

## **Section A. Information**

### **Forward**

Within the scope of its Title IX-related policies and procedures, Martin Luther College does not restrict any rights guaranteed against government action by the U.S. Constitution, including those rights enunciated in the First and Fourth Amendments of the U.S. Constitution and the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution.

Martin Luther College will comply with Title IX regulations, policies and procedures irrespective of FERPA provisions to the contrary. Nothing in these regulations will be used to deny any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq. or any regulations promulgated thereunder. Nothing in these regulations will deny any legal right of a parent or guardian to act on behalf of a "complainant," "respondent," "party," or other individual, including the ability to file a formal complaint.

If these regulations conflict with a State or local law applicable to Martin Luther College, Title IX regulations pre-empt that law to the extent of the conflict, and the college will follow them accordingly.

### **Applicable Federal Law**

This policy addresses the requirements of Title IX of the Education Amendments of 1972 ("Title IX"), which is a federal law that prohibits sex discrimination in federally funded education programs and activities. Title IX states as follows:

***No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.***

Discrimination on the basis of sex (i.e., sex discrimination) includes sexual harassment, sexual assault and sexual misconduct. Title IX prohibits sex discrimination in both the educational and employment settings.

### **Policy Statement**

It is the policy of the College to provide an educational, employment, and business environment free of all forms of sex discrimination, including but not limited to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct or communications constituting sexual harassment, as defined in this policy and as otherwise prohibited by state and federal statutes. Sexual harassment, including acts of sexual assault and sexual misconduct, is a form of sex discrimination and is prohibited at the College. The sexual harassment of College students,

faculty, and staff by non-College employees and guests doing business or providing services on campus (*e.g.*, contractors and vendors) also is prohibited by this policy. This policy applies to all College students, faculty, and staff, to other members of the Martin Luther College Community, and to contractors, consultants, and vendors doing business or providing services to the College.

## **Alleged or Suspected Violations of this Policy**

Martin Luther College will respond appropriately to all alleged violations of this policy about which the college has “actual knowledge.” When notice of an alleged violation is received and been communicated to the Title IX Coordinator, the college is deemed to have “actual knowledge.” The College’s ability to investigate in a particular situation, or the extent of the investigation in any given situation, may be affected by any number of factors, including whether the complainant is willing to file a formal complaint and give consent to an investigation, the location where the alleged or suspected conduct occurred, and the College’s access to information relevant to the alleged or suspected violation of this policy. The College is nonetheless committed to investigating all alleged and suspected violations of this policy of which it has actual knowledge to the fullest extent possible under the circumstances.

## **Jurisdiction**

According to Title IX law and regulation, a formal complaint of sexual harassment must be dismissed if:

- 1) the conduct alleged in the formal complaint would not constitute sexual-harassment, even if proven,
- 2) the conduct did not occur in a college education program or activity, or
- 3) the conduct did not occur against the person in the United States.

For purposes of this policy, **education program or activity** means locations, events, or circumstances over which the College exercises substantial control over both the respondent and the context in which the sexual harassment occurs and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution.

## **Title IX Coordinators**

Any inquiries regarding Title IX or this policy should be directed to the Title IX Coordinator or Deputy Coordinators identified below. These officials will be available to meet with students, faculty and employees regarding issues relating to Title IX and this policy.

### **Title IX Coordinator**

The Title IX Coordinator is responsible for implementing and monitoring Title IX Compliance on behalf of the College. This includes coordination of training, education, communications, and administration of grievance procedures for the handling of complaints alleging violations of this policy.

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Vice President for Student Life  
Administration Suite 110 – Wittenberg Collegiate Center  
[schonejl@mlc-wels.edu](mailto:schonejl@mlc-wels.edu)  
507-354-8221 ext 289  
507-217-9764 mobile

## Deputy Title IX Coordinator

The Deputy Title IX Coordinator is responsible for assisting the Title IX Coordinator in regard to implementing and monitoring Title IX compliance at the College and for notifying the Title IX Coordinator of any alleged or suspected violations of this policy and the resolution of such alleged or suspected violations, regardless of whether a complaint is filed.

Andrea E. Wendland  
Director of Human Resources  
Wittenberg Collegiate Center - 158  
[wendlaae@mlc-wels.edu](mailto:wendlaae@mlc-wels.edu)  
507-766-4690

## Other Reporting Options

### A Note About Reporting Violations of TIX Policy

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address listed for the Title IX Coordinator (see above.)

When notice of sexual harassment or allegations of sexual harassment has been given to the College's Title IX Coordinator, Deputy Coordinator or any official of the College who has authority to institute corrective measures on behalf of the College, the College is considered to have "actual knowledge" of the allegation or violation and, thereby, must respond promptly to Title IX sexual harassment in a manner that is not "deliberately indifferent," which means in a way that is not clearly unreasonable in light of the known circumstances.

**"Officials with Authority"** are defined as the President and the Vice presidents of Martin Luther College. These officials must report any notification of alleged sexual harassment to the Title IX Coordinator and are not able to maintain confidentiality in their report.

All other faculty, staff and employees can maintain confidentiality and will report an alleged violation of this policy when they have the consent of the notifying party to do so. As noted

below, there are members of the campus family that have mandatory reporting obligations even while maintaining confidentiality.

### **Anonymous Report**

A student or employee may file an anonymous complaint of sexual harassment and/or sexual violence through the [MLC Advocate site](#). The report will be filed with the college student life office and investigated as best as feasibly possible. A person may submit an anonymous report through the College's Portal site, which can be accessed at the following URL:

[https://mlc-wels-advocate.symplicity.com/public\\_report/index.php](https://mlc-wels-advocate.symplicity.com/public_report/index.php)

### **Law Enforcement**

Sexual misconduct incidents may always be reported to the Police Department by the victim. The College reserves the right in certain circumstances to report the incident to the Police Department.

### **Office for Civil Rights**

Individuals with complaints of sexual harassment or sexual misconduct who do not feel that the school is addressing cases of sexual misconduct and discrimination also have the right to file a formal complaint with the United States Department of Education, Office for Civil Rights (OCR). Discrimination based on sex is prohibited by Title IX of the Education Amendment of 1972 and is enforced by OCR. A complaint of discrimination can be filed by ***anyone who believes that an education institution that receives Federal financial assistance has discriminated against someone*** on the basis of sex, as well as other categories such as race, color, national origin, disability, or age. The person or organization filing the complaint need not be a victim of the alleged discrimination, but may complain on behalf of another person or group. Generally, a complaint must be filed with OCR within 180 calendar days of the last act that the complainant believes was discriminatory.

More information can be obtained regarding filing a complaint with OCR at the following link: <http://www2.ed.gov/about/offices/list/ocr/complaints-how.html>

The OCR office for Minnesota is located at:  
Chicago Office Office for Civil Rights  
U.S. Department of Education  
Citigroup Center  
500 W. Madison Street, Suite 1475  
Chicago, IL 60661-4544

Telephone: 312-730-1560  
FAX: 312-730-1576;  
TDD: 800-877-8339  
Email: [OCR.Chicago@ed.gov](mailto:OCR.Chicago@ed.gov)

## **Federal Statistical Reporting Obligations**

Victims of sexual misconduct should be aware that certain campus officials have a duty to report sexual misconduct for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus security regarding the type of incident and its general location (on or off-campus, in the surrounding area, but no addresses are given) for publication in the Annual Campus Security Report. This report helps to provide the community with a clear picture of the extent and nature of campus crime, to ensure greater community safety.

Mandated federal reporters include: student/conduct affairs, campus security, local police, coaches, athletic directors, residence hall staff, student activities staff, human resources staff, advisors to student organizations and any other official with significant responsibility for student and campus activities.

The information to be shared includes the date, the location of the incident (using Clery location categories) and the Clery crime category. This reporting protects the identity of the victim and may be done anonymously. Names of alleged victims and perpetrators may be reported with the consent of the notifying party.

## **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that college administrators must issue immediate timely warnings for incidents reported to them that are confirmed to pose a substantial threat of bodily harm or danger to members of the campus community. The college will make every effort to ensure that a victim'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 danger. The reporters for timely warning purposes are exactly the same as detailed at the end of the above paragraph.

## **Section B. Title IX Formal Grievance Procedure**

The Title IX grievance procedure refers to the entire length of a case from the time of the institution receiving notice/actual knowledge through the end of the appeal and its resulting sanctions. The grievance process refers to the steps following the signed formal complaint. The grievance process exists to provide a fair process that resolves complaints as equitably and accurately as possible in order to preserve and restore equal access to the institution's educational programs or activities. During the grievance process there is a presumption that the respondent is not responsible for the alleged conduct until a determination regarding

responsibility is made at the conclusion of the grievance process by the applicable standard of proof.

## 1. After Receipt of a Report or Notice of a Sexual Harassment Allegation

- TIX Coordinator will contact the *complainant* (even if that person is not the reporter) in a reasonably prompt time-frame ...
  - To explain and discuss supportive measures and their availability
  - To consider the complainant’s wishes with respect to supportive measures
  - Inform the complainant of the availability of supportive measures with or without the filing of a formal complaint (see the information below)
  - Explain to the complainant the process for filing a formal complaint and the grievance process which follows a formal complaint
- The College may remove a student respondent from the education program or activity on an emergency basis, only after:
  - Undertaking an individualized safety and risk analysis; and
  - Determining if an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal; and
  - Providing the respondent with notice and an opportunity to challenge the decision immediately following the removal while respecting all rights under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act, as applicable.
- Place a non-student employee respondent on administrative leave during the pendency of a grievance process under existing procedures, without modifying any rights provided under Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act.

### Definitions:

- “Complainant”
  - “An individual who is alleged to be the victim of conduct that would constitute sexual harassment.”
    - A school must treat a person as a complainant anytime the school has notice that the person is alleged to be the victim of conduct that could constitute sexual harassment (regardless of whether the person themselves reported or a third-party reported the sexual-harassment or the complaint chooses to remain anonymous) and irrespective of whether the complainant ever chooses to file a formal complaint.
- “Respondent”
  - An individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment
- “CONSENT” is defined in MINNESOTA as

- a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.
- b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.
- c) Corroboration of the victim's testimony is not required to show lack of consent. (Minnesota Statute 609.341 DEFINITIONS, subdivision 4.) [Note: for a full reading of this Minnesota Statute, see appendix.]

### **Additional Applicable Definitions and Understandings regarding Consent:**

Consent is clear, knowing and voluntary. Consent is active, not passive. Silence, in and of itself, cannot be interpreted as consent. Consent can be given by words or actions, as long as those words or actions create clear mutually understandable permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent to any one form of sexual activity cannot automatically imply consent to any other forms of sexual activity.

Previous relationships or prior consent cannot imply consent to future sexual acts.

In order to give consent, one must be of legal age (18).

In some instances, because of a person's power/authority, or the perception thereof, one individual may not be able to give consent to a given sexual encounter. For example, one individual who supervises another may not be able to obtain consent in an intimate encounter because the other person fears they might lose their job or status if they object to some or all aspects of the encounter. Power and authority may arise from a variety of areas including one's size, strength or reputation within the College.

Sexual activity with someone whom one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (e.g., by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

### **Incapacitation**

is a state where someone cannot make rational, reasonable decisions because they lack the capacity to give knowing consent (i.e., to understand the "who, what, when, where, why or how" of their sexual interaction).

This policy also covers a person whose incapacity results from mental disability, sleep, involuntary physical restraint, or from the taking of rape drugs. Possession, use and/or distribution of any of these substances, including, but not limited to Rohypnol, Ketomine, GHB, or Burundanga, is prohibited, and administering one of these drugs to

another student is a violation of this policy.

### **Force**

is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion that overcome resistance or produce consent.

### **Coercion**

is unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear to you that they do not want sex or that they do not want to go past a certain point of a sexual interaction, continued pressure beyond that point can be coercive.

Physical resistance (e.g., pushing someone away) is a clear demonstration of non-consent. The lack of physical resistance does not imply the individual consented to the sexual activity or event.

Use of alcohol or other drugs will never function as a defense to a violation of this policy.

- **“Formal Complaint”**

- A document filed by a complainant or signed by the TIX Coordinator alleging sexual harassment against the respondent and **requesting that the school investigate the allegation of sexual harassment.**
- A formal complaint may be filed with the TIX Coordinator in person, by mail, or by electronic mail, by using the contact information required to be listed for the TIX Coordinator, and by any additional method the school designates.
- The phrase “document filed by a complainant” means a document or electronic submission that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the formal complaint.
- There is no time limit or statute of limitations on a complainant’s decision to file a formal complaint, other than that the complainant must be enrolled in the school’s education program or registered to be enrolled in said program.

### **Supportive Measures**

- Non-disciplinary, non-punitive individualized service is offered as appropriate, as reasonably available, and without fee or charge to the complainant (alleged victim) or the respondent (alleged perpetrator) before or after the filing of a formal complaint, or where no formal complaint has been filed.
- All such measures are designed and intended to restore or preserve equal access to the school’s education program or activity without unreasonably burdening either party. Supportive measures are also designed to protect the safety of all parties and the school’s educational environment, and to deter continuing sexual-harassment.



- Supportive measures may include, but are not limited to:
  - Counseling
  - Extensions of deadlines or other course related adjustments
  - Modifications of work or class schedules
  - Campus escort services
  - Mutual restrictions and contact between the parties
  - Changes in work or housing locations on campus
  - Leaves of absence
  - Increased security and monitoring of certain areas of the campus
  - Other similar measures
- The school must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the school to provide the supportive measures.

**Sexual harassment is outlined in the Title IX regulations within three categories:**

1. **"Quid pro quo"**
  - A benefit is directly tied to an unwelcome sexual advance
  - Sexual harassment that involves a proposed exchange of actions
2. **Unwelcome conduct** determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies equal access to the College's education programs or activities
  - Gender-based sexual harassment
  - Sexual Exploitation/Sexual Misconduct occurs when a student/employee takes non-consensual or abusive sexual advantage of another.
  - Virtual sexual harassment
3. **Clery Act and Violence Against Women Act crimes**
  - Sexual assault - rape, fondling, incest, statutory rape
  - Dating violence
  - Domestic violence
  - Stalking
  - Hazing

**Prohibited conduct** in this policy includes harassment and discrimination, including but not limited to sexual discrimination, unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct or communications of a sexual nature on the basis of sex.

Sexual harassment may consist of repeated actions or may even arise from a single incident if sufficiently extreme. The complainant and the alleged perpetrator may be of either gender and need not be of different genders.

General examples include, but are not limited to: an attempt to coerce an unwilling person into a sexual relationship; to repeatedly subject a person to egregious, unwelcome sexual attention;

to punish a refusal to comply with a sexual-based request; to condition a benefit on submitting to sexual advances; sexual violence; intimate partner violence, stalking; gender-based bullying.

Specific Examples of Sexual Harassment:

- A professor insists that a student have sex with him/her in exchange for a good grade. This is harassment regardless of whether the student accedes to the request.
- A student repeatedly sends sexually oriented jokes around on an email list he/she created, even when asked to stop, causing one recipient to avoid the sender on campus and in the residence hall in which they both live.
- Explicit sexual pictures are displayed in a professor's office, on the exterior of a residence hall door or on a computer monitor in a public space.
- A professor engages students in discussions in class about their past sexual experiences, yet the conversation is not in any way germane to the subject matter of the class. Professor probes for explicit details, and demands that students answer, though they are clearly uncomfortable and hesitant.
- An ex-girlfriend widely spreads false stories about her sex life with her former boyfriend to the clear discomfort of the boyfriend, turning him into a social pariah on campus.
- Displaying or transmitting unwelcome sexually suggestive electronic content, including inappropriate e-mails or postings on social media such as Facebook, Twitter, or Instagram;
- Stalking or cyberbullying another student;
- A student grabbed another student by the hair, grabbed her breast and then laughed about it as a joke.

**Sexual Exploitation and Sexual Misconduct** occurs when a student/employee takes non-consensual or abusive sexual advantage of another.

Examples of sexual exploitation and sexual misconduct include, but are not limited to:

- Invasion of sexual privacy
- Prostituting another student
- Non-consensual video or audio-taping or broadcasting of sexual activity
- Engaging in voyeurism
- Exposing one's genitals in non-consensual circumstances; inducing another to expose their genitals
- Sexually-based stalking and/or bullying may also be forms of sexual exploitation
- Physical assaults of a sexual nature, such as rape, sexual assault, sexual battery, molestation, or attempts to commit these acts
- The use or display in the classroom or workplace, including electronic, of pornographic or sexually harassing materials such as posters, photos, cartoons or graffiti without pedagogical justification
- Unwelcome sexual advances, repeated propositions or requests for a sexual relationship to an individual who has previously indicated that such conduct is unwelcome, or sexual gestures, noises, remarks, jokes, questions, or comments about a person's sexuality or sexual experience.

Sexual activity with someone whom one should know to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated\* (e.g., by alcohol or other drug use, unconsciousness or blackout), constitutes a violation of this policy.

**Sexual Assault** is a particular type of sexual harassment that includes physical sexual acts perpetrated against a person’s will or where a person is incapable of giving consent due to the victim’s use of drugs or alcohol, or the victim’s physical, mental or legal incapacity.

### **Non-Consensual Sexual Contact \***

- any intentional sexual touching,
- however slight,
- with any object,
- by a man or a woman upon a man or woman,
- that is without consent and/or by force\*\*

\*Sexual Contact includes: Intentional contact with the breasts, buttock, groin, or genitals, or touching another with any of these body parts, or making another touch you or themselves with or on any of these body parts; any intentional bodily contact in a sexual manner, though not involving contact with/of/by breasts, buttocks, groin, genitals, mouth or other orifice.

\*\*Force is the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (implied threats) and coercion.

### **Non-Consensual Sexual Intercourse\***

- any sexual intercourse
- however slight,
- with any object,
- by a man or woman upon a man or a woman,
- that is without consent and/or by force.

\*Intercourse includes: vaginal or anal penetration by a penis, object, tongue or finger and oral copulation (mouth to genital contact or genital to mouth contact), no matter how slight the penetration or contact

### **Stalking**

The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- fear for his/her safety or the safety of others; or
- suffer substantial emotional distress.

For the purposes of this definition—

- Course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or

means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person's property.

- Reasonable person means a reasonable person under similar circumstances and with similar identities to the victim.
- Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

The MINNESOTA State Statutes list the following definitions and criminal sexual misconduct categories on the Legislature's website. See: <https://www.revisor.mn.gov/statutes/?id=609.341>

**DOMESTIC VIOLENCE:** The term "domestic violence" means

1. Felony or misdemeanor crimes of violence committed-
  - a. By a current or former spouse or intimate partner of the victim;
  - b. By a person with whom the victim shares a child in common;
  - c. By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;
  - d. By a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred; or
  - e. By any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.
2. For the purposes of complying with the requirements of this section and Minnesota Statute section 518B.01, any incident meeting this definition is considered a crime for the purposes of Clery Act reporting. Information on MINNESOTA Statutes regarding Domestic Abuse and Violence can be found at on the legislative website at <https://www.revisor.mn.gov/statutes/?id=518B.01>

**DATING VIOLENCE:** The term "dating violence" means violence committed by a person

1. who is or has been in a social relationship of a romantic or intimate nature with the victim and
2. the existence of such a relationship shall be based on the reporting party's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition-
  - a. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
  - b. Dating violence, according to Minnesota law, includes acts covered under the definition of domestic violence.
3. For the purposes of complying with the requirements of this section and applicable Minnesota law any incident meeting this definition is considered a crime for the purposes of Clery Act reporting. MINNESOTA Statutes treat Dating Violence under the heading of Domestic Abuse and Violence

## 2. Upon Receipt Of A Formal Complaint

The TIX Coordinator must provide WRITTEN NOTICE to the parties who are known:

- Notice of the School's GRIEVANCE PROCESS
- Notice of the school's INFORMAL RESOLUTION PROCESS
- Notice of the allegations of sexual harassment including...
  - **Identities of parties** involved, if known
  - The **conduct** allegedly constituting sexual harassment
  - **Date(s) and location(s)** of alleged incidents
  - Statement that the **respondent is presumed not responsible** for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process

Each party will also be notified about the following:

- They will have sufficient time to prepare a response before any meetings/interviews.
- Each party may have an Advisor of their choice, who may be, but is not required to be, an attorney, or an Advisor will be provided for them by the college, free of charge. **Each party, finally, must have an advisor throughout the grievance process.**
- The prohibited retaliation among either the Complainant, the Respondent, or parties affiliated with the Complainant or the Respondent.

If at any point during the investigation the College discovers any further allegations that were not included in the initial notice, the College will provide notice of the additional allegation details to the parties in writing.

If a case is dismissed, parties will receive a written notice of dismissal with grounds for dismissal, as well as information on how to appeal the dismissal.

## 3. Investigation

- The Title IX Coordinator assigns at least one (1) investigator to the case, two (2) if possible.
- The investigators interview both parties and all witnesses and collect evidence that is relevant to the case.
- The investigators write a report of findings, which is shared with both parties. The parties are allowed 10 business days to inspect the preliminary report and all evidence gathered and respond with any factual changes they want to be made.
- After factual changes and/or corrections are clarified, parties are allowed an additional 10 business days to review.
- The Investigator(s) assigned to the case will carry out an investigation without bias or prejudice. Audio recordings by investigators of any interviews are permissible as long as one individual is aware of the recording taking place. The burden of proof and responsibility for gathering evidence will rest on the College and not on either party. If

multiple formal complaints arise from the same facts, the College may consolidate investigations at its discretion.

- The Complainant and Respondent, and witnesses, will be given written notice in advance of any interview with sufficient time to prepare for meaningful participation.
- As part of the investigation, the investigator(s) will seek separate interviews with the Complainant, the Respondent, and any witnesses to the greatest extent possible. To help ensure a prompt and thorough investigation, interviewees are encouraged to provide as much of the following information as possible, such as:
  - The name, department, and position/status of the person or persons in alleged violation of this policy.
  - A description of any relevant incident(s), including the date(s), location(s), and witnesses.
  - The alleged effect of the incident(s) on the Complainant's academic standing, educational benefits or opportunities, position of employment, salary, employee benefits, promotional opportunities, or other terms or conditions of employment.
  - The names of other students or employees who might have been subject to the same or similar discrimination, harassment, or retaliation.
  - Any steps the Complainant has taken to try and stop the discrimination, harassment, or retaliation.
  - Any other information the Complainant believes to be relevant to the alleged discrimination, harassment, or retaliation.
  - Any information or exculpatory evidence the Respondent believes to be relevant to the alleged discrimination, harassment, or retaliation.
- The final report is completed and parties are given 10 business days at a minimum to prepare before the live hearing.

### **A Note on Privileged Information**

Information that is protected by doctor-patient confidentiality, marital status, attorney-client privilege, etc. shall remain protected during the Investigation and the Live Hearing unless it is voluntarily given by the party as evidence in the case.

### **A Note on the Conduct of Advisors during the Investigation**

As noted above, each party will have an advisor of their own choosing, or if they are unable to obtain such, they will have an advisor appointed for them by the college. During the investigation, each party's advisor may accompany and be a witness to any interview or meeting held by the investigators with that party. The advisor is not allowed to participate in the interview or meeting, or interrupt it in any way, but may simply observe.

### **A Note on Furnishing False Information**

Prohibited Behavior:

- Furnishing false information to any College official, faculty/staff member, or Office;
- Furnishing false information in any College application or agreement that is required by the College no matter the time of discovery

- Knowingly bringing false charges against the student, faculty or staff member
- Knowingly providing false information during any investigation carried on by the college, e.g., investigations of academic integrity, conduct code/handbook violations, Title IX allegations.

### **A Note on Recording during the Investigation and Live Hearing**

Audio or video recording of any proceedings are prohibited by any party other than the College throughout this process. The burden of proof and responsibility for gathering evidence will rest on the College and not on either party.

## **4. Live Hearing**

Prior to a live hearing, a pre-hearing meeting will take place with the Title IX Coordinator, the parties, and the advisors to clarify the hearing rules. During a live hearing, the Complainant and Respondent with their Advisors will agree to be in either one room, or two separate locations connected via video and audio, so that parties can see and hear each other in real-time. Either party can request that the live hearing occur with the parties located in separate rooms with technology enabling the Adjudicators and parties to simultaneously see and hear the party or the witness answering questions

Live hearings will be recorded and will be made available to the parties for inspection and review.

The hearing panel will be made up of three to four adjudicators, one serving as the Lead Adjudicator.

- Live hearings allow for cross-examination of both parties and any witnesses.
- Questions are only asked by the Advisors and Adjudicators during the live hearing.
- Adjudicators determine the relevancy of each question before it is answered.
  - Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.
- Complainant and Advisor will appear before the panel first, the panel will ask questions, Complainant's Advisor will ask questions of the Respondent and any witnesses they wish.
- Once this is completed, the Respondent and Advisor will appear before the panel, the panel will ask questions, Respondent's Advisor will ask questions of the Complainant and any witnesses they wish.
- Advisors will be limited to asking questions that their advisee (Complainant or Respondent) wishes them to ask. Cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.
- If either party or any witness refuses to answer even one question during cross-examination, no part of their statements during the hearing or during the investigation can

be used by the Adjudicators to make a determination of responsibility regarding the allegation.

- In such a case, however, the Adjudicators cannot draw an inference about the determination regarding responsibility based **solely** on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.
- At the conclusion of the live hearing, the Adjudicators will meet to deliberate and come to a final determination. A written final determination (with sanctions/remedies included when the respondent is found responsible for violations) will be provided to the parties.

The Live Hearing Protocol can be found in the appendix to this policy document.

## 5. Determination of Responsibility

The Adjudicator panel will meet following the conclusion of the live hearing in order to reach a determination of responsibility within a reasonably prompt time frame. When they have determined if College policy/policies have been violated, they will then decide which remedies/sanctions to assign. Written notice of their determination will be sent out to the parties simultaneously. The written notice of determination will include:

- Identification of the allegations potentially constituting sexual harassment as defined in Title IX regulations and this policy.
- A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held, etc.,
- Findings of fact supporting the determination,
- Conclusions regarding the application of the College's code of conduct (specifically this policy) to the facts,
- A statement of, and rationale for, the result as to each allegation, including:
  - any disciplinary sanctions the College imposes on the respondent; and
  - whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant.

The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

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

## 6. Appeal

Either party may appeal a dismissal of the allegation or a final determination of violation/no violation solely upon the following grounds:



- A procedural error in the formal grievance process
- New evidence that was not previously available
- Conflict or bias of College officials involved in the grievance process that impacted the outcome

To complete the appeal process:

1. Review the rationale for appeal as outlined above and write a letter or email that states clearly in the opening paragraph the reason(s) you believe an appeal is warranted. Use the following paragraph(s) to expand or substantiate the reason(s) for the appeal or grievance, including a summary of any evidence you would like to be considered in the review process.
2. Attach any supporting documentation that may be supportive to the appeal.
3. Send the appeal material to the Title IX Coordinator **within 10 business days** after receiving the findings of the Hearing Board Adjudicators. The Title IX Coordinator will forward the appeal to the appeal officer.
4. The College will notify the other party in writing when an appeal is filed and will ensure that the decision-maker(s) for the appeal is not the same person as the Adjudicator(s) that reached the determination regarding responsibility or dismissal, the Investigator(s), or the Title IX Coordinator.
5. Both parties have the right to submit a written statement in support of, or challenging the appeal or its outcome.
6. As stated above, the determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

The **appeal form** can be found in the Appendix of this document

## **7. Other Important Information**

### **Standard of Evidence**

The standard used to determine whether this policy has been violated is whether it is more likely than not that the Respondent violated this policy. This is often referred to as the "Preponderance of Evidence" standard.

### **Objective Evaluation of Evidence**

Title IX team members will be assigned to cases after determination that they do not have a conflict of interest in the case. Team members participate in annual training on objectively evaluating evidence and avoiding bias.

### **Dismissal of Allegation**

An allegation must be dismissed as pertaining to Title IX if it:

- Does not fall under definition of sexual harassment
- Did not occur in the college’s program or activity
- Did not occur in the United States
- If at the time of filing a formal complaint, a complainant is not participating in or attempting to participate in the education program or activity of the recipient.

A case may be dismissed as pertaining to Title IX if:

- Complainant requests dismissal in writing
- Respondent is no longer a student or employee
- Or determination cannot be made due to specific circumstances, for example, circumstances prevent the College from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

If a case is dismissed, all parties will be notified in writing of the dismissal, whether it was mandatory or discretionary, and of their right to appeal the dismissal.

### **Referral**

The Title IX Coordinator may refer any/all of the matter for consideration under another applicable College policy or procedure (Student Conduct System, Human Resources, etc.) in the event that a complaint is dismissed for purposes of Title IX.

### **Consolidation of Complaints**

Complaints may be consolidated if there are multiple parties with complaints and/or there are cross claims of the same allegation.

### **Range of Sanctions and Remedies**

Any violation of this policy involving students, faculty, staff, or other employees of the College is subject to the policy and procedures as stated in this document and is not governed by any other employee or student handbook or policy. The College will take steps to prevent the recurrence of any harassment or other discrimination and to remedy the discriminatory effects on the Complainant (and others, if appropriate).

The Decision Makers will review the information gathered during the investigation process and live hearing to determine the outcome, which may include “no violation” or “in violation” and the application of one or more sanctions or remedies.

The range of potential sanctions/remedies may include, but is not limited to, one or more of the following:

- no contact order,
- campus housing restrictions,

- academic course/class/schedule restrictions,
- campus event restrictions,
- campus leadership restrictions,
- advising restrictions,
- teaching restrictions,
- probation,
- community service,
- education, training, counseling
- suspension, or expulsion.

The College also may take any other corrective action that it deems appropriate under the circumstances.

Employees and/or students who are found to have violated this policy will be subject to disciplinary action up to and including expulsion or dismissal.

Faculty and staff who are found to have violated this policy will be subject to disciplinary action up to and including discharge or termination.

Guests and other third parties who are found to have violated this policy will be subject to corrective action deemed appropriate by the College, which may include removal from College property and termination of any contractual or other arrangements.

When the College is unable to offer resolution to an alleged violation of this policy because a Complainant insists on confidentiality or for some other reason, the College will nonetheless take steps to limit the effects of any actions that violate this policy and will work to prevent any recurrence of violation.

### **Retaliation**

Retaliation exists when action is taken against a participant in the complaint process that (i) adversely affects the individual's employment or academic status and (ii) is motivated in whole or in part by the individual's participation, or lack thereof, in the complaint process.

No individual involved in a complaint alleging a violation of this policy or participating in the investigation, adjudication or resolution of such a complaint shall be subject to retaliation as a result of such activity or participation. Any acts of retaliation shall be grounds for disciplinary action, up to and including expulsion/dismissal for students and termination/dismissal for faculty and staff.

- Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or this part, constitutes retaliation.
- The exercise of rights protected under the First Amendment does not constitute retaliation.

- Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation as long as a policy recognizes that determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

Complaints alleging retaliation may be filed with the Title IX Coordinator by signing and filing a written letter of complaint outlining the retaliatory behavior.

## **Training**

The College will provide training for Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, as applicable, on:

- The definition of sexual harassment in § 106.30
- The scope of the recipient's education program or activity
- How to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes
- How to serve impartially, by avoiding prejudgment of the facts at issue, conflicts of interest, and bias
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigative report that fairly summarizes relevant evidence.

Materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment.

Materials that have been used for training purposes include:

## **Confidentiality**

The College will maintain the confidentiality of the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

## **Section C. Title IX Informal Resolution Process**

The informal resolution process is a voluntary, structured interaction between involved parties (complainant and respondent) to resolve the allegations following the filing of a formal complaint and prior to a formal hearing on the allegations. Again, a request for Informal Resolution can be made at any time during the Formal Grievance Procedure up until the day of a scheduled hearing by the Title IX Hearing Panel. The informal resolution process is intended to be flexible while also providing for a full range of possible outcomes.

The following are the parameters by which an informal resolution may be conducted.

The Title IX Coordinator may offer the parties the opportunity to become involved in an informal resolution process. Likewise, either party (complainant or respondent) may petition the Title IX Coordinator in writing to offer an informal resolution process to the other party. The Title IX Coordinator is the sole administrator who determines if an Informal Resolution (hereafter IR) is appropriate given the allegations. Factors that the Title IX Coordinator may weigh in considering the appropriateness of the informal resolution process include, but are not limited to, the gravity of the allegations, whether there is an ongoing threat of harm or threat to the safety of the campus and campus family, whether the respondent is a repeat offender, and whether the Parties are participating in good faith. This determination is not subject to appeal.

The Title IX Coordinator and/or the coordinator's trained designee (hereafter facilitator) will supervise the informal resolution process. This facilitator will present the option of an Informal Resolution and proposed terms to each Party independently and in writing. All related communication will go through the facilitator. Participation in an Informal Resolution is voluntary for all Parties and requires a fully informed and signed, written consent. If either Party does not agree with the proposed terms, or is uninterested in engaging in negotiations, the party may continue with the College's formal grievance process at any time before signing the Informal Resolution Agreement.

The IR process will be voluntary for both parties and each party must submit a written request to become involved in the IR process. An informal resolution cannot be offered if the complainant is a student and the respondent is an employee.

The IR will not require the parties to confront each other or even be present in the same room. During the IR process, the allegations are presented, evidence submitted and shared, questions asked and answered, responses given and received, proposals for resolution requested and offered...all with the goal of forming an agreement enabling the parties and the institution to bring the formal complaint to conclusion. In all of the this, the facilitator will mediate and all communication will pass through him or her.

The parties may consult their advisor or have their advisor present at any time an IR meeting or interview occurs.

**Confidentiality.** In entering the informal resolution process, the Parties agree that any testimony and evidence (including admissions of responsibility) they share or receive during the informal resolution process concerning the allegations of the Formal Complaint is confidential while the parties are participating in the informal resolution process. No evidence concerning the allegations obtained within the informal resolution process may be disseminated to any person, provided that any Party to the informal resolution process may generally discuss the allegations under investigation with a parent, friend, advisor, or other source of emotional support, or with an advocacy organization. Should the Parties withdraw from the informal resolution process, information disclosed or obtained for purposes of the informal resolution process may be incorporated into the formal investigation and live hearing, provided that this information is disclosed and reviewed by the Parties under the investigatory and hearing procedures described in the Title IX Grievance Process.

Either party may withdraw, without penalty, from the IR up until a written resolution agreement is signed by both parties. If either party withdraws from the IR, the formal grievance process will resume.

The facilitator has the authority to end the resolution process if the facilitator believes that one or both parties are not operating in good faith. If this happens, the formal grievance process will resume.

Both parties and the facilitator will have an opportunity to offer proposals to become a part of the final outcome/agreement. An IR agreement may include, but is not limited to, an admission of responsibility, an admission of false allegations, housing and academic accommodations, disciplinary sanctions, counseling, involvement in an educational program appropriate to the situation, (e.g., on topics including but not limited to: consent and communication, the use of alcohol or other drugs, healthy interpersonal relationships, stress management and well-being) or other measures deemed appropriate by the Title IX Coordinator.

The facilitator and both parties must all agree to the outcome of the IR. In doing so the facilitator will write a binding agreement based upon the parties' verbal agreement with the negotiated outcome. Separately, both parties will then be offered the opportunity to sign this IR agreement. If either party refuses to sign this agreement, the IR will be considered failed and the grievance process will resume.

A signed resolution agreement is binding on both parties. Upon signing the IR agreement, the complainant and respondent are bound by its terms and cannot elect for a formal resolution process for the conduct alleged in the formal complaint. Failure to comply with the signed agreement may result in disciplinary action for either party. Alleged violations of an Informal Resolution agreement, or allegations that the agreement was induced by fraud, misrepresentation, or any other misconduct, should be reported to the Title IX Coordinator for administrative review.

In most cases, the Informal Resolution process will be completed within thirty (30) days of receiving the signed, written request of both parties. The College, at its discretion, may extend this timeframe for good cause. Agreements reached in the Informal Resolution process are not subject to a request for review or appeal.

Retaliation against any individual that participates in an IR process is strictly prohibited and may result in disciplinary action taken against the offending party.

The College will implement an evaluative/vetting process to ensure that the Title IX Coordinator, investigator, decision-maker, or any person designated by a recipient to facilitate an informal resolution process does not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent.

## Section D. Appendices

### Appendix 1. Local and Campus Advocacy Services

- **MLC College Nurse**  
Luther Student Center - 118  
1995 Luther Court  
New Ulm, MN 56073  
  
Kelsey Horn, RN  
1-507-233-9101 or extension 101  
1-507-441-1372  
[hornky@mlc-wels.edu](mailto:hornky@mlc-wels.edu)
- **MLC Campus Pastor**  
Luther Student Center - 101  
1995 Luther Court  
New Ulm, MN 56073  
  
Pastor John Boeder
- **MLC College Nurse**  
1-507-354-8221 or extension 310  
1-507-404-0624  
[boederjc@mlc-wels.edu](mailto:boederjc@mlc-wels.edu)
- **CADA – Committee Against Domestic Abuse Brown County, Minnesota Victim Services**  
4 N. Minnesota Street  
New Ulm, MN 56073  
24 Hour Crisis Line 1-800-477-0466  
Text an Advocate 507-223-4200  
  
CADA Office  
507-233-6663

### Appendix 2

#### Additional Resources regarding sexual harassment, assault, and violence and Incest National Network

- **National Sexual Assault Hotline**  
1-800-656-HOPE  
operated by RAINN—the Rape, Abuse
- **Minnesota Coalition Against Sexual Assault**  
<http://www.mncasa.org/>

- **National Center for the Victims of Crime**  
<http://www.victimsofcrime.org/>  
detailed information for victims, survivors and helpers
- **Rape, Abuse and Incest National Network**  
<http://www.rainn.org/>
- **Ways to reduce your risk of sexual assault**  
<https://rainn.org/safety-prevention>
- **Valor.US**  
<https://www.valor.us>
- **Masculinity and Violence Issues**  
<http://xyonline.net/category/article-content/violence>
- **Men Can Stop Rape**  
<https://mcsr.org/home>
- **Alcohol and Sexual Assault on Campus**  
<https://www.alcohol.org/effects/sexual-assault-college-campus/>
- **National Sexual Violence Resource Center**  
<https://www.nsvrc.org/>
- **National Resource Center on Domestic Violence**  
1-800-799-SAFE  
<https://www.nrcdv.org/>
- **One in Four**  
national rape prevention peer organization  
<http://www.oneinfourusa.org/>
- **Sexual Assault**  
<https://www.womenshealth.gov/violence-against-women/>

## Appendix 3

### A. MN Statute 609.341 DEFINITIONS.

#### Subdivision 1. **Scope.**

For the purposes of sections [609.341](#) to [609.351](#), the terms in this section have the meanings given them.

#### Subd. 2. **Actor.**

"Actor" means a person accused of criminal sexual conduct.

#### Subd. 3. **Force.**



"Force" means the infliction, attempted infliction, or threatened infliction by the actor of bodily harm or commission or threat of any other crime by the actor against the complainant or another, which (a) causes the complainant to reasonably believe that the actor has the present ability to execute the threat and (b) if the actor does not have a significant relationship to the complainant, also causes the complainant to submit.

**Subd. 4.Consent.**

(a) "Consent" means words or overt actions by a person indicating a freely given present agreement to perform a particular sexual act with the actor. Consent does not mean the existence of a prior or current social relationship between the actor and the complainant or that the complainant failed to resist a particular sexual act.

(b) A person who is mentally incapacitated or physically helpless as defined by this section cannot consent to a sexual act.

(c) Corroboration of the victim's testimony is not required to show lack of consent.

**Subd. 5.Intimate parts.**

"Intimate parts" includes the primary genital area, groin, inner thigh, buttocks, or breast of a human being.

**Subd. 6.Mentally impaired.**

"Mentally impaired" means that a person, as a result of inadequately developed or impaired intelligence or a substantial psychiatric disorder of thought or mood, lacks the judgment to give a reasoned consent to sexual contact or to sexual penetration.

**Subd. 7.Mentally incapacitated.**

"Mentally incapacitated" means that a person under the influence of alcohol, a narcotic, anesthetic, or any other substance, administered to that person without the person's agreement, lacks the judgment to give a reasoned consent to sexual contact or sexual penetration.

**Subd. 8.Personal injury.**

"Personal injury" means bodily harm as defined in section [609.02, subdivision 7](#), or severe mental anguish or pregnancy.

**Subd. 9.Physically helpless.**

"Physically helpless" means that a person is (a) asleep or not conscious, (b) unable to withhold consent or to withdraw consent because of a physical condition, or (c) unable to communicate nonconsent and the condition is known or reasonably should have been known to the actor.

**Subd. 10. Current or recent position of authority.**

"Current or recent position of authority" includes but is not limited to any person who is a parent or acting in the place of a parent and charged with or assumes any of a parent's rights, duties or responsibilities to a child, or a person who is charged with or assumes any duty or responsibility for the health, welfare, or supervision of a child, either independently or through another, no matter how brief, at the time of or within 120 days immediately preceding the act. For the purposes of subdivision 11, "current or recent position of authority" includes a psychotherapist.

**Subd. 11. Sexual contact.**

(a) "Sexual contact," for the purposes of sections [609.343, subdivision 1](#), clauses (a) to (f), and [609.345, subdivision 1](#), clauses (a) to (e), and (h) to (p), includes any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, and committed with sexual or aggressive intent:

(i) the intentional touching by the actor of the complainant's intimate parts, or

(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts effected by a person in a current or recent position of authority, or by coercion, or by inducement if the complainant is under 13 years of age or mentally impaired, or

(iii) the touching by another of the complainant's intimate parts effected by coercion or by a person in a current or recent position of authority, or

(iv) in any of the cases above, the touching of the clothing covering the immediate area of the intimate parts, or

(v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.

(b) "Sexual contact," for the purposes of sections [609.343, subdivision 1](#), clauses (g) and (h), and [609.345, subdivision 1](#), clauses (f) and (g), includes any of the following acts committed with sexual or aggressive intent:

(i) the intentional touching by the actor of the complainant's intimate parts;

(ii) the touching by the complainant of the actor's, the complainant's, or another's intimate parts;

- (iii) the touching by another of the complainant's intimate parts;
  - (iv) in any of the cases listed above, touching of the clothing covering the immediate area of the intimate parts; or
  - (v) the intentional touching with seminal fluid or sperm by the actor of the complainant's body or the clothing covering the complainant's body.
- (c) "Sexual contact with a person under 13" means the intentional touching of the complainant's bare genitals or anal opening by the actor's bare genitals or anal opening with sexual or aggressive intent or the touching by the complainant's bare genitals or anal opening of the actor's or another's bare genitals or anal opening with sexual or aggressive intent.

#### **Subd. 12. Sexual penetration.**

"Sexual penetration" means any of the following acts committed without the complainant's consent, except in those cases where consent is not a defense, whether or not emission of semen occurs:

- (1) sexual intercourse, cunnilingus, fellatio, or anal intercourse; or
- (2) any intrusion however slight into the genital or anal openings:
  - (i) of the complainant's body by any part of the actor's body or any object used by the actor for this purpose;
  - (ii) of the complainant's body by any part of the body of the complainant, by any part of the body of another person, or by any object used by the complainant or another person for this purpose, when effected by a person in a current or recent position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired; or
  - (iii) of the body of the actor or another person by any part of the body of the complainant or by any object used by the complainant for this purpose, when effected by a person in a current or recent position of authority, or by coercion, or by inducement if the child is under 13 years of age or mentally impaired.

#### **Subd. 13. Complainant.**

"Complainant" means a person alleged to have been subjected to criminal sexual conduct, but need not be the person who signs the complaint.

#### **Subd. 14. Coercion.**

"Coercion" means the use by the actor of words or circumstances that cause the complainant reasonably to fear that the actor will inflict bodily harm upon the complainant or another, or the use by the actor of confinement, or superior size or strength, against the

complainant that causes the complainant to submit to sexual penetration or contact against the complainant's will. Proof of coercion does not require proof of a specific act or threat.

**Subd. 15. Significant relationship.**

"Significant relationship" means a situation in which the actor is:

- (1) the complainant's parent, stepparent, or guardian;
- (2) any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt; or
- (3) an adult who jointly resides intermittently or regularly in the same dwelling as the complainant and who is not the complainant's spouse.

**Subd. 16. Patient.**

"Patient" means a person who seeks or obtains psychotherapeutic services.

**Subd. 17. Psychotherapist.**

"Psychotherapist" means a person who is or purports to be a physician, psychologist, nurse, chemical dependency counselor, social worker, marriage and family therapist, licensed professional counselor, or other mental health service provider; or any other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

**Subd. 18. Psychotherapy.**

"Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

**Subd. 19. Emotionally dependent.**

"Emotionally dependent" means that the nature of the former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to know that the former patient is unable to withhold consent to sexual contact or sexual penetration by the psychotherapist.

**Subd. 20. Therapeutic deception.**

"Therapeutic deception" means a representation by a psychotherapist that sexual contact or sexual penetration by the psychotherapist is consistent with or part of the patient's treatment.

**Subd. 21. Special transportation.**

"Special transportation service" means motor vehicle transportation provided on a regular basis by a public or private entity or person that is intended exclusively or primarily to serve individuals who are vulnerable adults or disabled. Special transportation service includes, but is not limited to, service provided by buses, vans, taxis, and volunteers driving private automobiles.

**Subd. 22. Predatory crime.**

"Predatory crime" means a felony violation of section [609.185](#) (first-degree murder), [609.19](#) (second-degree murder), [609.195](#) (third-degree murder), [609.20](#) (first-degree manslaughter), [609.205](#) (second-degree manslaughter), [609.221](#) (first-degree assault), [609.222](#) (second-degree assault), [609.223](#) (third-degree assault), [609.24](#) (simple robbery), [609.245](#) (aggravated robbery), [609.25](#) (kidnapping), [609.255](#) (false imprisonment), [609.498](#) (tampering with a witness), [609.561](#) (first-degree arson), or [609.582, subdivision 1](#) (first-degree burglary).

## Appendix 4

### Title IX Live Hearing Protocol

*reviewed April 9, 2021*

Prior to a live hearing, a pre-hearing meeting will take place with the Title IX Coordinator, the parties, and the advisors to clarify the hearing rules.

During a live hearing, the Complainant and Respondent with their Advisors will agree to be in either one room, or two separate rooms connected via video and audio, so that parties can see and hear each other in real-time. Live hearings will be recorded. The hearing panel will be made up of three to four adjudicators, one serving as the Lead Adjudicator.

- Live hearings allow for cross-examination of both parties and any witnesses.
- Statements may be made or read by the advisors to the parties, per the protocol.
- Questions are only asked by the advisors and adjudicators during the live hearing.
- Adjudicators determine the relevancy and appropriateness of each question before it is answered.
  - [Prior to the hearing parties and their advisors may submit to the TIX coordinator a list of questions they intend to ask in order to facilitate the review process. The coordinator will deliver these questions to the adjudicators for their review. This does not preclude the parties, through their advisors, from asking questions during the hearing that are not included on such a list.]
- The complainant and advisor will appear before the panel first. The advisor first, and then the hearing board, will ask questions of the respondent and any witnesses the complainant wishes to bring to the hearing.
- Once this is completed, the respondent and advisor will appear before the panel. The advisor first, and then the hearing board, will ask questions of the complainant and any witnesses the respondent wishes to bring to the hearing.
- Advisors will be limited to asking questions that the advisee (complainant or respondent) wishes them to ask.
- If either party or any witness refuses to answer even one question during cross-examination, no part of their statements during the hearing or during the investigation can be used to determine a finding.
- The lead adjudicator has the ability to grant a brief recess to the proceedings.
- The hearing panel members, as a group, have the ability to ask for additional hearings to be scheduled, should a significant need for such arise.

### **An Outline of the Live Hearing Format/Protocol**

1. Lead adjudicator opens with:
  1. Introductions.
  2. Review of the hearing purpose, format and guidelines.
  3. Review the roles of all involved: parties, advisors, adjudicators.
2. Lead adjudicator provides a general timeline of when the adjudicators will come to a finding with rationale and sanctions, if any, and that this will be communicated to the parties in a written report.
3. The complainant and the complainant's advisor will cross-examine first.
  1. A brief opening statement will be allowed by the complainant's advisor.
  2. The complainant's advisor will ask questions of the respondent and any witnesses the complainant brings forward.
  3. The adjudicator panel will ask questions of the respondent and any witnesses the complainant brings forward.
4. The respondent and the respondent's advisor will cross-examine second.
  1. An opening statement will be allowed by the respondent's advisor.
  2. The respondent's advisor will ask questions of the complainant and any witnesses the respondent brings forward.
  3. The adjudicator panel will ask questions of the complainant and any witnesses the respondent brings forward.
5. Follow-up questions will be allowed in this order:
  1. The complainant's advisor may ask questions of the respondent.
  2. The respondent's advisor may ask questions of the complainant.
  3. The adjudicator panel may ask questions of the complainant.
  4. The adjudicator panel may ask questions of the respondent.
6. A closing statement from the complainant's advisor will be allowed.
7. A closing statement from the respondent's advisor will be allowed.
8. Lead adjudicator will close the hearing, recess, or schedule a follow-up hearing.

## Appendix 5

### Title IX Appeal Request Form

Your Name	
Street Address	
City, State, ZIP	
Phone	
email	

An appeal must be received by the college Title IX Coordinator within 10 days of the party's receipt of the Hearing Board Decision. Generally, an appeal meets one or more of the following objectives:

- To bring new information that might not have been available or previously considered.
- To protest a procedural error or inconsistency, or the presence of bias in the appeal process.
- To question the appropriateness of a decision.

To complete the appeal process

1. Review the objectives above and write a letter/email that states clearly in the opening paragraph the reason(s) you believe an appeal is warranted. Use the following paragraph(s) to expand or substantiate the reason(s) for the appeal, including a summary of any evidence you would like to be considered in the review process. Attach or include this appeal letter along with this form.
2. Attach any supporting documentation (e.g. letter from a medical professional) that may be supportive of your appeal.
3. Indicate whether you would like to present your appeal in person, and whether or not you wish to have someone present with you. If you wish to present your appeal in person, please note that you will need to comply with the appeal meeting time that is set by the person considering your appeal.

\_\_\_ I would like to request to present my appeal in person.

\_\_\_ I would like to have someone present with me at my presentation.

(Write below: name of person and relationship to you)



4. Submit the completed form and send it, along with all other documentation, to the Title IX Coordinator:

Prof. Jeffrey Schone, Vice president for Student Life  
Martin Luther College  
1995 Luther Ct., New Ulm, MN. 56073  
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He will date the appeal and turn it over to the Appeal Officer:  
Prof. Scott Schmudlach, Vice President for Administration

By signing below, I certify that the facts set forth in this form and its attachments and complete, and I authorize investigation of the statements I have made.

Signature	
Date	

Date received by Title IX Coordinator	
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