

# GENDER-BASED MISCONDUCT POLICY

## I. INTRODUCTION

Members of the Turtle Mountain Community College (TMCC) community, guests and visitors have the right to be free from all forms of gender and sex-based discrimination, examples of which can include acts of sexual violence, sexual harassment, domestic violence, dating violence, and stalking. All members of the campus community are expected to conduct themselves in a manner that does not infringe upon the rights of others. TMCC believes in a zero tolerance policy for gender-based misconduct. When an allegation of misconduct is brought to an appropriate administration's attention, and a responding party is found to have violated this policy, serious sanctions will be used to reasonably ensure that such actions are never repeated. This policy has been developed to reaffirm these principles and to provide recourse for those individuals whose rights have been violated. This policy is intended to define community expectations and to establish a mechanism for determining when those expectations have been violated.

Turtle Mountain Community College (TMCC) is committed to encouraging and sustaining a learning and living community that is free from harassment, violence, and prohibited discrimination. In that regard and consistent with federal law (e.g., Title IX of the Education Amendments of 1972 and the Violence Against Women Act), TMCC has developed this comprehensive Student Sexual Misconduct Policy, applicable to all students. Further, TMCC conducts extensive education and awareness programs with the goal of preventing and discouraging sexual/gender violence and other forms of sexual misconduct.

As discussed more fully below, Sexual Misconduct Policy prohibits all forms of sex/gender-based harassment, sexual/gender violence, sexual exploitation, relationship violence (domestic violence and dating violence), and stalking. Collectively, these terms are referred to in this policy as “**Sexual Misconduct.**” They are defined below under “Prohibited Conduct.” (Note that non-sex/gender-based harassment is also a violation of college policy, as described under the college's Harassment Policy.)

The Sexual Misconduct Policy serves three principal purposes. First, it establishes conduct standards—namely, prohibited sexual misconduct—for all TMCC students and employees. Note that a violation of this policy may also constitute a crime, which can be independently reported to Belcourt B.I.A. Police or other appropriate law enforcement agency.

Second, the Student Sexual Misconduct Policy outlines reporting, investigation, and complaint resolution procedures in cases where it is alleged that a TMCC student and/or employee has engaged in sexual misconduct. This policy refers to the individual who is the alleged victim of the behavior(s) in question as the “**complainant**” and the student alleged to have committed the violation of the policy as the “**respondent.**” Both the complainant and the respondent will be treated fairly and with respect throughout the process. Respondents are entitled to a presumption of innocence throughout the disciplinary process unless and until they are found responsible for a violation of this policy.

In the paragraphs that follow, the Student Sexual Misconduct Policy specifies to whom violations of this policy should be reported, the availability of confidential reporting, administrative actions available to the complainant and the respondent, how the college will investigate and resolve alleged violations, possible sanctions, and appeals.

The TMCC Title IX Office is primarily responsible for implementing these procedures. The TMCC Title IX Office consists of the TMCC Title IX Coordinator, the TMCC Dean of Student Services and the TMCC Human Resource Director. Anyone with concerns about a possible violation of the Sexual Misconduct Policy by a student or employee is encouraged to contact a representative from the TMCC Title IX Office.

Third, the TMCC Sexual Misconduct Policy describes resources available on campus and in the community to assist students in dealing with the impact of sexual misconduct, whether it happened recently or in the past. Such services include, for example, TMCC counseling services located in the student union, I.H.S. Human Services, Belcourt B.I.A. Police (for possible criminal conduct), and administrative actions arranged or issued by the TMCC Title IX Office and/or the TMCC Dean of Student Services (or designee). In addition, resources are available to respondents during and, in some cases, after the complaint process.

**Christopher M. Parisien (701-477-7814 [cparisien@tm.edu](mailto:cparisien@tm.edu)),** is the Director of Title IX Compliance (Title IX Coordinator). In this role, Mr. Parisien is responsible for overseeing the college's Title IX compliance, including this policy and its complaint-resolution procedures; as such, Mr. Parisien receives comments/concerns from students about this policy's implementation.

### **Confidentiality**

A student may confidentially discuss an alleged violation of this policy (i.e., without the information being reported to the TMCC Title IX Office) to those who serve in a professional role in which communication is privileged under Turtle Mountain Tribal Code and North Dakota law and to those whom the college has designated as a confidential resource consistent with Title IX. Persons who may maintain strict confidentiality under college policy and within the scope of their professional responsibilities are limited to:

- TMCC Counselor
- Spiritual Leader

Students should be aware that, with the exception of these confidential resources, all employees who become aware of conduct that might fall under this policy are expected to notify the TMCC Title IX Office with the names of the parties involved and the details of the report.

### **Information for Complainants**

Complainants will be treated with respect before, during, and after the disciplinary process. During an initial meeting, the TMCC Title IX Office will inform the complainant of the college's disciplinary process and possible outcomes. The TMCC Title IX Office will communicate substantive and, when warranted, procedural developments regarding an investigation. The alleged conduct may also be criminal in nature, and complainants have the right to report—or not

to report—the conduct to Belcourt B.I.A. Police or other appropriate law enforcement agency. A criminal report does not preclude college disciplinary action.

Complainants are strongly encouraged to seek counseling and support available through resources such as TMCC counseling services or Belcourt Human Services. For more information on these resources, please see “Support Services and Options for Complainants.”

Regardless of whether a complainant pursues a criminal complaint and/or the college’s complaint process through this policy, the college may investigate the incident(s) in question and will take appropriate responsive action to ensure that the educational environment is free of harassment and to prevent the recurrence of a hostile environment—and, if appropriate, remedy the effects of the alleged harassment on the complainant. As discussed later in the policy, remedies available to a complainant may include, but are not limited to: reasonable academic accommodations, a “no contact” directive between the respondent and the complainant, and disciplinary action against the respondent as determined through the disciplinary process outlined in this policy. Mediation is not appropriate for any allegation of sexual violence.

A complainant may request or the college may issue administrative actions and supports such as a “no contact” directive and changes to academic situations through the TMCC Title IX Office regardless of whether a complainant files a formal report. A complainant will be notified as to what changes are reasonably available and/or are being implemented.

### **Information for Respondents**

Respondents will be treated with respect before, during, and after the disciplinary process. During an initial meeting, the TMCC Title IX Office will inform the respondent of the college’s disciplinary process and possible outcomes. The TMCC Title IX Office will communicate substantive and, when warranted, procedural developments regarding an investigation. Note that alleged behavior may also be criminal in nature, and a respondent may be subject to a criminal investigation by the appropriate law enforcement agency at the same time as an investigation by the college under this policy; the respondent may wish to consult with a criminal lawyer as the TMCC Title IX Office does not provide advice as to the criminal process. Respondents are entitled to a presumption of innocence throughout the disciplinary process unless and until they are found responsible for a violation of this policy.

Respondents have the right to (and are strongly encouraged to seek) counseling and support available through resources such as TMCC Counseling Services or other college and local resources.

A respondent may request, or the TMCC Title IX Office may change, academic situations and will be notified as to what changes are reasonably available and/or are being implemented.

### **Supports**

TMCC Title IX Coordinators

**Christopher M. Parisien**

**TMCC Safety Compliance Officer/Title IX Coordinator**

**(701)477-7814**

**Holly Cahill**  
**TMCC Human Resources Director/Deputy Title IX Coordinator**  
**(701)477-7938**

**Wanda Laducer**  
**TMCC Dean of Student Services/Deputy Title IX Coordinator**  
**(701)477-7875**

TMCC on-campus counseling services. Please contact:

**Tammy Morin**  
**TMCC Counselor**  
**(701)477-7947**

Community Resources:

**Victims of Crime (701)477-5614 (Victim Assistance)**

**Hearts of Hope (701)477-0002/(701)477-0168**  
**(Domestic Violence Shelter)**

**Quentin N. Burdick Memorial Health Care Facility (I.H.S.)**  
**(701)477-6111**

**Belcourt Human Services (I.H.S. Mental Health)**  
**(701)477-8658/(701)477-8659**

**Presentation Medical Center (Rolla)**  
**(701)477-3161**

**Belcourt B.I.A. Law Enforcement Center**  
**(701)477-6134**

**Rolette County Sheriff's Office**  
**(701)477-5623**

## **II. Scope**

The TMCC Sexual Misconduct Policy applies to any instance in which any TMCC student or employee is alleged to have engaged in sexual misconduct against anyone (e.g., a student, employee, or third party such as a visiting athlete, guest speaker, or contractor), regardless of the complainant's or respondent's sex, gender, sexual orientation, or gender identity. The college will respond to any complaint of sexual misconduct, including conduct alleged to have occurred during breaks, leaves of absence, or periods of dismissal, whether on or off campus. The disciplinary process is available as an option while a respondent remains a student at TMCC. With the agreement of the Vice President for Student Affairs and the dean of the respondent's college or school, disciplinary action may be taken against a student who has graduated and is alleged to have committed a violation while a student.

### **III. OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO PHYSICAL SEXUAL MISCONDUCT**

The expectations of our community regarding sexual misconduct can be summarized as follows: In order for individuals to engage in sexual activity of any type with each other, there must be clear, knowing, voluntary, and meaningful consent prior to and during sexual activity. Consent is sexual permission. Consent can be given by word or action, but non-verbal consent is not as clear as talking about what you want sexually and what you don't. Consent to some form of sexual activity cannot be automatically taken as consent to any other form of sexual activity. Silence--without actions demonstrating permission-- cannot be assumed to show consent.

Additionally, there is a difference between seduction and coercion. Coercing someone into sexual activity violates this policy in the same way as physically forcing someone into sex. Coercion happens when someone is pressured unreasonably for sex.

Because alcohol or other drug use can place the capacity to consent in question, sober sex is less likely to raise such questions. When alcohol or other drugs are being used, a person will be considered unable to give valid, meaningful consent if they cannot fully understand the details of a sexual interaction (who, what, when, where, why, or how) because they lack the capacity to reasonably understand the situation. Individuals who consent to sex must be able to understand what they are doing. Under this policy, "No" always means "No," and "Yes" may not always mean "Yes." Anything but a clear, knowing and voluntary consent to any sexual activity is equivalent to a "no."

### **IV. OVERVIEW OF POLICY EXPECTATIONS WITH RESPECT TO CONSENSUAL RELATIONSHIPS**

There are inherent risks in any romantic or sexual relationship between individuals in unequal positions (such as teacher and student, supervisor and employee). These relationships may be less consensual than perceived by the individual whose position confers power. The relationship also may be viewed in different ways by each of the parties, particularly in retrospect. Furthermore, circumstances may change, and conduct that was previously welcome may become unwelcome. Even when both parties have consented at the outset to a romantic or sexual involvement, this past consent may not remove grounds for a later charge of a violation of applicable sections of the faculty/staff handbooks. TMCC does not wish to interfere with private choices regarding personal relationships when these relationships do not interfere with the goals and policies of TMCC. For the personal protection of members of this community, relationships in which power differentials are inherent (faculty-student, staff-student, administrator-student) are generally discouraged.

Consensual romantic or sexual relationships in which one party maintains a direct supervisory or evaluative role over the other party are unethical. Therefore, persons with direct supervisory or evaluative responsibilities who are involved in such relationships must bring those relationships to the timely attention of their supervisor, and will likely result in the necessity to remove the employee from the supervisory or evaluative responsibilities, or shift the student out of being supervised or evaluated by someone with whom they have established a consensual relationship.

While no relationships are prohibited by this policy, failure to self-report such relationships to a supervisor as required can result in disciplinary action for an employee.

## **V. SEXUAL VIOLENCE -- RISK REDUCTION TIPS**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to victim-blame, and with recognition that only those who commit sexual violence are responsible for those actions, these suggestions may nevertheless help you to reduce your risk experiencing a non-consensual sexual act. Below, suggestions to avoid committing a non-consensual sexual act are also offered:

- If you have limits, make them known as early as possible.
- Tell a sexual aggressor “**NO**” clearly and firmly.
- Try to remove yourself from the physical presence of a sexual aggressor.
- Find someone nearby and ask for help.
- Take affirmative responsibility for your alcohol intake/drug use and acknowledge that alcohol/drugs lower your sexual inhibitions and may make you vulnerable to someone who views a drunk or high person as a sexual opportunity.
- Take care of your friends and ask that they take care of you. A real friend will challenge you if you are about to make a mistake. Respect them when they do.

If you find yourself in the position of being the initiator of sexual behavior, you owe sexual respect to your potential partner. These suggestions may help you to reduce your risk for being accused of sexual misconduct:

- Clearly communicate your intentions to your sexual partner and give them a chance to clearly relate their intentions to you.
- Understand and respect personal boundaries.
- **DON'T MAKE ASSUMPTIONS** about consent; about someone's sexual availability; about whether they are attracted to you; about how far you can go or about whether they are physically and/or mentally able to consent. If there are any questions or ambiguity then you **DO NOT** have consent.
- Mixed messages from your partner are a clear indication that you should stop, defuse any sexual tension and communicate better. You may be misreading them. They may not have figured out how far they want to go with you yet. You must respect the timeline for sexual behaviors with which they are comfortable.
- Don't take advantage of someone's drunkenness or drugged state, even if they did it to themselves.
- Realize that your potential partner could be intimidated by you, or fearful. You may have a power advantage simply because of your gender or size. Don't abuse that power.
- Understand that consent to some form of sexual behavior does not automatically imply consent to any other forms of sexual behavior.
- Silence and passivity cannot be interpreted as an indication of consent. Read your potential partner carefully, paying attention to verbal and non-verbal communication and body language.

In campus disciplinary proceedings, legal terms like “guilt, “innocence” and “burdens of proof” are not applicable, but TMCC never assumes a student/employee is in violation of TMCC policy. Campus disciplinary proceedings are conducted to take into account the totality of all evidence available, from all relevant sources.

TMCC reserves the right to take whatever measures it deems necessary in response to an allegation of sexual misconduct in order to protect students’ rights and personal safety. Such measures include, but are not limited to, no contact orders, interim suspension from campus pending a resolution, and reporting the matter to the local police. Not all forms of sexual misconduct will be deemed to be equally serious offenses, and TMCC reserves the right to impose different sanctions, ranging from verbal warning to expulsion, depending on the severity of the offense. TMCC will consider the concerns and rights of both the reporting party and the responding party.

## **VI. Prohibited Conduct**

**Rule.** Turtle Mountain Community College prohibits all forms of sex/gender-based harassment, sexual/gender violence, sexual exploitation, relationship violence (domestic violence and dating violence), and stalking.

**Sex/Gender-Based Harassment.** Sex- or gender-based harassment may take two forms:

One form of harassment is unwelcome verbal or physical conduct based on sex that, because of its severity, persistence, and/or pervasiveness, creates a hostile environment by interfering significantly with an individual’s work or education, or adversely affecting an individual’s living conditions.

The other form of harassment is an employee’s or student’s use of a position of authority to engage in unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when:

- submission to such conduct is explicitly or implicitly made a term or condition of an individual’s employment or education; or
- submission to or rejection of such conduct is used as a basis for decisions affecting an individual’s education or employment.

The conduct alleged to constitute harassment under this policy must be sufficiently severe, persistent, and/or pervasive to actually interfere with the complainant’s work or education to a significant degree. The severity, persistence, and/or pervasiveness of the alleged conduct will also be evaluated from the perspective of a reasonable person similarly situated to the complainant and in consideration of the context of the behavior.

Harassment must be distinguished from behavior that, even though unpleasant or disconcerting, is appropriate to the carrying out of certain instructional, advisory, or supervisory responsibilities or to legitimate academic and related discussions.

## **SEXUAL HARASSMENT**

Sexual Harassment is:

- unwelcome, gender-based verbal or physical conduct that is, sufficiently severe, persistent or pervasive that it, unreasonably interferes with, denies or limits someone's ability to participate in or benefit from TMCC's educational program and/or activities, and is based on power differentials (quid pro quo), the creation of a hostile environment, or retaliation.

Examples include: 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.

## **NON-CONSENSUAL SEXUAL CONTACT**

Non-Consensual Sexual Contact is:

- any intentional sexual touching, however slight, with any object, of a person upon another person, 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.

## **NON-CONSENSUAL SEXUAL INTERCOURSE**

Non-Consensual Sexual Intercourse is:

- any sexual intercourse, however slight, with any object, of a person upon another person, 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.

## **SEXUAL EXPLOITATION**

Occurs when a student takes non-consensual or abusive sexual advantage of another for his/her own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and that behavior does not otherwise constitute one of other sexual misconduct offenses.

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

- Invasion of sexual privacy;
- Prostituting another student;
- Non-consensual video or audio-taping of sexual activity;
- Going beyond the boundaries of consent (such as letting your friends hide in the closet to watch you having consensual sex);
- Engaging in voyeurism;



- Knowingly transmitting an STI or HIV to another student;
- 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

**Sexual Violence.** Sexual violence is a particularly severe form of harassment defined as any physical act of a sexual nature based on sex and perpetrated against an individual without consent or when an individual is unable to freely give consent. The terms “without consent” and “unable to freely give consent” are defined below.

Physical acts of a sexual nature include, but are not limited to, touching or attempted touching of an unwilling person's breasts, buttocks, inner thighs, groin, or genitalia, either directly or indirectly; and/or sexual penetration (however slight) of another person's oral, anal, or genital opening with any body part or object.

**Sexual Exploitation.** Sexual exploitation includes taking non-consensual, sexual advantage of another for one's benefit or the benefit of another party.

**Relationship Violence.** Relationship violence is any act of violence or pattern of abusive behavior in an intimate relationship that is used by one partner to gain or maintain power and control over another partner. Relationship violence can be physical, sexual, emotional, economic, or psychological actions or threats of actions that influence another person. Relationship violence includes domestic violence and dating violence (adapted from the Office on Violence Against Women, U.S. Department of Justice, [justice.gov/ovw/domestic-violence](https://justice.gov/ovw/domestic-violence)).

- **Domestic violence** is any act of violence or pattern of abusive behavior committed by a person against the person's current or former spouse/cohabitant, person similarly situated under domestic or family violence law, or anyone else protected under domestic or family violence law.
- **Dating violence** is any act of violence or pattern of abusive behavior committed by a student who has been in a social relationship of a romantic or intimate nature with the complainant. Whether there was such relationship will be gauged by its length, type, and frequency of interaction.

**Turtle Mountain Band of Chippewa Tribal Code Definition:**

- **“DOMESTIC VIOLENCE”** means abuse, mental anguish, physical harm, bodily injury, assault, sexual assault or the infliction of reasonable fear of bodily injury between family and/or household members. All crimes involving threat, violence, assault, physical abuse, sexual abuse or others enumerated in the Tribal Mountain Tribal Code and the Turtle Mountain Domestic Violence Code committed against or between family or household members may be charged as domestic violence and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.

**Sex/Gender-Based Stalking.** Sex/gender-based stalking is a course of conduct (including cyberstalking) directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

## **ADDITIONAL APPLICABLE DEFINITIONS:**

- **Consent:** Consent is clear, knowing, meaningful, 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 mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

Consent is an affirmative decision to engage in mutually acceptable sexual activity freely given by clear actions or words.

Consent is an informed decision made freely and actively by all parties. Relying solely upon nonverbal communication can lead to miscommunication. It is important not to make assumptions; if confusion or ambiguity on the issue of consent arises anytime during a sexual interaction, it is essential that each participant stops and clarifies, verbally, willingness to continue.

Students should understand that consent may not be inferred from silence, passivity, or lack of active resistance alone. Furthermore, a current or previous dating or sexual relationship is not sufficient to constitute consent, and consent to one form of sexual activity does not imply consent to other forms of sexual activity.

**Conduct is considered “without consent” if no clear consent, verbal or nonverbal, is given.** An individual is "unable to freely give consent" when the individual is incapacitated (arising, for example, from the use of alcohol or other drugs or when the individual is passed out, asleep, unconscious, or mentally or physically impaired). An individual is "unable to freely give consent" when the individual is coerced into sexual activity, such as, for example, through the use of physical force, threat of physical or emotional harm, undue pressure, isolation, or confinement.

The perspective of a reasonable person will be the basis for determining whether a respondent knew, or reasonably should have known, whether a complainant was able to freely give consent and whether consent was given. Additionally, being intoxicated or incapacitated does not diminish one's responsibility to obtain consent and will not be an excuse for sexual misconduct.

- 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.
- **Force:** 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 (“Have sex with me or I’ll hit you. Okay, don’t hit me, I’ll do what you want.”).
  - **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, 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.

- NOTE: There is no requirement that a party resists the sexual advance or request, but resistance is a clear demonstration of non-consent. The presence of force is not demonstrated by the absence of resistance. Sexual activity that is forced is by definition non-consensual, but nonconsensual sexual activity is not by definition forced.
- In order to give effective consent, one must be of legal age.
- Sexual activity with someone who one should know to be -- or based on the circumstances should reasonably have known to be -- mentally or physically incapacitated (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 (e.g., 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 Rohypnol, Ketamine, GHB, Burundanga, etc. is prohibited, and administering one of these drugs to another student is a violation of this policy.
- Use of alcohol or other drugs will never function as a defense for any behavior that violates this policy.
- The sexual orientation and/or gender identity of individuals engaging in sexual activity is not relevant to allegations under this policy.

## **SANCTIONING FOR SEXUAL MISCONDUCT**

- Any person found responsible for violating the policy on Non-Consensual or Forced Sexual Contact (where no intercourse has occurred) will likely receive a sanction ranging from probation to expulsion, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*
- Any person found responsible for violating the policy on Non-Consensual or Forced Sexual Intercourse will likely face a recommended sanction of suspension or expulsion (student) or suspension or termination (employee).\*
- Any person found responsible for violating the policy on sexual exploitation or sexual harassment will likely receive a recommended sanction ranging from warning to expulsion or termination, depending on the severity of the incident, and taking into account any previous disciplinary violations.\*

\*The decision-making body reserves the right to broaden or lessen any range of recommended sanctions in the case of serious mitigating circumstances or egregiously offensive behavior. Neither the initial hearing officers nor any appeals body or officer will deviate from the range of recommended sanctions unless compelling justification exists to do so.

## **EXAMPLES**

1. Amanda and Bill meet at a party. They spend the evening dancing and getting to know each other. Bill convinces Amanda to come up to his room. From 11:00pm until 3:00am, Bill uses every line he can think of to convince Amanda to have sex with him, but she adamantly refuses. He keeps at her, and begins to question her religious convictions, and accuses her of being "a prude." Finally, it seems to Bill that her resolve is weakening, and he convinces her to give him a "hand job" (hand to genital contact). Amanda would never have done it but for Bill's incessant advances. He feels that he successfully seduced her, and that she wanted to do it all along, but was playing shy and hard to get. Why else would she have come up to his room alone after the party? If she really didn't want it, she could have left.

**Bill is responsible for violating the university Non-Consensual or Forced Sexual Contact policy. It is likely that a university hearing board would find that the degree and duration of the pressure Bill applied to Amanda are unreasonable. Bill coerced Amanda into performing unwanted sexual touching upon him. Where sexual activity is coerced, it is forced. Consent is not effective when forced. Sex without effective consent is sexual misconduct.**

2. Jiang is a junior at the university. Beth is a sophomore. Jiang comes to Beth's dorm room with some mutual friends to watch a movie. Jiang and Beth, who have never met before, are attracted to each other. After the movie, everyone leaves, and Jiang and Beth are alone. They hit it off, and are soon becoming more intimate. They start to make out. Jiang verbally expresses his desire to have sex with Beth. Beth, who was abused by a baby-sitter when she was five, and has not had any sexual relations since, is shocked at how quickly things are progressing. As Jiang takes her by the wrist over to the bed, lays her down, undresses her, and begins to have intercourse with her, Beth has a severe flashback to her childhood trauma. She wants to tell Jiang to stop, but cannot. Beth is stiff and unresponsive during the intercourse. Is this a policy violation?

**Jiang would be held responsible in this scenario for Non Consensual Sexual Intercourse. It is the duty of the sexual initiator, Jiang, to make sure that he has mutually understandable consent to engage in sex. Though consent need not be verbal, it is the clearest form of consent. Here, Jiang had no verbal or non-verbal mutually understandable indication from Beth that she consented to sexual intercourse. Of course, wherever possible, students should attempt to be as clear as possible as to whether or not sexual contact is desired, but students must be aware that for psychological reasons, or because of alcohol or drug use, one's partner may not be in a position to provide as clear an indication as the policy requires. As the policy makes clear, consent must be actively, not passively, given.**

3. Kevin and Amy are at a party. Kevin is not sure how much Amy has been drinking, but he is pretty sure it's a lot. After the party, he walks Amy to her room, and Amy comes on to Kevin, initiating sexual activity. Kevin asks her if she is really up to this, and Amy says yes. Clothes go flying, and they end up in Amy's bed. Suddenly, Amy runs for the bathroom. When she returns,

her face is pale, and Kevin thinks she may have thrown up. Amy gets back into bed, and they begin to have sexual intercourse. Kevin is having a good time, though he can't help but notice that Amy seems pretty groggy and passive, and he thinks Amy may have even passed out briefly during the sex, but he does not let that stop him. When Kevin runs into Amy the next day, he thanks her for the wild night. Amy remembers nothing, and decides to make a report to the Dean. **This is a violation of the Non-Consensual Sexual Intercourse Policy. Kevin should have known that Amy was incapable of making a rational, reasonable decision about sex. Even if Amy seemed to consent, Kevin was well aware that Amy had consumed a large amount of alcohol, and Kevin thought Amy was physically ill, and that she passed out during sex. Kevin should be held accountable for taking advantage of Amy in her condition. This is not the level of respectful conduct expected of students.**

#### **OTHER MISCONDUCT OFFENSES (WILL FALL UNDER TITLE IX WHEN SEX OR GENDER-BASED)**

1. Threatening or causing physical harm, extreme verbal abuse, or other conduct which threatens or endangers the health or safety of any person;
2. Discrimination, defined as actions that deprive other members of the community of educational or employment access, benefits or opportunities on the basis of gender;
3. Intimidation, defined as implied threats or acts that cause an unreasonable fear of harm in another;
4. Hazing, defined as acts likely to cause physical or psychological harm or social ostracism to any person within the TMCC community, when related to the admission, initiation, pledging, joining, or any other group-affiliation activity (as defined further in the Hazing Policy);
5. Bullying, defined as repeated and/or severe aggressive behavior likely to intimidate or intentionally hurt, control or diminish another person, physically or mentally (that is not speech or conduct otherwise protected by the 1<sup>st</sup> Amendment).
6. Violence between those in an intimate relationship to each other;
7. Stalking, defined as repetitive and/or menacing pursuit, following, harassment and/or interference with the peace and/or safety of a member of the community; or the safety of any of the immediate family of members of the community. (See TMT Code Definitions Attached)

#### **Retaliation**

Retaliation is prohibited under Title IX and the TMCC Title IX policy and is adjudicated under this policy and procedures. Retaliation is defined as words or acts taken in response to good-faith reporting of sexual misconduct, or to an individual or group's participation in TMCC's complaint process or the follow up to a complaint. Retaliation also includes opposing what the individual reasonably believes to be sexual misconduct. Retaliation will be a violation of this policy when it is sufficiently serious (e.g., severe, persistent, and/or pervasive) to discourage a reasonable person from further such activity. The protection against retaliation applies to both parties and to

all witnesses. All persons who believe they have been subjected to misconduct under this policy are encouraged and have the option to seek support, utilize available resources, and come forward with their concern or complaint.

Fear of retaliation should never be an obstacle to reporting an incident of alleged sex/gender-based harassment, sexual/gender violence, sexual exploitation, relationship violence, or stalking.

## **VII. Complaint Resolution**

### **Reporting**

Students and Employees are encouraged to report violations of this policy to the TMCC Title IX Office, which consists of TMCC Title IX Coordinator, TMCC Dean of Student Services, and TMCC Human Resources Director.

Once a report is received, an investigation and possible immediate and/or interim measures may occur, including adjudication through the disciplinary process described below, administrative actions (e.g., a “no contact” directive, trespass from campus, interim suspension), reasonable academic or housing modifications, or other measures designed to reasonably minimize the possible recurrence of, and mitigate the effects of, the alleged conduct.

Reports involving an alleged student respondent may be filed at any time while the respondent remains a student at TMCC; prompt reporting can aid an investigation.

A complainant may request that the TMCC Title IX Office not reveal the complainant's identity in responding to a report. (In some situations, it may be possible to proceed fully with an investigation without disclosing the name of the complainant.) A complainant may also request that the college take limited or no action in response to a report.

A request to preserve the confidentiality of any party involved in a report or that no action be taken should be made to either the TMCC Title IX Coordinator, TMCC Dean of Student Services, or TMCC Human Resource Director. TMCC Title IX Office will confer about the request and inform the party of the extent to which confidentiality may be maintained. The college will attempt to preserve the confidentiality of the complainant and/or respect a request for limited or no action in response to a report except when, in the college's judgment, doing so would jeopardize the safety of members of the college community (including the complainant) or where the college is required by law to disclose the information (such as in response to a legal process).

### **Immediate and/or Interim Measures**

The TMCC Title IX Office, may issue administrative actions immediately and/or on an interim basis as deemed appropriate, including but not limited to restrictions on contact between the complainant, the respondent, and/or other involved parties and exclusion from areas of campus. The Dean of Students Office adjudicates alleged violation of such through its policies and procedures. The Dean of Students, or designee, may impose an interim suspension.

### **Time Frames**

The TMCC Title IX Office seeks to resolve complaints under this policy within 60 business days from receipt of a report, excluding days classes are not in session (see additional information about Appeals, below, for additional time frames). An investigation typically takes 21 to 45 business days to complete. Generally within 15 business days after completion of an investigation, an administrative or panel hearing, if applicable, is scheduled. During this time, staff in the administrative or hearing panel may seek clarifying information and/or meet with a complainant, respondent, investigator, or others.

Circumstances may require the college to extend this overall time frame or any individual time frame discussed in this policy. Examples of reasons why time frames may need to be extended include the complexity of the case, delays due to fall/spring/summer/holiday breaks, inclement weather, and other extenuating circumstances. Exceptions to these time frames will be communicated to the complainant and respondent.

### **Advisors**

A complainant and a respondent have access to trained Disciplinary Advisors to guide them through the disciplinary process. Complainants and respondents may consult with anyone they wish (including an attorney) during any stage of this process. One advisor of the complainant's/respondent's choice (either the university-appointed Disciplinary Advisor or another advisor of their choice) may accompany the complainant/respondent to any meeting with TMCC Title IX Office, the investigator, or to a hearing. The advisor's role in any meeting or hearing is limited to quietly conferring with the complainant or respondent through written correspondence or whisper, and the advisor may not address any other participant or the hearing panel. An advisor may not also be a witness.

### **Investigation**

After it receives a report, the TMCC Title IX Office typically meets with a complainant and respondent separately in order to review the disciplinary process and to hear an overview of each party's account of the incident. Immediate, interim, and/or long-term measures may also be discussed. The TMCC Title IX Office may use any information gleaned through this and/or subsequent meetings with the complainant/respondent in the disciplinary process.

If the TMCC Title IX Office determines further investigation is warranted, a full investigation will be conducted concerning the reported incident. The TMCC Title IX Coordinator, in conjunction with a TMCC Deputy Title IX Coordinator, will act as the investigators. The investigators interview witnesses, collect additional information, and submit a written report of relevant information to the TMCC Vice President. The TMCC Vice President will review the report for completeness and relevance (as that term is defined in Section VI), and direct further investigation as necessary before the report is shared with the complainant and respondent.

The investigator's final report will be shared with the complainant and respondent, who then have five business days to respond in writing to the report with any clarifications, witness statements, or other information. The complainant and respondent must also submit in writing by that time the names of any material witnesses the complainant/respondent wishes to testify (should the matter proceed to a hearing) and a summary of information each witness would

provide through his/her testimony. (Character witnesses are not permitted.) Names of witnesses provided by the complainant/respondent will be shared with the other party. After the five-business-day deadline, the complainant and respondent may not provide any additional information for the hearing packet (defined below) and may not produce any additional material at the hearing, unless that information was not reasonably available prior to the closing of the five-day window. The hearing panel or the TMCC Title IX Office, as appropriate, determines whether to grant exceptions to this five-day deadline.

The TMCC Title IX Office, in conjunction with TMCC Vice President, will determine what, if any, changes or additions are made to the investigator's report based upon its review of the report and feedback as described above from the complainant and respondent.

The TMCC Title IX Office will determine whether to proceed to a hearing based on its assessment of whether there is sufficient information to believe that a policy violation may have occurred. The TMCC Title IX Office will convey this decision in writing to the complainant and respondent as applicable, who may ask that the TMCC Title IX Office reconsider its decision.

### **VIII. Hearing Procedures**

When the TMCC Title IX Office decides that a case should proceed to a hearing, the case may be resolved either through an administrative resolution or a hearing panel. Under both types of proceedings, the university will use a "preponderance of the evidence" standard.

#### **Administrative Hearing**

At the discretion of the TMCC Title IX Office, and with the agreement of both the complainant and respondent, a report may be resolved through an administrative hearing. The parties will be notified (typically via email) of the specific violations of the Student Sexual Misconduct Policy under consideration in advance of an administrative hearing. A designee of the TMCC Title IX Office will review the information gathered during the investigation separately and in private with each party and give each party an opportunity to respond. The designee will determine if the respondent is responsible for the alleged policy violation(s), and, if so, issue (an) appropriate sanction(s). The parties will be notified in writing of the outcomes concurrently. If the respondent or complainant does not accept the administrative hearing resolution, either party may request by the stated deadline (typically 72 hours after notification of the outcome) a hearing before a hearing panel, as described below. If such a request is made, the TMCC Title IX Office will then proceed in scheduling a hearing panel. The proposed outcome from the administrative hearing will not be disclosed to the hearing panel unless the complainant or respondent shares such information.

#### **Hearing Panel**

If the TMCC Title IX Office decides the case should be resolved through a hearing panel, the TMCC Title IX Office will appoint a specially trained three-person hearing panel (typically including two faculty or staff members and, when possible, at least one representative of the complainant's and respondent's school[s]) to resolve a complaint under this policy. A finding of responsibility must be based on a unanimous vote. Sanctions of suspension or expulsion must also be supported by a unanimous vote. A majority vote is required for all other sanctions.



The following procedures apply to a complaint that proceeds to a hearing panel:

- **Notice.** Both the complainant and the respondent will be notified at least 120 hours in advance of the date and time of the hearing and the names of the hearing panelists.
- **Hearing Packet.** In advance of the hearing, the TMCC Title IX Office finalizes a packet with information it deems relevant to the case to be shared with the hearing panel. The hearing packet typically includes the investigator's report (if applicable). The TMCC Title IX Office will share a copy of that packet with both the complainant and the respondent at least 120 hours in advance of the hearing.
- **Conflict of Interest.** A complainant and/or respondent may challenge the participation of a panelist because of perceived conflict of interest, bias, or prejudice. Such challenges, including rationale, must be made to the TMCC Title IX Office at least 72 hours prior to the commencement of the hearing. At its discretion, the TMCC Title IX Office will determine whether such a conflict of interest exists and whether a panelist should be replaced. Postponement of a hearing may occur if a replacement panelist cannot be immediately identified.
- **Witnesses.** The hearing panel may, at its discretion, exclude witnesses or witness testimony the panel considers irrelevant or duplicative.
- **Electronic Devices.** A respondent, complainant, advisor, and/or witness may not bring electronic devices that capture or facilitate communication (e.g., computer, cell phone, audio/video recorder, etc.) into a hearing room, unless authorized by the hearing panel. The TMCC Title IX Office will make an audio recording of the hearing to be kept on file for three years. Reasonable care will be taken to create a quality audio recording and minimize technical problems; however, technical problems that result in no recording or an inaudible one will not be a valid argument for appeal.
- **Hearing Procedure.** A hearing panel has general authority over the conduct of the hearing (e.g., it may set time frames for witness testimony and it may limit opening/closing statements or their length, etc.). The general course of procedure for a panel hearing is as follows: introductions; respondent's statement accepting or denying responsibility; opening comments from the complainant; opening comments from the respondent; questions from the panel; testimony/questions of other material witnesses (if applicable); closing comments from the complainant; and, closing comments from the respondent. A complainant or respondent may not question each other or other witnesses directly, but may raise questions to be asked of that party through the hearing panel, which will determine whether to ask them. The hearing panel determines the relevancy of any information presented/submitted at the hearing and can exclude irrelevant information.
- **Hearing Facilitator.** A staff member from the TMCC Title IX Office will serve as the non-voting hearing facilitator.
- **Relevance.**
  - In evaluating the relevance of information, the TMCC Title IX Office or the hearing panel, as appropriate, considers, among other things, whether the information bears on a fact at issue in the case, is more prejudicial than probative, or is duplicative.
  - A complainant's or respondent's prior or subsequent sexual activity is typically not relevant and will only be considered as evidence when the previous or

subsequent behavior was substantially similar to the conduct at issue or indicates a pattern of behavior and substantial conformity with that pattern.

The complainant and respondent will receive verbal notification of the decision of a hearing panel no later than five business days after the hearing. Notification will be individually given to the respondent and complainant at approximately the same time. A written hearing report outlining the decision and rationale of the hearing panel will be delivered to the respondent and the complainant within 10 business days of the hearing panel's decision.

## **Appeal**

### **Filing an appeal**

The complainant or the respondent may appeal the decision of the decision maker. An appeal must be filed in writing with the president or designee within ten (10) business days after notification of the decision. The appeal must state specific reasons why the complainant or respondent believes the decision was improper.

### **Effect of review**

For employees represented by a collective bargaining agreement, an appeal under this procedure is separate and distinct from, and is not in any way related to, any contractual protections or procedures. During the pendency of the appeal disciplinary or corrective action taken as a result of the decision shall be enforced.

### **Appeal process**

The president or designee shall review the record and determine whether to affirm or modify the decision. The president or designee may receive additional information if the president or designee believes such information would aid in the consideration of the appeal. The decision on appeal shall be made within a reasonable time and the complainant, respondent and designated officer shall be notified in writing of the decision, consistent with applicable state and federal data privacy laws. The decision on appeal exhausts the complainant's and respondent's administrative remedies under this procedure except as provided herein.

### **Maintenance of report/complaint procedure documentation**

During and upon the completion of the complaint process, the complaint file shall be maintained in a secure location in the office of the designated officer for the college in accordance with the applicable records retention schedule. Access to the data shall be in accordance with the respective collective bargaining agreement or personnel plan, or other applicable law.

## **SANCTIONS**

The following sanctions may be imposed upon any member of the community found to have violated the Gender-based Misconduct Policy (also see ranges above for violations of the sexual misconduct policy). Factors considered in sanctioning are defined in the TMCC Student Handbook and TMCC Employee Policy Manual. The following are the typical sanctions that may be imposed upon students or organizations singly or in combination:

### **Student Sanctions (listed below and defined in TMCC Student Handbook)**

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Revocation of Degree
- Organizational Sanctions
- Other Actions

**Employee Sanctions (listed below and defined in TMCC Employee Handbook)**

- Warning – Written or Verbal
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Demotion
- Loss of Annual Pay Increase
- Suspension without Pay
- Suspension with Pay
- Revocation of Tenure
- Termination

## **IX. MODEL CONFIDENTIALITY, PRIVACY AND REPORTING POLICY**

### **Confidentiality and Reporting of Offenses Under This Policy**

All TMCC employees (faculty, staff, administrators) are expected to report actual or suspected discrimination or harassment to appropriate officials, though there are some limited exceptions. In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality – meaning they are not required to report actual or suspected discrimination or harassment to appropriate university officials - thereby offering options and advice without any obligation to inform an outside agency or individual unless you have requested information to be shared. Other resources exist for you to report crimes and policy violations and these resources will take action when you report victimization to them. The following describes the two reporting options at university:

### **Confidential Reporting**

If a reporting party would like the details of an incident to be kept confidential, the reporting party may speak with:

- On-campus licensed professional counselors,
- Off-campus:
  - Licensed Professional Counselors
  - Local rape crisis counselors
  - Domestic violence resources,
  - Local or state assistance agencies,

- On or off-campus Spiritual Leaders

All of the above employees will maintain confidentiality except in extreme cases of immediacy of threat or danger or abuse of a minor. Campus counselors [and/or the Employee Assistance Program] are available to help free of charge and can be seen on an emergency basis during normal business hours. These employees will submit [timely, quarterly, semesterly, yearly] anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient or parishioner.

### **Formal Reporting Options**

All TMCC employees have a duty to report, unless they fall under the “Confidential Reporting” section above. Reporting parties may want to consider carefully whether they share personally identifiable details with non-confidential employees, as those details must be shared by the employee with the Title IX Coordinator and/or Deputy Coordinators. Otherwise, employees must share all details of the reports they receive. If a reporting party does not wish for their name to be shared, does not wish for an investigation to take place, or does not want a formal resolution to be pursued, the reporting party may make such a request to the Title IX Coordinator or Deputy Coordinators, who will evaluate that request in light of the duty to ensure the safety of the campus and comply with federal law.

In cases indicating pattern, predation, threat, weapons and/or violence, TMCC will likely be unable to honor a request for confidentiality. In cases where the victim requests confidentiality and the circumstances allow TMCC to honor that request, TMCC will offer interim supports and remedies to the victim and the community, but will not otherwise pursue formal action. A reporting party has the right, and can expect, to have reports taken seriously by TMCC when formally reported, and to have those incidents investigated and properly resolved through these procedures.

Formal reporting still affords privacy to the reporter, and only a small group of officials who need to know will be told, including but not limited to: TMCC Title IX Office, TMCC President and TMCC Vice President. Information will be shared as necessary with investigators, witnesses and the responding party. The circle of people with this knowledge will be kept as tight as possible to preserve a reporting party’s rights and privacy. Reports to the Title IX Coordinator can be made via email, phone or in person at the contact information below:

**Christopher M. Parisien**  
**TMCC Title IX Coordinator/Safety Compliance Officer**  
TMCC Main Campus  
10145 BIA Road 7  
P.O. Box 340  
Belcourt, ND 58316  
Phone #: (701) 477-7814  
[cparisien@tm.edu](mailto:cparisien@tm.edu)

Failure of a non-confidential employee, as described in this section, to report an incident or incidents of sex or gender harassment or discrimination of which they become aware, is a

violation of university policy and is subject to disciplinary action ranging from a warning up to and including termination of employment.

### **[OPTIONAL ADDITIONAL INFORMATION]:**

#### **Federal Statistical Reporting Obligations**

Certain campus officials have a duty to report sexual assault, domestic violence, dating violence and stalking for federal statistical reporting purposes (Clery Act). All personally identifiable information is kept confidential, but statistical information must be passed along to campus law enforcement 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 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 law enforcement, local police, coaches, athletic directors, residence life 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.

#### **Federal Timely Warning Reporting Obligations**

Victims of sexual misconduct should also be aware that university 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 university 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.

### **QUESTIONS AND ANSWERS**

Here are some of the most commonly asked questions regarding the University's sexual misconduct policy and procedures.

#### ***Does information about a report remain private?***

The privacy of all parties to a report of sexual misconduct must be respected, except insofar as it interferes with TMCC's obligation to fully investigate allegations of sexual misconduct. Where privacy is not strictly kept, it will still be tightly controlled on a need-to-know basis.

Dissemination of information and/or written materials to persons not involved in the resolution process is not permitted. Violations of the privacy of the reporting party or the responding party may lead to conduct action by the TMCC.

In all resolutions of sexual misconduct, all parties will be informed of the outcome. In some instances, the administration also may choose to make a brief public announcement of the nature of the violation and the action taken, without using the name or identifiable information of the alleged victim. Certain TMCC administrators are informed of the outcome within the bounds of student privacy (e.g., the President of the university, Dean of Students, Director of Security). [If there is a report of an act of alleged sexual misconduct to a conduct officer of the TMCC and there is evidence that a felony has occurred, local police will be notified. This does not mean charges will be automatically filed or that a victim must speak with the police, but the institution

is legally required to notify law enforcement authorities]. The institution also must statistically report the occurrence on campus of major violent crimes, including certain sex offenses, in an “Annual Security Report” of campus crime statistics. This statistical report does not include personally identifiable information.

***Will my parents be told?***

No, not unless you tell them. Whether you are the reporting party or the responding party, TMCC’s primary relationship is to the student and not to the parent. However, in the event of major medical, disciplinary, or academic jeopardy, students are strongly encouraged to inform their parents. TMCC officials will directly inform parents when requested to do so by a student, in a life-threatening situation, [or if an individual has signed the permission form at registration which allows such communication].

***Will the responding party know my identity?***

Yes, if TMCC determines there is reasonable cause to believe a violation has occurred and investigates the matter. Sexual misconduct is a serious offense and the responding party has the right to know the identity of the reporting party. If there is a hearing, TMCC does provide options for questioning without confrontation, including closed-circuit testimony, Skype, using a room divider or using separate hearing rooms.

***Do I have to name the responding party?***

Yes, if you want formal disciplinary action to be taken against the responding party. You can report the incident without the identity of the responding party, but doing so may limit the institution’s ability to respond comprehensively.

***What do I do if I am accused of sexual misconduct?***

DO NOT contact the reporting party. You may immediately want to contact someone who can act as your advisor; anyone may serve as your advisor. You may also contact the Student Conduct Office, which can explain TMCC’s procedures for addressing sexual misconduct reports. You may also want to talk to a confidential counselor at the counseling center or seek other community assistance. See below regarding legal representation.

***Will I (as a victim) have to pay for counseling/or medical care?***

Not typically, if the institution provides these services already. If a victim is accessing community and non-institutional services, payment for these will be subject to state/local laws, insurance requirements, etc. [In this state, victims may be ineligible for state-based assistance if they were engaged in any illegal activity during the assault or if they fail to cooperate with criminal prosecution].

***What about legal advice?***

Victims of criminal sexual assault need not retain a private attorney to pursue criminal prosecution because representation will be handled by the Turtle Mountain Band of Chippewa Prosecutor’s Office or, depending on severity of incident, U.S. Federal Prosecutor’s Office. You may want to retain an attorney if you are considering filing a civil action or are the responding party. The responding party may retain counsel at their own expense if they determine that they need legal advice about criminal prosecution and/or the campus conduct

proceeding. Both the responding party and the reporting party may also use an attorney as their advisor during the campus' resolution process. Attorneys are subject to the same restrictions as other advisors in the process as described here [LINK].

### ***What about changing residence hall rooms?***

You may request a room change if you want to move. Room changes under these circumstances are considered emergencies. It is typically institutional policy that in emergency room changes, the student is moved to the first available suitable room. If you prefer that the responding party be moved to another residence hall, that request will be evaluated by the Title IX Coordinator or deputy to determine if it can be honored. Other assistance and modifications available to you might include:

- Assistance from university support staff in completing a room relocation;
- Arranging to dissolve a housing contract and pro-rating a refund;
- Help with finding an off-campus residential alternative;
- Assistance with or rescheduling an academic assignment (paper, exams, etc.) or otherwise implementing academic assistance;
- Taking an incomplete in a class;
- Assistance with transferring class sections;
- Temporary withdrawal;
- Assistance with alternative course completion options;
- Escorts to and from campus locations;
- On or off-campus counseling assistance;
- Transportation assistance or support;
- Other accommodations for safety as necessary.

### ***What should I do about preserving evidence of a sexual assault?***

Police are in the best position to secure evidence of a crime. Physical evidence of a criminal sexual assault must be collected from the alleged victim's person within 120 hours, though evidence can often be obtained from towels, sheets, clothes, etc. for much longer periods of time. If you believe you have been a victim of a criminal sexual assault, you should go to the Hospital Emergency Room (IHS or any of the other local hospitals), before washing yourself or your clothing. The Sexual Assault Nurse Examiner (a specially trained nurse) at the hospital is usually on call 24 hours a day, 7 days a week (call the Emergency Room if you first want to speak to the nurse; ER will refer you). A victim advocate from the institution can also accompany you to Hospital and law enforcement or Security can provide transportation. If a victim goes to the hospital, local police will be called, but s/he is not obligated to talk to the police or to pursue prosecution. Having the evidence collected in this manner will help to keep all options available to a victim, but will not obligation him or her to any course of action. Collecting evidence can assist the authorities in pursuing criminal charges, should the victim decide later to exercise it. For the Victim: the hospital staff will collect evidence, check for injuries, address pregnancy concerns and address the possibility of exposure to sexually transmitted infections. If you have changed clothing since the assault, bring the clothing you had on at the time of the assault with you to the hospital in a clean, sanitary container such as a clean paper grocery bag or wrapped in a clean sheet (plastic containers do not breathe, and may render evidence useless). 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. You can take a support person with you to

the hospital, and they can accompany you through the exam, if you want. Do not disturb the crime scene—leave all sheets, towels, etc. that may bear evidence for the police to collect.

***Will a victim be sanctioned when reporting a sexual misconduct policy violation if he/she has illegally used drugs or alcohol?***

No. The severity of the infraction will determine the nature of TMCC's response, but whenever possible TMCC will respond educationally rather than punitively to the illegal use of drugs and/or alcohol. The seriousness of sexual misconduct is a major concern and the college does not want any of the circumstances (e.g., drug or alcohol use) to inhibit the reporting of sexual misconduct.

***Will the use of drugs or alcohol affect the outcome of a sexual misconduct conduct resolution?***

The use of alcohol and/or drugs by either party will not diminish the responding party's responsibility. On the other hand, alcohol and/or drug use is likely to affect the reporting party's memory and, therefore, may affect the resolution of the reported misconduct. A reporting party must either remember the alleged incident or have sufficient circumstantial evidence, physical evidence and/or witnesses to prove that policy was violated. If the reporting party does not remember the circumstances of the alleged incident, it may not be possible to impose sanctions on the responding party without further corroborating information. Use of alcohol and/or other drugs will never excuse a violation by a responding party.

***Will either party's prior use of drugs and/or alcohol be a factor when reporting sexual misconduct?***

Not unless there is a compelling reason to believe that prior use or abuse is relevant to the present matter.

***What should I do if I am uncertain about what happened?***

If you believe that you have experienced sexual misconduct, but are unsure of whether it was a violation of the institution's sexual misconduct policy, you should contact the institution's student conduct office (not confidential) or victim advocate's office (confidential). The institution provides non-legal advisors who can help you to define and clarify the event(s), and advise you of your options.



## Definitions

**Complainant**-This policy refers to the individual who is the alleged victim of the behavior(s) in question as the “**complainant**”

**Respondent**-This policy refers to the individual who is the student alleged to have committed the violation of the policy as the “**respondent.**”

**Consent:** Consent is clear, knowing, meaningful, 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 mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity.

**Hostile Environment**-an occurrence where “a student is sexually harassed and the harassing conduct is sufficiently serious to deny or limit the student’s ability to participate in or benefit from the program.” (US Dept. of Ed Office of Civil Rights and US Dept. of Justice, Civil Rights Division, University of Montana Letter of Findings, May 9, 2013, pgs. 4-5)

**Sexual Harassment**- “unwelcome conduct of a sexual nature and can include unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal, or physical conduct of a sexual nature, such as sexual assault or acts of sexual violence” (US Dept. of Ed Office of Civil Rights and US Dept. of Justice, Civil Rights Division, University of Montana Letter of Findings, May 9, 2013, pg. 4)

## Turtle Mountain Band of Chippewa Tribal Code Definitions

“**SEXUAL ASSAULT**” means:

- a. Any unwelcome sexual contact;
- b. Causing another person to involuntarily engage in sexual activity by force; and
- c. Causing another person to involuntarily engage in sexual activity by threat of force or duress.

“**DOMESTIC VIOLENCE**” means abuse, mental anguish, physical harm, bodily injury, assault, sexual assault or the infliction of reasonable fear of bodily injury between family and/or household members. All crimes involving threat, violence, assault, physical abuse, sexual abuse or others enumerated in the Tribal Mountain Tribal Code and the Turtle Mountain Domestic Violence Code committed against or between family or household members may be charged as domestic violence

and may be punished as provided in Chapter 37.03 of the Turtle Mountain Domestic Violence Code.

**“DOMESTIC PARTNER”** means adults or minors who are dating, have dated, are engaged in a sexual relationship or who have been engaged in a sexual relationship. This shall include those persons involved in same sex relationships.

**“PROTECTION ORDER”** means a court order granted for the protection of victims of domestic violence.

**“AGGRAVATED SEXUAL ABUSE”** means to knowingly cause another person to engage in a sexual act by using force against that person or by threatening or placing that person in fear that any person will be subjected to death, serious bodily injury or kidnapping or attempts to do so.

**“COERCION”** means to exploit fear or anxiety through intimidation, compulsion, domination, or control with the intent to compel conduct or compliance.

**“LACK OF CONSENT”** means the acts must be committed either by threat, force and intimidation or through the use of the victim’s mental or physical disabilities which can include when the victim is physically or mentally incapacitated by alcohol or drugs.

**“SEX”** means acts of masturbation, sexual intercourse, or physical contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**“SEXUAL ABUSE”** means to knowingly cause another person to engage in a sexual act by threatening or placing that person in fear or engages in a sexual act if that person is incapable of appraising the nature of the conduct or physically incapable of declining participation in or communicating unwillingness to engage in that sexual act.

**“SEXUAL ACT”** means sexual contact between human beings consisting of contact between the penis and the vulva, the penis and the anus, the mouth and the penis, the mouth and the vulva, or any other portion of the human body; or the use of an object which comes in contact with the victim’s anus, vulva, or penis. Emission is not required.

**“SEXUAL BATTERY”** means the act of making unwanted and sexually offensive

contact with an intimate body part of another person or which causes an immediate apprehension in the other person that such an act will occur. Intimate body parts include sexual organs, the anus, the groin or buttocks of any person and the breasts of a female. Sexual battery includes situations in which the interactions defined are with a person who is incapable of giving consent or resisting due to alcohol or drugs.

**“SEXUAL CONTACT”** means any touching of the sexual or other intimate parts of the person for the purpose of arousing or satisfying sexual or aggressive desires whether or not through the clothing or other covering, of the sexual or other intimate parts of the person, or the penile ejaculation or ejaculate or emission of urine or feces upon any part of the person, for the purpose of arousing or satisfying sexual or aggressive desires, and shall include any sexual touching of or contact with an individual’s intimate very private, personal body parts either directly or through the clothing of the individual.

**“SEXUAL HARASSMENT”** means any unwanted sexual advances, a request for sexual favors, verbal or physical conduct of a sexual nature that alarms or annoys you, interferes with your privacy and creates an intimidating, hostile, or offensive environment. Making unwanted and offensive sexual advances or of sexually offensive remarks or acts, by a person.

**“SEXUAL INTERCOURSE”** means genital stimulation of one person with or by another and includes genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between person of the same or opposite sex.

**“SEXUAL MISCONDUCT”** means sexual contact without consent by an acquaintance or a stranger and includes sexual touching without consent, either of the victim or when the victim is forced to touch, directly or through clothing another person’s genitals, breast, groin, thighs or buttocks.

Sexual act with an incapacitated person Any person who:

1. Commits or causes another to commit any act of lewd or indecent sexual conduct with any person who is incapacitated or for any other reason is not able to give express and informed consent, or
2. Commits a sexual act with another who has been rendered unconscious or involuntarily drugged or who is otherwise incapable of appraising the

nature of the conduct or declining to participate or consent.

### **Harassment**

A person is guilty of the offense of harassment if, with the intent to frighten, cause significant annoyance, causes undue worry or upset to another, the person:

1. Communicates in writing or by telephone a threat to inflict injury to any other person, to any person's reputation, or to any property;
2. Makes a telephone call anonymously or in offensively course language;
3. Makes repeated calls, whether or not a conversation ensues, with no purpose of legitimate communication; or
4. Communicates a falsehood in writing or by telephone and causes another mental anguish.

### **Stalking**

Stalking is an intentional course of repeated conduct directed at a specific person that would frighten, intimidate, or harass a person of reasonable sensitivities and serves no legitimate purpose nor is a constitutionally protected activity. Stalking is a Class 4 offense if the person has been previously convicted of violating Section 26.1314, violates a restraining or protection order of the court if the person had notice of the court order or has been previously convicted of violating this Section. Otherwise, a person who violates this Section is guilty of a Class 3 offense. In any prosecution for violation of this Section, it is a defense that the accused is a licensed private investigator or licensed peace officer acting within the scope of their employment. Should a claim be made that the activity is constitutionally protected, the court shall determine the validity of the claim as a matter of law, and if found valid, shall exclude evidence of the activity.