

The illegal use, possession, dispensation, distribution, manufacture, or sale of alcohol or other drugs by an employee in the workplace, or while the employee is on duty or official college business or by a student is prohibited. This standard of conduct applies to all college-sponsored on-campus and off-campus activities.

8. **Alcohol and drug abuse education programs** are conducted primarily via the Lifetime Wellness Program. Statements of compliance with the Drug Free Schools and Communities legislation are included in the Student Handbook and employee staff manuals. Programs may be passive poster campaigns, awareness programs such as Alcohol Awareness Month, or guest speakers. Collaboration on programs may occur with other campus departments and student organizations such as the Student Activities Council.

Luther has adopted **Medical Amnesty** as part of its Alcohol and Other Drugs Policy.

Medical amnesty protects a student from policy violations when they are seeking help in an emergency. Medical Amnesty granted by the College for alcohol or drug sanctions will be granted to students who, in good faith, report, or experience themselves, an alcohol or drug emergency that requires acute emergency care (i.e. a transport to the emergency room). However, a student will not be granted protection under this policy if campus officials (e.g., Residence Life Staff, Campus Safety and Security) intervene beforehand.

Medical amnesty is not viewed as an avenue through which a student may escape responsibility, but rather as an opportunity to reflect on their decision-making process related to their use of alcohol and/or drugs. The goal of amnesty is to increase student awareness of the risks of alcohol or other drug overconsumption and to reduce the instances that require acute emergency care.

The medical amnesty policy is designed to encourage students to seek help in an alcohol or drug emergency without hesitating because of worry about receiving policy violation sanctions from the College. This policy also applies to someone who has been a crime victim, who also may be intoxicated and therefore reluctant to report the crime. If in doubt about a person's safety related to alcohol or drug use, seek help by calling Campus Safety and Security (563-387-2111) or 911.

Additionally, Luther has adopted a **Good Samaritan** exemption for students who may be in violation of alcohol and other drugs policy but who seek help for a peer.

Students are encouraged to immediately seek medical or security assistance for students whose health and wellbeing may be at risk due to the overconsumption of alcohol and/or drugs. Taking responsibility for helping a student in need will always be viewed positively in any post-incident follow-up, including those incidents where the “Good Samaritan” and/or the person needing emergency assistance may have violated the College’s alcohol and other drugs policy.

## 9. **Alcohol Educational Sanctions**

Luther College employs a points-based accountability system in regard to alcohol and other drug violations. This system incorporates benchmarks for educational sanctions, loss of privileges, and referral to the hearing board for consideration of suspension or expulsion. The system encourages students to accept responsibility for their behavior and includes opportunities to have

points forgiven – and thus return of lost privileges – during a period where no further violations have occurred. Additionally, this system provides a much clearer outline of expectations and outcomes when policies have been violated. Students may be referred to substance abuse evaluations and expected to follow treatment recommendations.

## 10. Sexual Violence Policy and Programs

- Luther’s Policy on Student Sexual Misconduct and the Interim Title IX policy, provided at the end of this report, includes definitions of various acts of sexual and domestic violence and consent. Additionally, the policy provides information regarding reporting information, non-retaliation assistance, the process to make a complaint and the College’s response, including a sanction statement. The college prohibits sexual violence of any form including dating violence, domestic violence, sexual assault, and stalking.
  - Luther College employs a preponderance of evidence standard in all of its disciplinary procedures, including those employed to resolve complaints of sexual violence.
  - Sanctions assessed when a respondent have been found responsible for dating violence, domestic violence, sexual assault or stalking are typically configured to the severity of the violation and its impact on the individual students involved as well as the community. In the most serious cases, lengthy suspensions or expulsion are likely. Other sanctions from the Student Handbook, listed below, may be assessed when relevant and/or necessary. Restorative practices are utilized when deemed appropriate. All relevant sanctions may be found in the respective policies at the end of this report.
  
- Annual programs are provided during New Student Orientation regarding various aspects of sexual violence. Each new student receives a printed brochure of campus definitions, reporting options, and campus supports. Posters are prominently displayed regarding what to do in the event of sexual assault. Additionally, student groups also provide educational programming.
- Students are advised via this statement, Student Handbook information, and posters, that they should report sexual assault as soon as possible, and not destroy any evidence of assault. Initial reports may be directed to: Campus Safety and Security (563-387-2111), Office of Student Engagement (563-387-1020), Residence Life via Hall Director or RA, Riverview Center Sexual Assault Resources (563-380-3332), Domestic and Sexual Abuse Resource Center (800-383-2988), Winneshiek Medical Center (563-382-2911), Decorah Police Department (563-382-3667).
- Students are advised, via this document, personal discussions or documents, that they have the option to notify law enforcement authorities, and that the Office of Student Engagement will assist them in that notification if they desire.
- On-campus support services available for students include the Office of Student Engagement, Counseling Service, Student Health Services, College Ministries, and Residence Life. They can also assist in making appropriate off-campus referrals. Counseling Service, Student Health Services, and College Ministries are confidential receivers of reports.

- Luther will provide resource and other service information to current students and employees. Support and resources are available both on campus and in the local community. Referrals to specific agencies will be made upon request.
- As appropriate, Luther will implement initial remedial and responsive actions upon notice of allegation of a sex offense. Such actions are determined by the context of the situation and will be based upon ensuring the student who filed the complaint has full access to their educational resources. A survivor need not necessarily pursue disciplinary or other action against the perpetrator in order to have access to remedial measures. Luther is obligated to comply with a student's reasonable request for a living and/or academic situation change following an alleged sex offense.

## 11. Procedures Victims Should Follow

Any kind of coercive sexual contact, either by a stranger or someone you know, is sexual assault. If you are sexually assaulted, tell someone who can help. Don't try to handle it alone. Please consider the following options and resources.

*In the immediate aftermath of a sexual assault:*

- Contact Campus Security at (563) 387-2111, an RA, or hall director for help. They have received training in how to support you.
- Contact the Riverview Center at (563) 380-3332 or the 24-hour crisis line at (888) 557-0310. A trained sexual assault advocate is available to talk with you by phone or meet with you. The advocate can provide support and information about medical, legal, and counseling resources.
- Secure immediate medical attention at Winneshiek Medical Center Emergency Room, (563) 382-2911, 901 Montgomery St., Decorah.
  - Do not remove any clothing, shower, douche, or do anything that might destroy physical evidence of the assault.
  - A Luther staff member or a Riverview Center advocate can accompany you to the emergency room.
  - Your evaluation and treatment at the hospital can be paid for by the Iowa Sexual Assault Examination Payment Program. You do not need to make a report to the police to receive this benefit, and your health insurance will not be charged.
  - Emergency contraception is most effective within 72 hours, but can still have some effectiveness up to 5 days.
- Make a prompt report to the Decorah Police Department: (563) 382-3667. A Luther staff member or a Riverview Center advocate can assist you if you wish to make a report. You are not obligated to make a report and making a report does not obligate you to pursue formal charges.

*After the immediate crisis:*

- Seek support from your RA or hall director.
- Contact Riverview Center for information and support.
- Pursue medical follow-up at the Luther College Student Health Services (563-387-1045; Larsen Hall) or Winneshiek Medical Center ER.
- You may still make a report to the Decorah Police, if you have not already done so.



- Consult with the Office of Student Engagement (563-387-1020; 266 Dahl Centennial Union), about the option of filing a formal complaint and pursuing campus judicial action. Ask any questions you have about the process.
- You may request changes in academic or living arrangements to minimize contact with your assailant, if these are reasonably possible. Speak to the Office of Student Engagement.
- Consult the Student Handbook for information on college policies, reporting, resources and support services.
- Consider confidential counseling support at the Counseling Service (563-387-1375; Larsen Hall).
- Consider confidential medical support at Student Health Services (563-387-1045; Larsen Hall).
- Consider confidential pastoral support from the Office of College Ministries (563-387-1040; Center for Faith and Life).

### *Contact Information*

#### For Emergency Assistance

- Call 911 (or, 9-911 from any campus phone) to reach the Decorah Police Department
- Call 563-387-2111 to reach Campus Safety & Security

#### For Confidential Medical Care

- Go to the Winneshiek Medical Center at 901 Montgomery Street, Decorah, IA 52101
- Go to Student Health Services in Larsen Hall or call them at 563-387-1045

#### For Confidential Guidance and Support

- Call Counseling Service at 563-387-1375
- Call College Ministries at 563-387-1040
- Call the Riverview Center at 563-380-3332
- Call Helping Services at 563-387-1720
- Call the Iowa Sexual Abuse Hotline at 800-284-7821

#### To File an Official Report

- Meet with Janet Hunter, Dahl Centennial Union 266, 563-387-2229
- Meet with Bob Harri, Dahl Centennial Union 129, 563-387-2103
- Meet with Kasey Nikkel, Main 30, 563-387-1825

## **12. Overview of process**

The following is information located on the Title IX webpage. Detailed information for complainants and respondents may be found at the end of this document.

This high-level summary of the sexual harassment grievance process is provided for your convenience and does not provide complete details. This is not the official policy. For more detailed information, please view the [Luther College Interim Sexual Harassment Policy](#) or contact the [Title IX Team](#).

Jump to section:

- [Report, Preliminary Inquiry, and Supportive Measures](#)
- [Complaint and Investigation](#)
- [Review and Respond](#)
- [Hearing](#)
- [Appeal](#)
- [Other Considerations and Ongoing Support](#)
- [Legal System](#)

## **Report, Preliminary Inquiry, and Supportive Measures**

Luther College receives a report of an incident of sexual harassment on our campus or involving members of our Luther community. In response to every report, Luther conducts a preliminary inquiry to identify the parties involved and ascertain the misconduct being alleged. This inquiry typically takes the form of a conversation with the Complainant and is usually completed without informing the alleged Respondent or other parties involved of the report.

Upon receipt of the report, Luther College offers Complainants a wide range of support services, including no contact directives, academic assistance, housing accommodations, confidential counseling, referrals for medical attention, and more.

Finally, the College must determine the appropriate next steps. Generally, the College is able to allow the Complainant to decide if and when to initiate the grievance process. However, where there is a clear threat to campus safety Luther may be required to proceed with the formal process despite the wishes of the Complainant.

Janet Hunter works collaboratively with Kasey Nikkel during this stage of the process, consulting with Bob Harri as necessary.

## **Formal Complaint and Investigation**

A report becomes a complaint when the Complainant filed/signed a document filed/signed alleging sexual harassment against a Respondent and for the College to initiate the grievance process. Once the decision to commence a formal investigation is made, the Title IX Coordinator appoints two investigators to conduct the investigation.

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.

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.

A typical investigation includes:

- Interview with and written statement from the complainant
- Interview with and written statement from the respondent
- Interviews with witnesses
- Evidence supplied by the parties (photos, messages, etc.)
- Other evidence (security camera footage, key card access, location photos, etc.)
- External reports (medical, police, etc.)

## **Review and Respond**

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.

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 final investigation report will summarize the information and include any documents gathered.

Bob Harri, Kris Franzen, and Jake Dyer usually handle investigations as a team. Kasey Nikkel monitors progress, consults with the investigators, and communicates with the parties as necessary.

## **Hearing**

Both parties are notified upon conclusion of the investigation and asked to meet with the chair of the Luther College Hearing Board to discuss hearing rules and procedures. The Hearing Board chair drafts an official charge letter identifying the issues for the hearing. In preparation for the hearing, parties will typically each meet several times with the chairperson, and during this phase each party:

The hearing is conducted by the chair, supported by a Hearing Board composed of students, faculty, and staff. All hearings are recorded. The hearing is set up so that the parties can see and hear each other whether in person or virtually. Submission to cross-examination of the parties

and relevant witnesses is required. Additionally, the board members will ask questions to parties and witness(es). A typical hearing might follow this structure:

1. Introductions and hearing procedures
2. Opening statement by the complainant
3. Opening statement by the respondent
4. Questions for the complainant and respondent
5. Submission to cross-examination for parties (questioning by advisor)
6. Break
7. Witness statements and questions
8. Submission of witness(es) to cross-examination (questioning by advisor)
9. Questions for the complainant and respondent
10. Break
11. Questions for the complainant and respondent
12. Closing statement by the complainant
13. Closing statement by the respondent
14. Conclusion

At the conclusion of the hearing both parties are released and the Board remains to conduct deliberations. First, the Board must determine by the preponderance of the evidence standard whether the respondent is responsible for each charge enumerated in the charge letter. Once the findings are determined, if necessary, the Board proceeds to determine an appropriate sanction for the respondent.

Both parties receive notice of the hearing outcome in simultaneous meetings, typically the morning after the hearing.

Nan Hibbs currently serves as a chairperson of the Luther College Hearing Board, and she consults with Kasey Nikkel as necessary.

## **Appeal**

Both parties are entitled to file appeals if they are dissatisfied with either the findings or the sanctions. However, valid grounds for appeal are limited to:

- Due to conflict of interest or bias that may affect the outcome
- Due to procedural irregularity that may affect the outcome
- Whether the sanctions imposed were appropriate
- Consider new information not known to the appellant at the time of the hearing that may affect the outcome

Written appeals, along with hearing materials and recordings, are reviewed by the Luther College Appeals Board, which consists of Ashley Benson, a representative of the Faculty Interests

Committee, and the president of the Student Senate. The Appeals Board does not meet with the parties.

## **Other Considerations and Ongoing Support**

In every meeting with Luther College, both parties are entitled to have an advisor of their choice. That advisor may be a student, faculty, family member, attorney, or other outside advisor. Advisors are required for cross-examination.

Luther College has a strict non-retaliation policy and does not tolerate retaliation against anyone who brings a complaint or otherwise participates in an investigation or hearing related to sexual harassment allegations.

The formal grievance process, including all steps from complaint through notice of hearing result, is typically completed in two months or less. However, delays can occur when evidence is difficult to obtain, there are many witnesses to interview, or the College is on break between semesters. The College makes every effort to resolve complaints in a timely manner and inform both parties of any delays.

The conclusion of the formal grievance process does not signal the end of the support provided to the parties. Students' wellbeing, safety, and ability to thrive at Luther are of utmost importance to us beyond our federal compliance.

## **Legal System**

Luther College encourages Complainants to file reports with local police and to press charges if warranted. However, the decision of whether to do that rests entirely with the Complainant. If the victim does decide to work with local law enforcement, Luther College will invite law enforcement officers in the investigation process to minimize the number of times the victim needs to recall the incident.

Once initiated, the legal process and the on-campus conduct process function separately.

### **13. Crime Definitions – Jurisdictional Definitions**

The following crime definitions are listed as defined by the local law jurisdiction of the Luther College Campus (Decorah, Iowa).

**Dating Violence.** Currently, the Iowa law does not have a definition for Dating Violence. If a person is in a dating relationship where they are not living together, not married and don't have any kids and an act of violence occurs, such behavior is listed as an assault.

**Domestic Violence.** Iowa law combines two sections of the criminal code to define domestic violence. The assault code, which defines criminal behavior (Iowa Code 708.1 assault) and the Domestic Abuse Act, which defines a domestic relationship, (Iowa Code 236.2).

"Domestic abuse" is committing assault, as defined in section 708.1, under any of the following circumstances:

- The assault is between family or household members who reside together at the time of the assault.
- The assault is between separated spouses or persons divorced from each other and not residing together at the time of the assault.
- The assault is between persons who are parents of the same minor child, regardless of whether they have been married or have lived together at any time.
- The assault is between persons who have been family or household members residing together within the past year and are not residing together at the time of the assault.
- The assault is between persons who are in an intimate relationship or have been in an intimate relationship and have had contact within the past year of the assault. In determining whether the persons are or have been in an intimate relationship, the court may consider:
  - The duration of the relationship
  - The frequency of interaction
  - Whether the relationship has been terminated
  - The nature of the relationship, characterized by either party's expectation of sexual, romantic involvement.
- A person may be involved in an intimate relationship with more than one person at a time.
- "Family or household members" means spouses, persons cohabiting, parents, or other persons related by consanguinity or affinity. This does not include children under age 18 or household members who reside together at the time of the assault.
- "Intimate relationship" means a significant romantic involvement that need not include sexual involvement. An intimate relationship does not include casual social relationship or associations in a business or professional capacity.

**Sexual Abuse.** Any sex act between persons (Iowa Code section 709.1) is sexual abuse by either of the participants when the act is performed with the other participant in any of the following circumstances:

- The act is done by force or against the will of the other. If the consent or acquiescence of the other is procured by threats or violence toward any person, or if the act is done while the other is under the influence of a drug-inducing sleep or is otherwise in a state of unconsciousness, the act is done against the will of the other.
- Such other participant is suffering from a mental defect or incapacity which precludes giving consent, or lacks the mental capacity to know the right and wrong of conduct in sexual abuse.
- Such other participant is a child.

**Consent.** In reference to sexual activity, as defined by the State of Iowa - the term "consent" with reference to sexual activity is not specifically defined in Iowa law.

14. **Crimes of Violence and Non-Forcible Sex Offenses.** Upon written request, victims can have the results of any disciplinary proceeding conducted by Luther College against a student who is the alleged perpetrator of a crime of violence of non-forcible sex offense. If the alleged victim is

deceased as a result of such a crime, the victim's next of kin shall be treated as the alleged victim.

**15. Bystander Intervention.** Tips provided by the It's On Us ([www.itsonus.org](http://www.itsonus.org)):

- Talk to your friends honestly and openly about sexual assault.
- Don't be a bystander – if you see something, intervene in any way you can.
- Trust your gut. If something looks like it might be a bad situation it probably is.
- Be direct. Ask someone who looks like they may need help if they're okay.
- Get someone to help you if you see something – enlist a friend, RA, bartender, or host to help step in.
- Keep an eye on someone who has had too much to drink.
- If you see someone who is too intoxicated to consent, enlist their friends to help them leave safely.
- Recognize the potential danger of someone who talks about planning to target another person at a party.
- Be aware if someone is deliberately trying to intoxicate, isolate, or corner someone else.
- Get in the way by creating a distraction, drawing attention to the situation, or separating them.
- Understand that if someone does not or cannot consent to sex, it's rape.
- Never blame the victim.
- If you are a victim or survivor, or helping someone in that situation call the National Sexual Assault Hotline at 1-800-656-HOPE.

**16. Reducing Risk.** Luther College and the surrounding Decorah community are relatively safe places but we are not immune from the same problems that plague the rest of the world; incidents like this happen as sexual assault is a deplorable part of our culture. As a community we can work toward maintaining a safe environment where every individual is treated with respect.

We also suggest exercising good safety practices. The following steps will not eliminate all potential hazards but can help to reduce some of those risks. These are general safety tips and are not necessarily reflective of this reported incident.

- Stay alert and aware of your surroundings; this helps take away the element of surprise someone might otherwise use against you.
- Try not to walk alone, especially at night and/or in isolated areas. Walk with friends and stay in well-lit and well-traveled areas as much as possible.
- Security will provide a walking escort on campus so feel free to utilize this service, (563) 387-2111.
- Carry a cell phone and be aware of where you are so you can direct help to your location if it is needed. Call 911 in an emergency and program the campus security number into your phone, (563) 387-2111.

- If you are traveling alone let someone know your estimated time of arrival to your destination and the route you plan to take.
- Additional steps to reduce risks can be found on the Rape and Incest National Network website: <https://www.rainn.org/articles/steps-you-can-take-prevent-sexual-assault>.

17. **Sex Offender Registry.** Information regarding the Iowa Sex Offender Registry program, and also information regarding local inquiries, may be found at the following website: <http://www.iowasexoffender.com/>

## 18. **Missing Student Notification and Procedures**

Federal law requires colleges to establish a missing student notification policy and related procedures for students who reside in on-campus housing. The Luther College policy follows:

### **I. Policy Statement on Missing Students**

- Each student has the option to identify an individual to be contacted by Luther officials or law enforcement personnel no later than 24 hours after the time a student is determined missing (see below).
- Each student may register and update the identity of this individual, known as the Missing Student Confidential Contact, in the “update my profile” screen of [norsehub.luther.edu](http://norsehub.luther.edu).
- In the case of students who are under 18 years of age and not emancipated, Luther College is required by federal law to notify a custodial parent or guardian no later than 24 hours after the time a student is determined missing.
- Luther College officials will notify the appropriate law enforcement agency no later than 24 hours after the time a student is determined missing.
- If Luther Campus Safety and Security is notified of a potential missing student and makes a determination that the student has been missing for more than 24 hours and has not returned to campus, Luther will initiate the emergency contact procedures in accordance with the student’s designation. If Luther Campus Safety and Security has reason to believe the student is missing and endangered, the emergency contact process may be initiated prior to being missing for 24 hours.

### **II. Missing Student Confidential Contact**

- Students may identify their contact by completing the “Missing Student Confidential Contact” section of the “Update My Profile” data entry screen of [norsehub.luther.edu](http://norsehub.luther.edu). The specific data entry statement follows:
- Missing Student Confidential Contact Information – You also have the option to designate an individual to be contacted in the event you are determined to be missing—by Luther officials or law enforcement personnel—for a period of more than 24 hours.  
Name \_\_\_\_\_  
Phone \_\_\_\_\_
- \* Note: If you are under 18 years of age and not emancipated, federal law requires that a custodial parent or guardian be contacted.



### III. Procedure If You Believe a Student Is Missing

- Immediately notify a Residence Life staff member, Office of Student Engagement staff member, or a Campus Safety and Security officer. A report will be filed with Campus Safety and Security and an investigation initiated.
- After investigating, Campus Safety and Security will make a determination as to whether or not the student is missing and has been missing for more than 24 hours.
- If the student is determined to be missing for more than 24 hours, Luther College officials will notify the Decorah Police Department and the student's confidential contact (if the student has provided a confidential contact). If the missing student is under 18 years of age and not emancipated, Luther College officials will immediately notify a custodial parent or guardian.

### 19. Additional Safety and Security Issues

Although the Luther crime statistics give the impression of a relatively safe environment, there are certain precautions and advice to which any college student should pay attention. The following are not only general safety and security issues, but are based on Luther experiences.

- **Theft.** Crime statistics do not include general theft. Vulnerable items have included unattended **bicycles** (particularly high value bikes), **backpacks or book bags** left unattended (particularly at the beginning or end of a semester). Although theft from rooms has been limited, virtually all thefts could have been prevented by a simple action—**lock your doors!**
- **Sexual Assault.** Although reports of stranger assault have been extremely limited, common sense dictates that walking alone at night or in isolated areas is not a good practice. Many cases of sexual abuse by acquaintances could be avoided by: good communication between individuals regarding sexual expectations, students practicing restraint in regard to alcohol use, and by peers practicing effective bystander interventions and looking out for their friends as they enter potentially high risk or poor judgment situations.
- **Residence Halls.** Respect your community by reporting strangers and by assisting to keep outside doors tightly shut and locked.
- **Vehicle Vandalism.** Vehicles can be subject to vandalism. Remember to lock vehicles and remove valuables. Report any vandalism to the Campus Safety and Security Office.

Campus Safety and Security is available 24 hours/day. A daily security log (including Security response to criminal activity) is posted in the Centennial Union, outside the Campus Safety and Security Office.

Please report any crime to Campus Safety and Security or residence hall staff as soon as possible. (Written reports should be completed for all incidents.)

**Emergency (ambulance, fire, etc.)** - 911 (9-911 from a campus phone)

**Campus (Emergency calls only)** - 563-387-2111

**Decorah Police** - 563-382-3667

Questions may be directed to the Office of Student Engagement, Luther College, Decorah, Iowa 52101  
Telephone: 563-387-1020, Email: [students@luther.edu](mailto:students@luther.edu)

## Annual Campus Crime and Fire Statistics Report (Clery Act)

This report includes statistics for the previous three years concerning reported crimes that occurred on campus; in certain off-campus buildings or property owned or controlled by Luther; and on public property within, or immediately adjacent to and accessible from, the campus. The report also includes institutional policies concerning campus security, such as policies concerning alcohol and drug use, crime prevention, the reporting of crimes, sexual assault, and other matters. You can obtain a copy of this report by downloading this PDF or by contacting the Office of Student Engagement.

### Crime Statistics

Crime Statistics are tabulated in accordance with The Clery (Campus Security) Act.

Please see below notes and clarifications on crime statistics

### Notes and Clarifications on Crime Statistics

- Many crimes go unreported or unnoticed. Crime reports are recorded if official reports are filed and there is reason to believe they are valid. Reports do not suggest conviction, arrests, etc. Classification is based on definitions of UCR (Uniform Crime Statistics) and Iowa IBR (Incident Based Reporting).
- Readers are cautioned that statistics on this campus and others may be difficult to interpret. For example, burglary statistics may not reflect theft of valuable items unless there is unauthorized entry.
- Another category, sex offenses, includes reported "acquaintance rapes." A forcible sex offense is "any sexual act directed against another person, forcibly and/or against the person's will where the victim is incapable of giving consent." and includes forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are acts of "unlawful, non-forcible sexual intercourse," and include incest and statutory rape.
- Discipline statistics in the report include numbers of students "referred for campus disciplinary action." This is confusing terminology, but a good faith effort has been made by the College to count the number of students who were likely violators of state law (underage) when they were referred to the discipline system.
- Hate crime statistics required by this legislation are to include offenses of criminal homicide, negligent manslaughter, sex offenses, robbery, aggravated assault, motor vehicle theft, arson, and other crime involving bodily injury "that manifest evidence that the victim was intentionally selected because of the victim's actual or perceived race, gender, religion, sexual orientation, ethnicity, or disability." Some people interpret any sex offense as a hate crime; the reader is left to their own interpretation of federal law in this regard.
- Location definitions:
  - **On-campus, residence halls** refers to campus residential units;
  - **On-campus, non-residence hall** refers to crimes at campus locations *other* than residential units;
  - **Total, on-campus** refers to the combined total of residence halls and non-residence halls;
  - **Non-campus** refers to off-campus properties/student residences (such as fraternity houses) over which the college has some control;

- **Public property** refers to public property that may be directly connected or adjacent to campus property and could be considered to part of campus for security/safety purposes.

The 2020 statistics include a reduction in reported number of rapes and dating violence from the 2019 report. Additionally, the number of alcohol and drug policy referrals have decreased from 2019.

<b>Offense</b>	<b>Year</b>	<b>On Campus: Residence Hall</b>	<b>On Campus: Other</b>	<b>Total On Campus</b>	<b>Non-campus</b>	<b>Public Property</b>
<b>Arson</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Manslaughter</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Manslaughter by Negligence</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Forcible Sex Offense</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Non Forcible Sex Offense</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Robbery</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Aggravated Assault</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>Burglary</b>	<b>2020</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>Motor Vehicle Theft</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>Weapons Arrest</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Drug Arrest</b>	<b>2020</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>19</b>	<b>0</b>	<b>19</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>6</b>	<b>1</b>	<b>7</b>	<b>0</b>	<b>0</b>
<b>Alcohol Arrest</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Weapons Referral</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Drug Referral</b>	<b>2020</b>	<b>4</b>	<b>3</b>	<b>7</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>14</b>	<b>0</b>	<b>14</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
<b>Alcohol Referral</b>	<b>2020</b>	<b>85</b>	<b>3</b>	<b>88</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>131</b>	<b>3</b>	<b>134</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>153</b>	<b>5</b>	<b>158</b>	<b>0</b>	<b>0</b>
<b>Stalking</b>	<b>2020</b>	<b>5</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>1</b>	<b>0</b>
<b>Dating Violence</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>6</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>
<b>Domestic Violence</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Rape</b>	<b>2020</b>	<b>6</b>	<b>0</b>	<b>6</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>13</b>	<b>1</b>	<b>14</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>18</b>	<b>1</b>	<b>19</b>	<b>0</b>	<b>0</b>
<b>Fondling</b>	<b>2020</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>0</b>
	<b>2019</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>
	<b>2018</b>	<b>5</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>0</b>
<b>Incest</b>	<b>2020</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

	2019	0	0	0	0	0
	2018	0	0	0	0	0
Statutory Rape	2020	0	0	0	0	0
	2019	0	0	0	0	0
	2018	0	0	0	0	0

## Luther College Annual Fire Safety Report for the Calendar Year 2020

Fire safety is an important issue on the Luther campus. The material contained in this report outlines the measures taken on campus to both prevent and respond to fires in our residence halls. This information is provided in response to the Higher Education Opportunity Act . The table below illustrates the type of fire safety system in each residential facility at Luther.

Residence Hall	Fire Alarm Monitoring done on site	Partial Sprinkler system	Full Sprinkler System	Smoke Detectors	Fire Extinguisher Devices	Evacuation Plan Placards	Number of evacuation plans each year
Baker Village				X	X		2
Brandt	X		X	X	X		2
College Apts.				X	X		2
Dieseth	X		X	X	X		2
Farwell	X		X	X	X		2
Larsen	X		X	X	X		2
Miller	X		X	X	X		2
Olson	X		X	X	X		2
Norby	X		X	X	X		2
Prairie House				X	X		
Prairie House				X	X		
Prairie House				X	X		
Sustainability House				X	X		
Ylvisaker	X		X		X		2

### Fire Safety Information

Policies and procedures related to fire safety are detailed in several documents including the Luther Code of Conduct, the Safety and Security website, and the Residence Life Handbook as well as City, State and Federal Laws. To ensure compliance with established fire safety policy and rules Residence

Life Staff does conduct official room safety inspections of the residence halls during each fall, winter and spring break. Inspections may be conducted at other times as well. Any prohibited or unsafe item will be confiscated and appropriate fines levied against those found in violation. (For further information on fines and/or sanctions see the Residence Life Handbook)

## **Prohibited Possessions**

For health and safety reasons certain items are prohibited in the residence halls and other college-owned housing facilities. Prohibited items include, but are not limited to:

- Extension cords, multiple plug adapters, and surge protectors with more than 6 outlet
- Wireless routers
- Candles, incense, oil lamps, halogen torchiere lamps, spider lamps and open flames
- Smoking and illegal drug paraphernalia
- Flammable substances such as gasoline, lighter fluid, mineral spirits, and cleaning fluids
- Live Christmas Trees and/or live holiday greenery and large decorative bulbs
- Motorized vehicles such as motorcycles and mopeds.
- Fireworks, explosives, firearms, ammunition or gunpowder.

## **Electrical Appliances**

Some electrical appliances can create a fire or safety hazard and are not allowed in the residence halls. Prohibited items include;

- Toasters, toaster ovens, and George Foreman type grills.
- Microwaves
- Space heaters
- Air Conditioners
- Desktop burners and other appliances with an open hotplate or heat coil
- Residents are allowed one Refrigerator in each room if it is less than 3.2 cubic feet.

## **Fire Evacuation Plan**

Residents are required to evacuate the building each time there is a fire alarm in the building. Planned fire drills will take place in each hall twice a year so residents will have an opportunity to practice evacuation procedures. These drills are conducted by trained hall staff and/or security personnel. Whenever the fire alarm sounds, complete evacuation is required. Never treat an alarm as if it is false or a prank. Walk to the nearest identified exit and leave the building. Close doors and windows as you exit if you can do so safely. If the identified stairway exit contains smoke, flames or strong fumes choose an alternative route. Continue evacuation even if the alarm stops sounding. Once you are outside the

building move away from the structure to the designated evacuation waiting area. Remain in this area until authorized personnel inform you to return to the building.

If you see smoke and or fire and the alarm has not yet been sounded pull the alarm and follow the above evacuation procedures. Once you are safely out of the building Contact Security at 2111 to report the fire. If smoke is present, stay low to the ground and check all doors for heat before opening them. If the door is hot to the touch, choose an alternative exit.

Take the time to learn the location of fire alarm pull stations, fire extinguishers and evacuation routes prior to any emergency,

## Fire Safety Education and Training

Residence Life Staff, Security and other key campus personnel are trained in the operation of fire extinguishers on an annual basis. They are also trained and practiced in evacuation procedures. Residence Life staff includes fire safety information and evacuation procedures with residents as part of the orientation process. Written procedures for evacuation are detailed in the Luther Emergency Procedure Guide and online.

## Fire Safety Log

Security maintains a fire log that includes the nature, date, time and general location of each reported fire. To ensure the accuracy of this log every fire should be reported to Security and the Residence Life Office. The log below illustrates the reported fire incidents for the 2020, 2019 and 2018 calendar years:

### Fire Incidents - 2020

Residence Hall	Date of Incident	Time of Incident	Cause of Fire	Number of Injuries	Number of Deaths	Value of Property damaged	Total Number of reported fires	Case Number
Baker Village								
Brandt	10-4-20	1521	Cooking	0	0	\$30.00	1	00384-2020
College Apts.							0	
Dieseth								
Farwell							0	
Larsen							0	
Miller	1-15-20	1932	Unknown	0	0	\$1,000	1	00028-2020
Olson							0	
Norby							0	
Prairie House							0	
Prairie House							0	
Prairie House							0	
Sustainability House							0	

Ylvisaker							0	
-----------	--	--	--	--	--	--	---	--

On 1/15/20 at about 1932 hours the fire alarm sounded in Miller Hall and a sprinkler head was activated in room 215. Investigation revealed there was a fire in this room that burned the mattress, headboard and the adjacent exterior of the closet on one side of the room. There was no one home at the time of the fire and the cause was undetermined. Water damage was minimal due to mitigation efforts by building staff. There were no injuries.

At about 1521 on 10/4/20 a student was cooking Ramen Noodles in a Microwave in the Brandt Kitchen when the noodles overheated and started on fire. Damage was limited to the interior of the microwave. There were no injuries.

### Fire Incidents - 2019

Residence Hall	Date of Incident	Time of Incident	Cause of Fire	Number of Injuries	Number of Deaths	Value of Property damaged	Total Number of reported fires	Case Number
Baker Village	10/15/19	1223	Cooking	0	0	\$30.00	1	00557-2019
Brandt							0	
College Apts.							0	
Dieseth	12/12/19	1355	Unknown	0	0	\$10,000	1	00719-2019
Farwell							0	
Larsen							0	
Miller							0	
Olson							0	
Norby							0	
Prairie House							0	
Prairie House							0	
Prairie House							0	
Sustainability House							0	
Ylvisaker							0	

On 10/15/19 at about 1223 residents were cooking in their Baker Village unit when a plastic cover caught fire. Occupants used a fire extinguisher to halt the flame and there was no damage other than the cover and clean-up of the extinguisher powder.

At about 1355 on 12/12/19 the sprinkler head inside a room on the first floor of Dieseth Hall activated. A joint investigation by Luther Safety and Security, the Decorah Police Department, The Decorah Fire Department and the Iowa State Fire Marshall revealed a fire damaged property in the room. There was additional damage that resulted from water emitted by the sprinkler system but the system functioned well in extinguishing the fire. The cause of this fire has not been determined.



## Fire Incidents - 2018

Residence Hall	Date of Incident	Time of Incident	Cause of Fire	Number of Injuries	Number of Deaths	Value of Property damaged	Total Number of reported fires	Case Number
Baker Village							0	
Brandt							0	
College Apts.							0	
Dieseth							0	
Farwell							0	
Larsen							0	
Miller							0	
Olson							0	
Norby							0	
Prairie House							0	
Prairie House							0	
Prairie House							0	
Sustainability House							0	
Ylvisaker							0	

Luther College also publishes an annual crime report in compliance with the Higher Education Opportunity Act. A written copy of this report is available in Student Life and Security. Questions regarding this Fire Safety Report should be directed to Robert Harri Director of Safety and Security at Luther College. Phone number 563-387-2103 or email at [harrro01@luther.edu](mailto:harrro01@luther.edu).

# Alcohol and Other Drugs

## Point System Grid

### I. Policy Statement on Alcohol and Other Drugs

Luther College takes seriously the abuse of alcohol and chemical substances. This includes the illegal use of alcohol, specifically alcohol consumption by individuals under the age of 21. As an educational institution, we place a great deal of responsibility on students who are of legal age to make the decision whether or not to consume alcohol and if they choose to consume alcohol, to do so responsibly. College students also have a great deal of freedom; however, with freedom comes responsibility.

The responsible student will:

- Make an informed decision on choosing to consume alcohol.
- Know, understand, and conform to federal, state, and local laws, and adhere to Luther College regulations on alcohol use.
- Assume accountability for one's behavior (and those of guests) and accept the consequences for all actions.
- Not make alcohol the main focus in his/her activities. Consuming alcohol just to consume or get intoxicated is not responsible use.
- Not pressure other students to consume alcohol, whether directly or indirectly.
- Not pressure other students to engage in sexual activity when either or both of them have been consuming alcohol.
- Not behave in a way that is disruptive or otherwise harmful to self or others including times when this behavior is related to alcohol consumption.
- Show care and concern for students who use alcohol in a manner damaging to themselves or the community, and refer students to the Residence Life Office, Student Life Office, Counseling Service, or any faculty or staff member for additional assistance.

The ultimate definition of responsible personal use is left to the discretion of Residence Life staff. Only students who have attained the legal drinking age of 21 years may possess or consume alcoholic beverages in private living quarters (student rooms, apartments, etc.). Peer pressure to use alcohol will not be tolerated. When in possession of or consuming alcohol, no students under the legal drinking age may be present; in this situation, all students present are at risk of violating the alcohol policy.

Students should note that the possession of alcoholic beverage containers, either full or empty, may be taken as a presumption of use and possession, and as such, may be considered policy violations. Students may also be held accountable, even if they do not have actual possession of alcohol, when they are present at alcohol-related events; commit actions due to alcohol intoxication; or are in "constructive" possession of alcohol (parallel to the Iowa Code on possession) or illegal substances.

Most alcohol policy violations are handled via Informal Administrative Hearings as outlined in the Luther Code of Conduct.

When, in the judgment of a staff person, a student is transported for medical attention or monitoring in response to alcohol or other chemical use, the involved student will be responsible for any costs incurred.

### II. Luther Code of Conduct: Statement on Drugs and Drug-Related Paraphernalia

Any student found to have committed or to have attempted to commit the following misconduct is subject to the disciplinary sanctions outlined in Article IV of the Code of Conduct: Use, possession, manufacturing, or

distribution of marijuana, heroin, narcotics, or other controlled substances except as expressly permitted by law, including the use or possession of drug-related paraphernalia [Article III(B)(18)].

Students should be advised that local police authorities are involved with investigation and prosecution when illegal use or possession is suspected. The typical disciplinary action on campus is detailed in the [Point System Grid](#). If a student is found to be selling drugs, or the evidence on campus suggests distribution of drugs to others, the college employs a “no tolerance” stance.

### **III. Luther Code of Conduct: Statement on Smoking and Smoking Devices**

Any student found to have committed or to have attempted to commit the following misconduct is subject to the disciplinary sanctions outlined in Article IV of the Code of Conduct: Smoking of cigarettes, including e-cigarettes, cigars, and other forms of tobacco under the provisions of the Iowa Smokefree Air Act. This act prohibits smoking inside all buildings, outside all buildings, and on all college property including, but not limited to, sidewalks, parking lots and roads (and inside vehicles located on such grounds), athletic fields, and on any other college property. The possession of pipes, hookahs, and other smoking devices is also prohibited, as is the sale or distribution of tobacco products [Article III(B)(20)].

Luther College has long recognized that smoking is a serious health hazard. All members of the Luther community are asked to remind persons who are smoking that we are required to comply with the provisions of the Iowa Smokefree Air Act; the Act stipulates that the campus is entirely smoke-free. Persons who have been reminded and continue to smoke will be reported to Campus Safety and Security; a \$50 citation may be given to individuals after adequate warning. Finally, students, faculty, and staff members may receive information on smoking-cessation programs from the Wellness Program Office.

### **IV. Luther Code of Conduct: Statement on Alcohol**

Any student found to have committed or to have attempted to commit the following misconduct is subject to the disciplinary sanctions outlined in Article IV of the Code of Conduct: Use, possession, manufacturing, or distribution of alcoholic beverages (except as expressly permitted by Luther College regulations), or public intoxication. Alcoholic beverages may not, in any circumstance, be used by, possessed by, or distributed to any person under twenty-one years of age. This policy applies to behavior on Luther College premises or at Luther College sponsored or supervised functions [Article III(B)(19)].

The Code of Conduct broadly identifies prohibited behavior with respect to alcohol possession and/or use. Specific interpretations and policy situations with respect to the policy follow:

- The possession, consumption, or sale of alcoholic beverages at any campus event is prohibited. Further, no college or residence hall funds may be expended for the purchase of alcoholic beverages.
- The consumption of alcoholic beverages in the lounges, corridors, and other public areas of the residence halls, as well as in any other college buildings or on any college grounds, is prohibited.
- Students living in residence halls who have reached the legal drinking age in the state of Iowa are allowed to make their own decisions in relation to the possession and consumption of alcoholic beverages in their rooms. However, no kegs or amounts of alcohol in excess of personal use are allowed. Alcohol must be transported to living quarters in closed containers. When in possession of or consuming alcohol, no students under the legal drinking age may be present.
- Students are responsible for their own and their guests’ behavior at all times. The use of alcoholic beverages shall not impinge upon the freedom and rights of roommates, residents in neighboring rooms, and other students. All members of the Luther community should assume responsibility for referring persons who need assistance for alcohol-related problems to Student Life professionals. Disruptive, destructive, or illegal behavior related to the consumption of alcoholic beverages is subject to college disciplinary action and/or civil enforcement.

- The alcohol policy includes alcohol-related violations. Students may be held accountable, even if they do not have actual possession of alcohol, when they are present at alcohol-related events; commit actions related to alcohol intoxication (i.e. excessive noise, harassing or disruptive behavior, vandalism); or are in “constructive” possession of alcohol (parallel to the Iowa Code on possession).
- Possession of alcoholic beverage containers, either full or empty, may be taken as a presumption of use and possession, and as such, may be considered policy violations.
- If a student is found to be responsible for an alcohol or alcohol-related violation, specific points will be assessed. The points assigned will be based upon the nature and severity of the violation, and range from minor to severe. With each offense, students are required to have a meeting with a Residence Life staff member, typically a hall director or area coordinator, to review alcohol policies and procedures; the R.A. may attend at the hall director’s discretion. If the student does not then complete the disciplinary sanction, the student is subject to an assessment of a point. Other sanctions may be assigned as appropriate. Any violation may be referred to the Luther College Hearing Board for review.

***Alcohol and alcohol-related violations include, but are not limited to, the following examples:***

- An R.A. confronts students in a room that is excessively noisy and finds students who are drinking. If any of them are underage, it is a clear alcohol violation. If the students are over 21, cooperate about providing IDs, and lower the noise level, it would normally be treated as a noise violation.
- There is a party going on in a room that overflows into the hall or cluster. The alcohol present exceeds "personal use" or there are open containers in the hallways.
- Public intoxication (staggering, slurring of words, vomiting, loss of bodily fluids, etc.).
- Permitting others (students or guests) to use assigned living quarters to consume alcohol in violation of the alcohol policy.
- There is vandalism or damage done to property or other people by a student who evidences alcohol use.
- A student harasses or is abusive to other students or college authorities and there is evidence of alcohol use.
- Promotion of events where alcohol is the primary focus.
- A staff member is present in any area of the residence hall and notices alcohol containers or paraphernalia, regardless if alcohol consumption has taken place.
- Use of false identification in order to consume alcohol and avoid detection by staff or security, or failure to provide identification when requested by a college official.

**V. Alcohol-Related Violations: Point System Grid**

	Violation	Points	Notes
•	Medical Amnesty / Good Samaritan exemption	0	<a href="http://bit.ly/MedicalAmnestyForm">http://bit.ly/MedicalAmnestyForm</a>
A	Use or possession of an alcoholic beverage under the age of 21	1	
B	Being in the presence of alcohol under the age of 21	1	

C	Possession of an open container of alcohol in a non-approved public location	1	
D	Possession of a fictitious or fraudulent ID	1	
E	Guest policy violation	1	
F	Excessive noise	1	
G	Failure to complete new-student online educational program on alcohol, drugs, healthy relationships and bystander intervention. Fall deadline is September 30. Spring deadline is February 28.	1	
H	Possession of alcohol containers under the age of 21 (for example: cans, bottles, shot glasses, flasks, funnels, etc.)	1	May include prohibited item fine
I	Being in the presence of high-risk drinking (such as drinking games with alcohol, bong, funnels)	1	May include prohibited item fine
J	*Hosting individuals in room where open containers of alcohol are in the presence of individuals under 21	1	
K	*Missed sanction deadline	1	
L	*Repeated alcohol or other drug violation within 3 months of incident (not including original incident month); points for new incident are assessed and an additional point is added to the total	1	
M	*Use of a smoking device (e-cigarette, vaporizer, etc.) or smoking tobacco on college-owned property	1	
N	Intoxicated individual (signs of internal consumption including disruptive behavior requiring a response from college or law enforcement official)	2	

O	*Disruptive behavior (vomiting, loss of bodily functions, excessive noise, or deemed disruptive behaviors, etc)	2	Possible law enforcement involvement
P	*Disorderly conduct (failure to comply with college or law enforcement official)	2	Possible law enforcement involvement
Q	Being in the presence of an illegal drug substance citation (such as marijuana)	2	Possible law enforcement involvement
R	Use of a fictitious or fraudulent ID to purchase alcohol	3	
S	Use or possession of hard alcohol (liquor) under the age of 21	3	
T	*False activation of a fire alarm or tampering with safety equipment	3	Fine included
U	Hosting an event with high-risk drinking (such as drinking games with alcohol, bong, funnels)	4	May include prohibited item fine
V	Providing alcoholic beverages to a student under the age of 21	4	
W	Use or possession of marijuana and/or drug paraphernalia	4	Law enforcement involvement
X	Acute, emergency medical care when medical amnesty is not available	4	
Y	*Engaging in a physical altercation	4	Possible law enforcement involvement
Z	*Destruction of property belonging to another student, the college, the city of Decorah or other public space, or privately owned property	5	
AA	Possession of a keg, common source, or large quantities of an alcoholic beverage—regardless of age—on college-owned property	6	
BB	Providing hard alcohol, by a legal-aged student, to a student under the age of 21	6	

CC	Unlicensed sale of alcohol to another individual or individuals	6	
DD	Use or possession of illegal drugs other than marijuana	8	Law enforcement involvement
EE	Illegal use of prescription medications, including without limitation the use of another's prescribed medications or illegal misuse of personally prescribed or over-the counter medications	8	Law enforcement involvement
FF	Distributing illegal drugs (including, but not limited to, marijuana) or other controlled substances (legal, prescription drugs)	9	Law enforcement involvement
GG	Operating a motor vehicle under the influence of alcohol and/or other drugs (arrested for)	9	Law enforcement involvement
HH	Selling illegal drugs (including, but not limited to, marijuana) or other controlled substances (legal, prescription drugs)	10	Law enforcement involvement
*Corollary Points	<p>Corollary points are assessed above the base alcohol or other drug points. Such points are identified with an asterisk in the points grid. Incidents not involving alcohol will be assessed the published points.</p> <p>For example, a student who has accepted responsibility (or been found responsible) for possession of an open container of alcohol as well as disorderly conduct would be assessed a total of 3 points for the incident.</p>		
Other Sanctions	<p>Disciplinary sanctions of suspension or expulsion may be relevant in some cases. Administrative hearing officers or the Luther College Hearing Board may also assign other sanctions, including the aforementioned sanctions, depending on the specific circumstances of the situation. That is, sanctions for cases more severe in magnitude can exceed the outcomes published in this grid. All possible sanctions are outlined in the Code of Conduct in the Student Handbook.</p>		
Point Forgiveness	<p>Students can be eligible to have a point reduced from their personal points history when they have no further violations of the Luther College Policy on Alcohol and Drugs during the three months following the month of an incident when the college is in session.</p> <p>Students who return after a disciplinary suspension after accumulating 10 or more points will return with 5 points on their personal points history.</p>		

	An example: a student has accepted responsibility (or been found responsible) for a violation during September is assessed 2 points. If the student has no further violations for the remainder of the month of September or during the months of October, November, and December, the student would have one point removed from their points history.	
<b>Accumulated points benchmarks</b>		
2	Educational sanction: Educational alcohol and/or drug program	\$50 Fee
4	Educational sanction: Educational alcohol and/or drug program + conversation	\$100 Fee
4	*Notification to parent(s)/legal guardian(s), academic advisor and/or department chair, coach, ensemble director, or designee	
6	Educational sanction: Educational program	\$125 Fee
6	Disclosure of points history to Center for Global Learning	
6	Disclosure of points history and violations when disciplinary record is requested	
7	Evaluation for substance abuse	
7	Decrease in housing priority for next room draw	
8	Educational sanction: to be determined on case by case basis	\$150 Fee
8	Housing relocation/dismissal	
9	Ineligible to have vehicle on campus (when associated with a driving-related violation)	
10	Consideration of a disciplinary suspension or expulsion (to be determined by Luther College Hearing Board).	
	*Notifications continue for any points accumulated above 4 points for each occurrence and take place as and to the extent permitted under FERPA (Family Education Rights and Privacy Act).	



## VII. Alcohol and Other Drugs Policy for Student Groups Traveling Off Campus

Luther College is committed to maintaining a safe and healthy living and learning environment free from alcohol and chemical abuse. Students should understand the importance of maintaining a healthy environment within the student organizations to which they belong. When student groups represent Luther College at official college-sponsored activities off campus, or when students make visits as part of classes off campus (including study abroad programs), they have the responsibility of being positive individual representatives of the college. Whenever groups travel off campus, members should be reminded that they are seen as representatives of Luther College. Membership in student groups recognized by Luther College is a privilege, and each student's actions reflect on our community.

The Luther Code of Conduct specifically outlines jurisdiction for conduct which occurs off campus. The Code of Conduct states: "The Luther Code of Conduct shall apply to conduct that occurs on Luther College premises, at Luther College sponsored programs and activities, and to off-campus conduct that adversely affects the Luther College Community and/or the pursuit of its objectives. Each student shall be responsible for his/her conduct from the time of initial visit as a prospective student through the actual awarding of a degree, even though conduct may occur before classes begin or after classes end, as well as during the academic year and during periods between terms of actual enrollment, even if his/her conduct is not discovered until after a degree is awarded. The Code of Conduct shall apply to a student's conduct even if the student withdraws from school or is suspended while a disciplinary matter is pending. The Vice President and Dean for Student Life or designee shall decide whether the Code of Conduct shall be applied to conduct occurring off campus, on a case by case basis, at his/her sole discretion."

With this in mind, the college encourages students to develop healthy habits and attitudes related to the use of alcohol and other drugs. Abstinence is always an appropriate option; moderation is acceptable if it does not violate either college policies or the law. The abusive, illegal, or irresponsible use of any drugs will not be tolerated.

It is the responsibility of students to be knowledgeable of the physical and mental effects of alcohol and other drugs and the risks associated with use. It is also the responsibility of students to be aware of other relevant college policies and federal, state, local, and international laws related to alcohol and other drugs use.

In the following policy, "group leader" is defined as the faculty or staff member responsible for the group, such as the instructor, advisor, coach, or music director. The group leader is expected to follow the same guidelines as the group.

### *Off-Campus Alcohol and Other Drugs Policies and Procedures*

- The group leader of each student group will meet with the organization to clarify the approach the group will take on the use and abuse of alcohol and other drugs. This "Alcohol and Other Drugs Policy for Student Groups Traveling Off Campus" will be distributed to all members at that time.
- The following are minimum guidelines, to be followed by every student group that travels off campus. A group or a group leader could develop stricter guidelines for the group to follow. For instance, a group leader may decide that the activity is not compatible with alcohol or other drug use in any way, and may add that to the policy at his/her discretion. In like manner, the students may recommend this action to their group leader. In study abroad programs, these guidelines are subject to host nation laws and cultural customs as identified by the group leader.
- Underage drinking and drug use are illegal and will not be tolerated. Any member who provides alcohol to an underage person or is found to be in possession of illegal drugs will be subject to disciplinary action.

***Students who are of legal drinking age are expected to act responsibly and adhere to the following guidelines:***

- On the day of an activity, no alcohol or other drug use is permitted during or prior to a performance, event, or activity.
- No alcohol or other drug use is permitted on college vans, buses, or any other means of private transportation associated with the trip, event, or tour.
- Members of legal drinking age are expected to use good judgment if consuming alcohol at private homes, at group meals, or other settings during non-program hours.
- If a group spends the night in a hotel, it is incumbent upon each member to behave responsibly as representatives of the college. No abusive, illegal, or irresponsible use of alcohol and other drugs will be tolerated. Hotel management will be encouraged to deal with disruptive or illegal activities just as they would with other hotel guests, which may include police involvement.
- Members should help one another in dealing with alcohol and other drug abuse, and should discourage one another from drinking to excess. Members who have an alcohol or drug abuse problem should be encouraged to seek counseling and treatment.

***Procedures for Off-Campus Alcohol or Other Drugs Violations***

For alcohol and/or other drug violations occurring off campus, two separate student conduct processes may be used—either individually or in combination—to address alleged policy violations.

- The student conduct procedures as outlined in the Luther Code of Conduct may be initiated once the student returns to campus and/or, the group leader may, upon discussion and an Informal Administrative Hearing (as specified in the Code of Conduct), immediately impose one or more of the following sanctions at his/her discretion, independent of other college judicial proceedings.
- The student may be suspended from participation in one or more activities during the travel period.
- The student may be immediately dismissed from the tour or event, and may have to travel home at his/her own expense. Underage or illegal use of alcohol or other drugs are grounds for such dismissal.
- The student may be suspended from the group for a specific time period, after returning from the event.
- Other educational sanctions as determined by the group leader, in conjunction with above sanctions.
- The Vice President and Dean for Student Life or his/her designee, and/or the student's parents, may be contacted about the incident, either at the time of the event or upon return to campus.

**VIII. Medical Amnesty**

Medical amnesty protects a student from policy violations when they are seeking help in an emergency. Medical Amnesty granted by the College for alcohol or drug sanctions will be granted to students who, in good faith, report, or experience themselves, an alcohol or drug emergency that requires acute emergency care (i.e. a transport to the emergency room). However, a student will not be granted protection under this policy if campus officials (e.g., residence life staff, campus safety) intervene beforehand.

Medical amnesty is not viewed as an avenue through which a student may escape responsibility, but rather as an opportunity to reflect on their decision-making process related to their use of alcohol and/or drugs. The goal of amnesty is to increase student awareness of the risks of alcohol or other drug overconsumption and to reduce the instances that require acute emergency care.

The medical amnesty policy is designed to encourage students to seek help in an alcohol or drug emergency without hesitating because of worry about receiving policy violation sanctions from the College. This policy also applies to someone who has been a crime victim, who also may be intoxicated and therefore reluctant to report

the crime. If in doubt about a person's safety related to alcohol or drug use, seek help by calling Campus Safety and Security (563-387-2111) or 911.

1. Students may be required to participate in an appropriate alcohol educational program depending upon their involvement in the situation. Failure to comply will invalidate protection under this policy.
2. Records kept as a result of this policy shall not be noted on the student's conduct record as a policy violation. Students involved may still need to meet with residence life staff or other College officials for a review of the incident, but this meeting will not result in disciplinary sanctions from the College.
3. This policy does not preclude disciplinary action regarding other violations of College policy, such as causing or threatening physical harm, sexual violence, damage to property, harassment, hazing, etc. Students should also be aware that this policy does not prevent action by local and state authorities.
4. Nothing in this policy shall prevent an individual who is obligated by state or federal law to do so from reporting, charging or taking other action related to the possible criminal prosecution of any student.

[The Medical Amnesty form is available online.](#)

### *Good Samaritan Statement*

Students are encouraged to immediately seek medical or security assistance for students whose health and wellbeing may be at risk due to the overconsumption of alcohol and/or drugs. Taking responsibility for helping a student in need will always be viewed positively in any post-incident follow-up, including those incidents where the “Good Samaritan” and/or the person needing emergency assistance may have violated the College’s alcohol and other drugs policy. Please seek help by calling Campus Safety and Security (563-387-2111) or 911.

Last Reviewed: Feb 23rd, 2016

## **Student Sexual Misconduct Policies and Procedures**

### **Sexual Misconduct (non-TIX) Policy Statement**

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

This policy covers incidents that occur in locations not covered or dismissed under Title IX and incidents of sexual misconduct that are not included in the Department of Education’s Title IX definitions. While cases addressed under this policy will closely mirror those that are determined to be alleged violations of Title IX, there are some differences related to the process.

### **1. Glossary**

- *Advisor* means a person chosen by a party, to accompany the party to meetings related to the resolution process, to advise the party on that process, and to support the party at the hearing, if any. Advisors may be present to consult with during a Hearing, but may not ask questions or make comments during the hearing. Advisors can not view case materials independently from the party.
- *Campus Appeals Board* is comprised of three members including one faculty member—typically the chairperson of the Faculty Interest Committee, one student—typically the President of the Student

Senate, 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.

- *Complainant* means an individual who is alleged to be the victim of conduct that could constitute sexual misconduct. 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.
- *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.
- *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).
- *Respondent* means an individual who has been reported to be the perpetrator of conduct that could constitute sexual misconduct or retaliation.
- *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.

## 2. Rationale for Policy

The core purpose of this policy is the prohibition of all forms of sexual misconduct, which includes sexual assault, dating, and domestic violence, stalking, and sexual exploitation. 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 who may have been victimized, as well as those students 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 misconduct, which includes sexual assault, dating violence, domestic violence, stalking, and sexual exploitation 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 misconduct are interpreted and applied consistently with the Code of Conduct, Title IX, the Clery Act, and other applicable law.

Conduct that occurs off-campus and not in connection with College programs may violate this policy if the conduct creates a threatening or hostile environment on campus or within a College program, or if the incident causes concern for safety or security of the College's campus. This policy applies to the individual behavior of students and the collective behavior of student organizations.

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. This policy covers locations that are not controlled by Luther College and that involve a Luther College student(s). For example, an incident that is reported to have occurred off campus such as a local apartment/house or international study away program.

Any person may file a complaint alleging sexual misconduct against a student under this policy. If a report or complaint does not fall under the College's scope under Title IX, the College will utilize this policy and the related procedures to respond to claims of sexual misconduct. 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 Director of Student Rights and Responsibilities and/or 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator can assist the Complainant in coordinating with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies. Similarly, the Director of Student Rights and Responsibilities and/or 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 misconduct or nondiscrimination policies and procedures of the facilitating or host organization may give recourse to the Complainant.

#### **4. Title IX Coordinator**

The Title IX Coordinator, along with the Director of Student Rights and Responsibilities, 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 the Title IX policy and implements this sexual misconduct policy as well.

#### ***5. Steps to Take Immediately Following Sexual and/or Physical Violence***

If a person experiences sexual and/or physical violence, many do not know where to turn for help or what steps to take. Although the choices about which options to explore rest with the victim, 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 other 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:
  - 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

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, as well as 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, as they 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 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 72 hours)

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

National Resource Center for Domestic Violence 800.799.SAFE

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@diaaiowa.org](mailto:help@diaaiowa.org)  
Website: [www.diaaiowa.org](http://www.diaaiowa.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  
Website: [Latinas Unidas por un Nuevo Amanecer](http://Latinas Unidas por un Nuevo Amanecer)

**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/](http://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](http://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](http://www.nisaa-afs.org)

All of the above-listed individuals 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 is available to help free of charge and may be consulted on an emergency basis during normal business hours.

**5. Reports/Complaints of Sexual Misconduct and/or Retaliation to the College**

Individuals making a Report or Complaint of sexual misconduct and/or retaliation may be made using any of the following options:

1. Report, or give verbal notice to, the Title IX Coordinator or Student Life Deans. 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.

## **6. Interim Supportive Measures**

Luther College will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sexual misconduct 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 misconduct, 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 housing measures after individualized analysis**

- Assistance in finding alternative on-campus housing
- In an unusual circumstance permission to reside off campus

#### **Wellbeing**

- 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 CAE)**

- 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

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.

## **7. Emergency Removal**

The Vice President and Dean for Student Life, the Director of Student Rights and Responsibilities and/or Title IX Coordinator, or their designee may issue an emergency removal of a student Respondent upon receiving a report of sexual misconduct 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:

- The basis for the temporary emergency removal
- The process to challenge the decision
- 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, and/or coaches.

### **Continued Academic Progress**

At times and at the discretion of the Vice President and Dean for Student Life or Director of Student Rights and Responsibilities and/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 their faculty members for the consideration and to work at 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.

## **8. Promptness**

All reports of sexual misconduct 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 are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the College will avoid all undue delays within its control.

Any time the general timeframes for resolution outlined in the College's procedures will be delayed, the College will provide 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.

## **9. 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 student as the person who is 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
- Instances involving alcohol or other drugs when under the age of 21

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 misconduct, 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 misconduct 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.

#### **10. 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.

#### **11. 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.

#### **12. Definition of Prohibited Sexual Misconduct**

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

Sexual Harassment, as an umbrella category, includes the offenses below:

- i. Quid Pro Quo:
  - an employee of the College
  - conditions the provision of an aid, benefit, or service of the College,
  - on an individual's participation in unwelcome sexual conduct; and/or
- ii. Hostile Environment:
  - unwelcome conduct,
  - on the basis of sex,
  - determined to be so severe, and
  - pervasive, and,
  - objectively offensive,

- 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.

iii. Sexual assault, defined as:

1. Rape:

- Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person,
- without the consent of the Complainant, 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.

2. Fondling:

- The touching of the private body parts of another person (buttocks, groin, breasts),
- for the purpose of sexual gratification,
- without the consent of the Complainant, including instances in which the Complainant is incapable of giving consent.

3. Incest

- Sexual intercourse,
- 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. Dating violence may manifest as one act or an ongoing pattern of behavior. It can encompass a broad range of coercive, abusive, threatening, and/or violent behaviors, including threats, assault, property damage, economic abuse, violence or threat of violence to one's self, one's sexual or romantic partner, and/or to the family members or friends of the sexual or romantic partner.

5. Domestic Violence: Felony or misdemeanor crime of violence committed by:

- A current or former spouse or intimate partner of the victim;
- A person with whom the victim shares a child in common;
- A person who is cohabitating with, or has cohabitated with, the victim as a spouse or intimate partner;

- 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
- 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:

- engaging in a course of conduct,
- towards another person, that would cause a reasonable person to
  - fear bodily injury to themselves or another; or
  - Suffer substantial emotional distress.

For the purposes of this definition—

- A course of conduct means two or more acts,
- Reasonable person means a reasonable person under similar circumstances, and
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

**b. Sexual Exploitation, Mistreatment, and Abuse**

Sexual exploitation is defined as harassing, non-consensual, or abusive sexual behaviors that do not fall within the definitions of sexual harassment, fondling, rape, stalking, domestic violence, and dating violence. Sexual Exploitation includes, but is not limited to:

1. Harassing sexual or gender-based behaviors that become so severe or pervasive as to interfere with an individual's ability to work, learn or participate in the College's programs; these behaviors can be verbal, physical, visual, communication-based, or any combination thereof, and will be assessed using the totality of the circumstances
2. Voyeurism and invasion of sexual privacy:
  - Observing or allowing others to observe a person undressing, using the bathroom, engaging in sexual activity, or in other private situations in which there is a reasonable expectation of privacy, without consent
  - Taking pictures, video recording, or audio recording of a person undressing, using the bathroom, engaging in sexual activity, or in other private situations in which there is a reasonable expectation of privacy, without consent
  - Disseminating or threatening to disseminate pictures, video, or audio recording of a person undressing, using the bathroom, engaging in sexual activity, or in other private situations in which there is a reasonable expectation of privacy, without consent (revenge porn)
3. Disrobing of another or unwelcome exposure from one person to another without consent
4. Misappropriation of another person's identity on apps, websites, or other venues designed for dating or sexual benefit (catfishing)
5. Intentional unwanted disclosure or threats to disclose an individual's sexual orientation, gender identity, or gender expression

6. Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV) or a sexually-transmitted disease (STD) or infection (STI), without informing the other person of the infection
7. Causing or attempting to cause the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of compromising that person's ability to give consent to sexual activity, or for the purpose of making that person vulnerable to non-consensual sexual activity
8. Prostituting another person or engaging in sex trafficking
9. Knowingly soliciting a minor for sexual activity
10. Creation, possession, or dissemination of child pornography

**c. 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, 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 misconduct 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 misconduct 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.

### **13. 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 Director of Student Rights and Responsibilities and/or 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.

### **14. 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator has ultimate discretion over whether the College proceeds when the Complainant does not wish to do so, and the Director of Student Rights and Responsibilities and/or 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 Director of Student Rights and Responsibilities and/or 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 Director of Student Rights and Responsibilities and/or 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.

#### **15. 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.

#### **16. 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.

#### **17. 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.

Sometimes, students are hesitant to assist others for fear that they may get in trouble themselves (for example, an underage 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 wellbeing.

### **18. Federal Statistical Reporting Obligations**

Reports may be required to document this report for general Clery Act statistics depending on 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.

Last revised October 28, 2020

Last Reviewed: Aug 14th, 2020

## **Procedures for Violations of Sexual Misconduct Policy (non-TIX)**

### **1. Overview**

Luther College will act on any formal Complaint of a violation of the policy on Sexual Misconduct received by the Title IX Coordinator or any other Official with Authority that fall within the scope of this policy by applying these procedures.

The procedures below apply only to qualifying allegations of sexual misconduct (including sexual assault, dating violence, domestic violence, stalking, and sexual exploitation as defined above) involving students.

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.

### **2. Report or Complaint**

When the College receives a report of potential sexual misconduct, 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 two responses:

- a. 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;
- b. Determine the circumstances do not 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;

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 misconduct, its potential recurrence, or effects.

### **3. Dismissal (Discretionary)**

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 notify 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.

### **4. 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.

### **5. 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator 5 business days in advance of the hearing. The decision to grant this request is at the sole discretion of the Director of Student Rights and Responsibilities and/or 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, faculty or staff member, 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. For cases of sexual misconduct, the parties may choose Advisors from inside or outside of the College community.

#### **b. 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. Advisors do not have the right to view the Hearing folder alone or independently from the Respondent. Advisors may be present to consult with during the Hearing, but may not ask questions or make comments during the hearing.

**c. 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.

**d. 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 Luther College Hearing Board members.

The parties are expected to ask and respond to questions on their own behalf throughout the investigation and hearing. 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, or during a hearing. 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

**e. 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.

**f. 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.

**6. 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.

## **7. 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.

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.

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. For more information please see the Title IX Policy.

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

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

The Title IX Coordinator and/or the Director of Student Rights and Responsibilities 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator any conflict of interest that the Investigator(s) may have, and 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.

## **9. 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 and/or the Director of Student Rights and Responsibilities, 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 in a timely manner. 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 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.

#### **10. 10. 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.

#### **11. 11. Ensuring Impartiality**

Any individual materially involved in the administration of the resolution process including the Director of Student Rights and Responsibilities and/or Title IX Coordinator, Investigator(s), and Hearing Board Chair and 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 and/or the Director of Student Rights and Responsibilities 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 and/or the Director of Student Rights and Responsibilities will determine whether the concern is reasonable and supportable. If so, alternate 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 and/or the Director of Student Rights and Responsibilities, 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.

## **12. 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):

- g. 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.
  - h. When participation of a party is expected, provide that party with notice of the date, time, and location of the meeting
  - i. Interview all available, deemed relevant witnesses and conduct follow-up interviews as necessary
  - j. Allow each party the opportunity to suggest relevant witnesses
  - k. Allow each party the opportunity to request an expert witness at the party's personal expense
  - l. Complete the investigation promptly and without unreasonable deviation from the intended timeline
  - m. Provide regular status updates to the Title IX Coordinator and/or the Director of Student Rights and Responsibilities throughout the investigation
2. 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.

The Complainant and Respondent will be provided the opportunity to inspect all evidence directly related to the allegations of the formal complaint. 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 the opportunity to inspect and review the evidence collected during the College's investigation. The parties can waive all or part of this inspection period. The parties can waive all or part of this inspection period.

## **13. 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.

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.

## **14. 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.

#### **15. 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. At the hearing, the Board will not consider information or questions raised concerning: 1) incidents not directly related to the possible violation(s), 2) previous sexual history not related to the case, 3) personal mental health, or 4) defamation of character in regard to either party.

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.

#### **16. Referral for Hearing**

If the allegations do appear to have merit, the Director of Student Rights and Responsibilities may resolve the charges administratively by mutual consent of the parties involved on a basis acceptable to the Title IX Coordinator. Such disposition shall be final, and there shall be no subsequent proceedings.

Provided that the Complaint is not resolved through Alternative Resolution, once the final investigation report is shared with the parties, the matter will be referred for a hearing. The Director of Student Rights and Responsibilities or designee will serve as Chair (non-voting member) for the Luther College Hearing Board. The Title IX Coordinator will be present, but is not a member of the Board.

#### **17. Hearing Board Composition**

A quorum for the hearing board consists of five voting members with at least one student, one faculty member, and the Chair. The Chair will appoint the board members, considering factors such as availability, conflict of interest, and demographic balance. Hearings at or near the end of term may instead use a quorum of three, described below.

#### **18. 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.

#### **19. 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.

#### **20. Notice of Hearing and Charges**

No less than seven (7) days prior to the hearing, the Chair of the Hearing Board will send notice of the hearing and charges to the parties.

The notice will contain:

- a. The time, date, and location of the hearing;
- b. 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.

- c. 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 prior to the hearing.
- d. Information on how the hearing will be recorded and on access to the recording for the parties after the hearing.
- e. Notification that the parties may have the assistance of an Advisor of their choosing at the hearing. An invitation to contact the Title IX Coordinator and/or the Director of Student Rights and Responsibilities 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.
- f. 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. A quorum of three (one faculty, one staff, and one student) rather than five will be required for these hearings.

## **21. 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 and/or the Director of Student Rights and Responsibilities at least five (5) days prior to the hearing. The hearing will proceed with or without the participation of parties and/or witnesses.

The Title IX Coordinator and/or the Director of Student Rights and Responsibilities 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 and/or the Director of Student Rights and Responsibilities know at least five (5) days prior to the hearing or in ideal situations during the investigation so that appropriate arrangements can be made.

## **22. 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 and all pertinent documentary evidence to the parties prior to the hearing.

The Chair or designee will notify 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.

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.

The parties will be given a list of the Hearing Board members at least seven (7) 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 Director of Student Rights and Responsibilities and/or 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 Director of Student Rights and Responsibilities and/or 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 seven (7) day period prior to the hearing, the parties have the opportunity for continued review on the final investigation report and available evidence.

### **23. Hearing Procedures**

At the hearing, the Hearing Board has the authority to hear and make determinations on all allegations of sexual misconduct and/or retaliation. Participants at the hearing may include the Chair, hearing board members, the Investigator(s) who conducted the investigation, the Complainant and 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 will then be excused.

### **24. 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 and/or Director of Student Rights and Responsibilities 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.

### **25. 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, questions submitted for cross-examination, final questioning and closing statements.

### **26. 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 the Chair.

All questions are subject to a relevance determination by the Chair. The Chair will determine whether the question will be disallowed as irrelevant and 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).

### **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 Director of Student Rights and Responsibilities and/or Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission of the Director of Student Rights and Responsibilities and/or 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 Director of Student Rights and Responsibilities. 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, and any sanctions.

At the discretion of the Director of Student Rights and Responsibilities and/or 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.

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; any sanctions issued; and any remedies provided to the Complainant designed to ensure access to the College's educational program or activity.

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
- 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. 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.

### **31. Withdrawal 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 may end, 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.

### **32. Appeals**

- a. 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](mailto:clandstrom@luther.edu).
- b. 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:
  - i. Deviations from designated procedures within the investigation or adjudication processes, which could have affected the outcome;
  - ii. A conflict of interest or the bias of the Director of Student Rights and Responsibilities and/or Title IX Coordinator, investigator or member of the Hearing Board sufficient to have affected the outcome;
  - iii. To determine whether the sanctions imposed were appropriate for the violation of the Policy which the student was found to have committed.
  - iv. 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.
- c. The Campus Appeals Board is comprised of 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.
- d. 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 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 may 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.

- i. 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.

ii. 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 Appeals 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 Chair and/or 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 Director of Student Rights and Responsibilities and/or 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.

### 33. Long-Term Remedies/Other Actions

Following the conclusion of the resolution process, and in addition to any sanctions implemented, the Title IX Coordinator and/or Director of Student Rights and Responsibilities 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 misconduct 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
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent priority on classroom registration
- Permanent alteration of work arrangements for student employee
- 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator will address any remedies owed by the College to the Respondent to ensure 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator.

### **35. Recordkeeping**

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

- Each sexual misconduct investigation including any determination regarding responsibility and any audio or audiovisual recording;
- Any disciplinary sanctions imposed on the Respondent;
- Any remedies provided to the Complainant designed to restore or preserve equal access to the College's education program or activity;
- Any appeal and the result therefrom;
- Any Alternative or Informal Resolution and the result therefrom;
- 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; and
- Any actions, including any supportive measures, taken in response to a report or formal complaint of sexual misconduct, including:
  - The basis for all conclusions that the response was not deliberately indifferent;
  - Any measures designed to restore or preserve equal access to the College's education program or activity; and
  - 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.

#### **Title IX Team, Investigators, Chairs, 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/>.

### **36. Revision of this Policy and Procedures**

This Policy and procedures supersede any previous policy(ies) will be reviewed and updated annually by the Director of Student Rights and Responsibilities in consultation with 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 Director of Student Rights and Responsibilities and/or Title IX Coordinator may make minor modifications to procedures in order to preserve the fairness owed the parties. The Director of Student Rights and Responsibilities and/or 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. ©2020. ATIXA

Last revised October 28, 2020

Last Reviewed: Aug 14th, 2020