

**Policy and Procedures**  
**TURTLE MOUNTAIN COMMUNITY COLLEGE**  
Title IX Policy and Procedures

**Policy:**

Turtle Mountain Community College (TMCC) will address all incidents of sex discrimination and sexual harassment reported to the TMCC Title IX Coordinator in compliance with the Higher Education Opportunity Act, the Clery Act, and Title IX of the Education Amendments of 1972, as amended.

**Purpose:**

This policy informs all prospective students, current students, and all TMCC employees of college policies and procedures regarding sex discrimination and sexual harassment to which all students, members of the faculty, and non-faculty personnel are expected to adhere during their time at TMCC. In addition, comprehensive information is provided regarding the reporting of sex discrimination and sexual harassment and avenues to seek immediate assistance.

**Procedure:**

TMCC seeks to create a positive educational environment on and off campus through our academic programs, services, activities, policies and procedures aimed at providing protection against sex discrimination and harassment. To that end, TMCC condemns discrimination in its education programs and activities based on sex or gender, sexual orientation, gender identity or expression, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. Notice of a sex discrimination or sexual harassment incident to the TMCC Title IX Coordinator, or a TMCC employee with authority to institute corrective measures on a recipient's behalf, charges TMCC with actual knowledge and triggers TMCC's response obligations as described in the institutional action section of this policy.

**Scope of the Policy**

TMCC must respond when: Sex discrimination and harassment occurs in TMCC's education program or activities; and it is against a person in the United States. Education program or activity includes locations, events, or circumstances over which TMCC exercised substantial control over both the respondent and the context in which the discrimination or harassment occurred, and also includes any building owned or controlled by a student organization that is officially recognized by a postsecondary institution. Title IX applies to all of a school's education programs or activities, whether such programs or activities occur on-campus or off-campus, including online instruction.

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 e-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 e-mail address, or by mail to the office address, listed for the Title IX Coordinator.

TMCC encourages victims of sexual harassment to talk with a counselor. Different employees within the scope of TMCC's resources have different abilities to maintain a victim's confidentiality.

- **TMCC Counselor** is required to maintain near complete confidentiality; talking to them is sometimes called a "privileged communication." The TMCC Counselor will only report incidents to the Title IX Coordinator with the victim's permission or in rare circumstances, such as; imminent harm to self; immediacy of threat or danger to college community; or mandated reporting in cases of minors.
- **TMCC Counselors (Vocational Rehab)** are required to maintain near complete confidentiality concerning clients on their caseload; talking to them is sometimes called a "privileged communication." The TMCC Vocational Rehab Counselors will only report incidents to the Title IX Coordinator with the victim's permission or in rare circumstances, such as; imminent harm to self; immediacy of threat or danger to college community; or mandated reporting in cases of minors.
- **TMCC Employees** are required to report all the details of an incident (including the identities of both the complainant and respondent) to the Title IX Coordinator. A report to TMCC employees (called "responsible employees") constitutes a report to TMCC and places TMCC on notice to take appropriate steps to address the situation.

Compliance with this policy does not constitute a violation of the Family Educational Rights and Privacy Act (FERPA). For the purpose of this policy, the outcome of a disciplinary proceeding means only the institution's final determination with respect to the alleged sex discrimination or sexual harassment offense and any sanction that is imposed against the respondent. This policy also applies to retaliation by TMCC or any person against any other person when for the purpose of interfering with Title IX rights, or because the person has participated or refused to participate in any manner in a proceeding under Title IX that is prohibited.

### **Assistance Following an Incident of Sexual Harassment**

- **Supports:**

Persons who have complaints of sexual harassment may file their complaints with the following:

Title IX Coordinators:

**Cory Poitra**

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

TMCC Main Campus

10145 BIA Road 7

P.O. Box 340

Belcourt, ND 58316

Phone #: (701) 477-7814 ext.1225

[cpoitral@tm.edu](mailto:cpoitral@tm.edu)

**Holly Cahill**  
**TMCC Human Resources Manager/Deputy Title IX Coordinator**  
TMCC Main Campus  
10145 BIA Road 7  
P.O. Box 340  
Belcourt, ND 58316  
Phone #: (701)477-7938  
[hcahill@tm.edu](mailto:hcahill@tm.edu)

**Dr. Wanda Laducer**  
**TMCC Dean of Student Services/Deputy Title IX Coordinator**  
TMCC Main Campus  
10145 BIA Road 7  
P.O. Box 340  
Belcourt, ND 58316  
Phone #: (701)477-7875  
[wladucer@tm.edu](mailto:wladucer@tm.edu)

TMCC on-campus counseling services. Please contact:

**Joseph LaFountain**  
**TMCC Counselor**  
TMCC Main Campus  
10145 BIA Road 7  
P.O. Box 340  
Belcourt, ND 58316  
Phone #: (701)477-7862 ext.1036  
[jlafountain@tm.edu](mailto:jlafountain@tm.edu)

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**  
**Seven Stone Center for Behavior Health and Healing (Belcourt)**  
**(701) 477-0498**  
**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**

Victims of sexual violence should get to a place of safety and call either the Belcourt B.I.A. Law Enforcement Center (701)477-6134 or the Rolette County Sheriff's Department at (701)477-5623 or, if it is an emergency, immediately dial 911.

Complainant or Witness: Call either the Belcourt B.I.A. Law Enforcement Center (701)477-6134 or the Rolette County Sheriff's Department at (701)477-5623 or, if it is an emergency, immediately dial 911.

### **Ongoing Assistance:**

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 Title IX complaint process, unless and until they are found responsible for a violation of this policy.

In order to ensure the safety and well-being of both parties, TMCC may take interim measures such as changing work schedules, academic schedules, addressing transportation issues, withdraw from/retake a class without penalty, and access academic support (e.g., tutoring), leaves of absence, campus escort services, or similar measures. In addition, while an investigation is pending, TMCC may initiate a "no contact order", or similar order, between the parties that carries a sanction of expulsion or termination if violated.

TMCC does offer internal counseling which is free for current TMCC students and which can also be utilized by employees and any other individuals to which this policy applies. TMCC counseling services are located in the TMCC Student Union on main campus. Additionally, law enforcement officials and college representatives are available to facilitate access to support services, which may be obtained through the TMCC Counselor and Title IX Coordinators.

- TMCC Counselor: (701)477-7947
- The Village (Employee Assistance Program): 1-800-627-8220
- TMCC Security: (701)477-7814/(701)477-7862
- Belcourt B.I.A. Law Enforcement Center: (701)477-6134
- Rolette County Sheriff's Office: (701)477-5623

### **Title IX Coordinator and Staff**

Title IX Coordinator has primary responsibility for overseeing the process of coordinating TMCC's compliance efforts, receiving complaints, investigations, hearing, sanctions, appeals, and education and training associated with this policy. To file a complaint or submit questions concerning actions governed by this policy contact the Title IX Coordinator:

**Christopher M. Parisien**

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

TMCC Main Campus

10145 BIA Road 7

P.O. Box 340

Belcourt, ND 58316

Turtle Mountain Community College

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Updated 8-10-20

Phone #: (701) 477-7814

[cparisien@tm.edu](mailto:cparisien@tm.edu)

- Title IX Deputy Coordinators have the secondary responsibility and assist in the duties of the Title IX Coordinator. Title IX Deputy Coordinators:

**Holly Cahill**

**TMCC Human Resources Manager/Deputy Title IX Coordinator**

TMCC Main Campus

10145 BIA Road 7

P.O. Box 340

Belcourt, ND 58316

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**Dr. Wanda Laducer**

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TMCC Main Campus

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P.O. Box 340

Belcourt, ND 58316

Phone #: (701)477-7875

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- Title IX Investigators may include but not be limited to TMCC security officers and staff. The primary responsibility of the investigator is to collect statements and any evidence directly related to any allegations of a Title IX policy violation as directed by the Title IX Coordinator. Investigators will receive appropriate Title IX and trauma informed training.
- Title IX Hearing Officer(s) will be made up of three (3) members selected from a pool consisting of the Vice President and department directors. Out of the three (3) members selected, one person will be chosen to act as the hearing officer, if there are no biases or conflict of interests concerning the alleged violation(s), the other two (2) members will be excused from this duty. The hearing officer moderates the hearing procedures in the event allegations of a Title IX policy violation are directed to a hearing by the Title IX Coordinator. Primary responsibilities of the hearing officer include, but are not limited to: Presiding over hearing; ensuring both parties receive due process; determining relevance; explaining decisions and exceptions to relevance; to listen to both sides of the complaint; evaluate information; to render and to confer with Hearing Panel Members to issue a written opinion as to whether or not a Title IX policy violation took place; and if it is determined that a Title IX policy violation has been proven to have occurred, the Hearing Officer and Title IX Hearing Panel Members will jointly determine disciplinary sanctions to be imposed on the respondent and whether remedies will be provided to the complainant. Sanction and

remedy determinations will be included in the hearing officer's written determination following hearing.

- Title IX Hearing Panel Members may include TMCC faculty and/or staff members. The primary responsibility of the hearing members is to listen to both sides of the complaint; record the proceedings; and upon finding that a Title IX policy violation has occurred, jointly determine with each other and the hearing officer the disciplinary sanctions to be imposed on the respondent and whether remedies will be provided to the complainant.

## **Definitions**

TMCC defines sex discrimination and sexual harassment broadly to include any of three types of misconduct on the basis of sex (or gender), all of which jeopardize the equal access to education that Title IX is designed to protect: Any instance of quid pro quo harassment by a school's employee; any unwelcome conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (as defined in the Clery Act), dating violence, domestic violence, or stalking as defined in the Violence Against Women Act (VAWA).

Offenses prohibited under TMCC's policy include, but are not limited to sex discrimination (including sexual orientation discrimination and gender identity or gender expression discrimination), sexual harassment, sexual violence to include non-consensual sexual contact, non-consensual sexual intercourse, sexual coercion, domestic/dating violence, stalking, and sexual exploitation.

- A. **Sex Discrimination:** includes sexual harassment and is defined as conduct directed at a specific individual or a group of identifiable individuals that subjects the individual or group to treatment that adversely affects their employment or education, or institutional benefits, on account of sex or gender (including sexual orientation, gender identity, and gender expression discrimination). It may include acts of verbal, nonverbal, or physical aggression, intimidation, or hostility based on sex or sex-stereotyping, even if those acts do not involve conduct of a sexual nature.
- B. **Sexual Harassment:** is unwelcome and discriminatory speech or conduct undertaken because of an individual's gender or is sexual in nature and is so severe, pervasive, and persistent, objectively and subjectively offensive that it has the systematic effect of unreasonably interfering with or depriving someone of educational, institutional, or employment access, benefits, activities, or opportunities. Students and visitors who are subject to or who witness unwelcome conduct of a sexual nature are encouraged to report the incident(s) to the Title IX Coordinator or any TMCC employee. Employees who are subject to unwelcome conduct of a sexual nature are encouraged to report the incident(s) to the Title IX Coordinator or any TMCC employee. Employees who witness or receive reports of unwelcome conduct of a sexual nature are required to report the incident(s) or reports received to the Title IX Coordinator.
  1. **Hostile Environment:** Sexual Harassment includes conduct that is sufficiently severe, pervasive, and persistent, objectively and subjectively offensive that it alters

the conditions of education or employment or institutional benefits of a reasonable person with the same characteristics of the victim of the harassing conduct. Whether conduct is harassing is based upon examining a totality of circumstances, including but not limited to:

- The frequency of the conduct;
- The nature and severity of the conduct;
- Whether the conduct was physically threatening;
- Whether the conduct was deliberate, repeated humiliation based upon sex;
- The effect of the conduct on the alleged victim's mental or emotional state from the perspective of a reasonable person;
- Whether the conduct was directed at more than one person;
- Whether the conduct arose in the context of other discriminatory conduct;
- Continued or repeated verbal abuse of a sexual nature, such as gratuitous suggestive comments and sexually explicit jokes; and
- Whether the speech or conduct deserves constitutional protections.

2. **Quid Pro Quo Sexual Harassment** exists when individuals in positions of authority over the complainant:

- Make unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature; and
- Indicate, explicitly or implicitly, that failure to submit to or the rejection of such conduct will result in adverse educational or employment action or where participation in an educational program or institutional activity or benefit is conditioned upon the complainant's submission to such activity.

C. **Sexual Violence** refers to physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent (*e.g.*, due to the student's age or use of drugs or alcohol, or because an intellectual or other disability prevents the student from having the capacity to give consent). A number of different acts fall into the category of sexual violence, including rape, sexual assault, sexual battery, sexual abuse, and sexual coercion. Sexual violence can be carried out by college employees, other students, or third parties.

1. **Non-Consensual Sexual Contact** is any intentional touching, however slight, whether clothed or unclothed, of the victim's intimate body parts (primarily genital area, groin, inner thigh, buttock or breast) with any object or body part, without consent and/or by force. It also includes the touching of any part of a victim's body using the perpetrator's genitalia and/or forcing the victim to touch the intimate areas of the perpetrator or any contact in a sexual manner even if not involving contact of or by breasts, buttocks, groin, genitals, mouth or other orifice. This definition includes sexual battery and sexual misconduct.
2. **Non-Consensual Sexual Intercourse** is defined as any sexual intercourse or penetration of the anal, oral, vaginal, genital opening of the victim, including sexual intercourse or penetration by any part of a person's body or by the use of an object, however slight, by one person to another without consent or against the victim's will.

This definition includes rape and sexual assault, sexual misconduct, and sexual violence.

- a) **Rape:** Penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim. This definition includes any gender of victim or perpetrator. Sexual penetration means the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person. This definition also includes instances in which the victim is incapable of giving consent because of temporary or permanent mental or physical incapacity (including due to the influence of drugs or alcohol) or because of age. Physical resistance is not required on the part of the victim to demonstrate lack of consent.
3. **Sexual Coercion** is the act of using pressure (including physical pressure, verbal pressure or emotional pressure), alcohol, medications, drugs, or force to have sexual contact against someone's will or with someone who has already refused. This includes rape, sexual assault, sexual exploitation and sexual misconduct.
4. **Dating violence** is violence between individuals in the following circumstances: The party is or has been in a social relationship of a romantic or intimate nature with the victim; and
- The existence of such a relationship shall be determined based on a consideration of the following factors:
  - Length of the relationship
  - Type of relationship
  - Frequency of interaction between the persons involved in the relationship
5. **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.
- D. **Advisor:** A person who has agreed to assist a complainant or respondent during the Title IX process. The advisor may be a person of the student's choosing, including but not limited to a TMCC faculty or staff member, a friend or an attorney. If a party does not choose an advisor, TMCC may select an individual to serve in this role for the limited purpose of conducting cross-examination at a hearing. This individual may, but is not required to be, an attorney.
- E. **Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment.



- F. **Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.
- G. **Formal complaint:** a document filed by a complainant or signed by the Title IX Coordinator alleging sexual harassment against a respondent and requesting that the school investigate the allegation of sexual harassment and stating the date, time, place, name(s) of person(s) involved (e.g. the accused, witnesses) and sufficient detail to make a determination regarding basic elements of the formal complaint process.
- At the time of filing a formal complaint, a complainant must be participating in or attempting to participate in the education program or activity of the school with which the formal complaint is filed.
- H. **Supportive measures:** individualized services reasonably available that are non-punitive, non-disciplinary, and not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment.

### **Consent**

Consent is the act of willingly agreeing to engage in sexual contact or conduct. Individuals who consent to sex must be able to understand what they are doing. Under this policy, “No” always means “No,” and the absence of “No” may not mean “Yes”.

- A. Consent is informed, 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 mutually understandable permission regarding the conditions of sexual activity.
- B. Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- C. Previous relationships or consent does not imply consent to future sexual acts.
- D. Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.
- E. In order to give effective consent, one must be of legal age and have the capacity to consent. Incapacity may result from mental disability, intellectual disability, unconsciousness/sleep, age, or use of alcohol, drugs, medication, and/or other substances. Consent given by someone who one should know to be, or based on the circumstances, reasonably should have known to be, mentally or physically incapacitated, is a policy violation. Incapacitation is a state where someone cannot make rational, reasonable decisions because he or she lacks capacity to give knowing consent. Note: indications of consent are irrelevant if the initiator knows or should reasonably have known of the incapacity of the other person.
- F. Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.

## Reporting

### A. Mandatory Reporting

All TMCC employees are responsible for taking all appropriate action to prevent sex discrimination or sexual harassment, to correct it when it occurs, and must promptly report it to the Title IX Coordinator. Failure to do so may result in disciplinary action up to and including termination. All TMCC employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.

### B. Confidential Reporting

Resources are available through the TMCC Counselor and Title IX Coordinator. 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
  - Employee Assistance Program
  - 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 to the campus community or danger or abuse of a minor. Campus counselors are available to help free of charge and can be seen on an emergency basis during normal business hours. The Employee Assistance Program is available 24 hours. These employees will submit annual anonymous statistical information for Annual Security Report (Clery Act) purposes.

In cases indicating pattern, predation, threat, weapons and/or violence, TMCC will likely be unable to honor a request for confidentiality.

### C. Reporting to the Police

TMCC strongly encourages anyone to report sexual violence and any other criminal offenses to law enforcement.

- If the incident happened on campus, it can be reported to the Belcourt B.I.A. Law Enforcement Center (701)477-6134. If the incident happened anywhere else, it can be reported to the local law enforcement with jurisdiction in the location where it occurred.
- Reporting for Faculty and Staff (Non-Student) Instances: Faculty and staff shall report any instances of sexual harassment by another faculty or staff member to the Title IX Coordinator. As stated above, TMCC also strongly encourages reporting any instances to law enforcement.

- **Employee Obligation to Report (Student Instances):** In compliance with Title IX, employees who become aware of a student instance of sexual harassment shall immediately report such instance to the Title IX Coordinator, including the name of the persons involved.

#### **D. Reporting of Student Instances**

Students shall report any instances of sex discrimination or sexual harassment to any TMCC employee and/or the Title IX Coordinator. A complaint should be filed as soon as possible. If either the complainant or the respondent is a student, the incident will be addressed through the Title IX process. The report can be made in person, by phone, mail, or email using the contact information listed for the Title IX Coordinator or by any other means that results in the Coordinator receiving the report. The report can be made any time, even during non-business hours.

After receiving a report or notice of an incident, the Title IX Coordinator will promptly contact the complainant confidentially to discuss the availability of supportive measures, 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, and explain to the complainant the process for filing a formal complaint. A complainant's wishes, with respect to whether TMCC investigates, should be respected unless the Title IX Coordinator determines that signing a formal complaint to initiate an investigation over the wishes of the complainant is not clearly unreasonable based on the circumstances (immediate threat to college community).

TMCC will promptly take necessary steps to offer Complainant individualized services, reasonably available, offered without fee or charge, designed to restore or preserve a complainant's equal access to the recipient's education program or activity without unreasonably burdening the other party, and/or designed to protect the complainant's safety or deter sexual harassment. The Title IX Coordinator is responsible for effective implementation of supportive measures.

#### **Written Notice of Complaint**

Upon receipt of a formal complaint, TMCC will provide written notice to all known parties in sufficient time to give the respondent time to prepare a response before an initial interview.

Written notice includes:

- a. Notice of the grievance process, including any informal resolution process;
- b. Notice of the allegations, including sufficient detail (i.e., names of known parties, the conduct alleged to be sexual harassment, and the date and location of the conduct, if known) to allow the respondent to prepare a response;
- c. A statement that the respondent is presumed not responsible for the conduct and that responsibility will be determined at the conclusion of the grievance process;
- d. Notice of the parties' right to have an advisor (who may be, but is not required to be, an attorney) and to inspect and review evidence; and
- e. Notice that knowingly making false statements or providing false information in the grievance process is a violation of the TMCC Policy and subject to disciplinary action.

Once a formal complaint has been filed, TMCC must follow its grievance procedure while abiding by the following principles:

- a. The complainant's wishes regarding an investigation should be respected unless the Title IX Coordinator signs a formal complaint to initiate an investigation in light of the known circumstances.
- b. Individuals' rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, must not be restricted.
- c. TMCC must dismiss any allegations that do not meet the definition of sexual harassment under Title IX's regulation, that did not occur in the school's education program or activity, or that did not occur in the United States. TMCC may, however, still address such allegations in any manner TMCC deems appropriate under its own policies, manuals, handbooks, and/or codes of conduct.
- d. Both parties must be treated equitably; each receiving written notice of the allegations, each given an equal opportunity to select an advisor of the party's choice, and each given an opportunity to submit and review evidence throughout the investigation.
- e. The Title IX Coordinator(s) and investigator(s), the decision-maker, and the decision-maker of any appeal must each: (1) be independent of one another, (2) receive training, and (3) serve without any conflict of interest in a particular matter.
- f. The respondent is presumed to be not responsible during the grievance process to ensure the school bears the burden of proof and the standard of evidence is applied correctly.
- g. All evidence, inculpatory and exculpatory, must be evaluated objectively.
- h. The grievance procedures must state up front: (1) the possible disciplinary outcomes and remedies; (2) that the college will use a "preponderance of evidence" standard to determine responsibility (which means more likely than not); (3) the range of supportive measures available to each party; and (4) the appeal process. Additionally, the grievance procedures must not require, allow, or use evidence or questions that constitute or seek legally privileged information without a waiver of the privilege.
- i. Retaliation for participating or refusing to participate in an investigation is prohibited; charging an individual with making a materially false statement in bad faith during an investigation is permissible and not deemed to be retaliation.

### **Investigation**

The Title IX Coordinator will make a determination to begin a formal investigation of sex discrimination or a sexual harassment incident which will lead to an institutional action. The coordinator will be available to explain to both parties the process and to notify in writing of the receipt of a complaint and the actions TMCC will take. The burden of gathering evidence and burden of proof must remain on TMCC, not on the parties.

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 investigative.

An investigation will be conducted by a TMCC Title IX official. This investigation will include:

- Meeting personally with the complainant, (unless extraordinary circumstances prevent a personal meeting),
- Meeting personally with the respondent, (unless extraordinary circumstances prevent a personal meeting),
- Presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made,
- Collecting any physical evidence,
- Meeting personally with any witnesses, (unless extraordinary circumstances prevent a personal meeting with one or more witnesses), and
- Reviewing any documentary evidence.

The investigation of complaints will be adequate, reliable and impartial. The investigation process can take up to 60 days. Additionally, TMCC reserves the right to temporarily delay Title IX investigations if there is an ongoing criminal investigation.

When investigating a complaint and throughout the complaint process, TMCC must: (1) ensure that the burden of proof and of gathering evidence rests on TMCC rather than the parties; (2) provide an equal opportunity for the parties to present witnesses and evidence (3) not restrict either party's ability to discuss the allegations or gather and present evidence; (4) provide the parties with the same opportunities to have others present during interviews or related proceedings, including an advisor; (5) provide, to a party who is invited or expected to attend, written notice of the date, time, participants, purpose, and location of any investigative interview, hearing or other meeting with enough time to allow the party to prepare and participate; (6) provide both parties and their advisors an equal opportunity to review all evidence directly related to the allegations in the formal complaint (both exculpatory and inculpatory) at least 10 days prior to the completion of the final investigation; and (7) prepare a written investigation report that fairly summarizes the relevant evidence and provide the report to both parties and their advisors for review and written response at least 10 days before a hearing or determination of responsibility. TMCC's Title IX Coordinator will determine if a Title IX hearing is necessary.

If it is determined that TMCC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date.

### **Mandatory or Permissive Dismissal**

Mandatory dismissal must occur when determined in the course of the investigation that allegation in a formal complaint: (1) did not occur in a TMCC program or activity; (2) did not constitute sexual harassment as defined herein, even if proved; or (3) did not occur against a person within the US. Both parties must receive written notice of a mandatory dismissal and reasons.

Permissive dismissal may occur at any time during the investigation or hearing when: (1) a complainant notifies the Title IX Coordinator in writing that they would like to withdraw; or (2) the respondent is no longer enrolled or employed by TMCC; or (3) specific circumstances prevent TMCC from gathering evidence sufficient to reach a determination. Both parties must receive written notice of a permissive dismissal and reasons.

TMCC may still address allegations of misconduct under the Student Code of Conduct, Employee Handbook or other applicable internal policies.

## **Institutional Action**

### **A. Informal Resolution:**

TMCC may not require an informal resolution as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment.

Similarly, TMCC may not require the parties to participate in informal resolution and may not offer an informal resolution as an option unless a formal complaint has been filed. However, at any time prior to reaching a determination regarding responsibility, TMCC may facilitate an informal resolution process, such as mediation with a trained Title IX Officer, that does not involve a full investigation and adjudication provided that TMCC:

1. Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
2. Obtains the parties' voluntarily and written consent to the informal resolution process; and
3. Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student or claims involving sexual violence.

Because the outcomes of voluntary resolution conversations are mutually developed and agreed upon by parties involved, an appeal of the process and its result is not permitted. However, either the Complainant or the Respondent may terminate mediation at any time prior to the entry of a voluntary resolution and proceed with the Title IX hearing. If the parties are unable to agree on a voluntary resolution, the matter will be referred by the Title IX Coordinator to a Title IX Hearing. No offers to resolve the conflict that were made or discussed during the informal voluntary resolution process may be introduced during the Title IX Hearing.

### **B. Title IX Hearing:**

The Title IX Coordinator will determine if a hearing is necessary; mediation is never appropriate in sexual violence cases. If it is determined that TMCC will proceed with a hearing, the complainant and the respondent will be notified in writing of the hearing date, the alleged policy violation and issued a notice to appear at the hearing. The written notice will be hand delivered directly to the student(s) or mailed to the local address as filed in the Registrar's Office. Students are responsible for providing and maintaining a current local address in the Registrar's Office.

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 hearing process unless and until they are found responsible for a violation of this policy.

A Hearing Officer shall preside over the hearing and hearing members and at least two (2) Title IX Hearing Members, which shall be TMCC faculty or staff members, shall be present to observe the proceedings. The selection of the Title IX Hearing Members will be made by the Title IX Coordinator. Criteria for the hearing members will include: 1) have received all appropriate training, 2) not a current instructor of either party involved, 3) have no previous substantive or direct knowledge of the incident, and 4) have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.

Description of the duties of the Title IX Hearing Officer will include but not limited to the following:

- The hearing officer is the main, or initial, decision maker in the event allegations of a Title IX policy violation are directed to a hearing by the Title IX Coordinator.
- To preside over the hearing and maintain sole discretion as to admissibility of evidence and testimony;
- Will ensure both parties receive due process;
- Serve as a neutral decision maker;
- Determining relevance, explain decisions and exceptions to relevance;
- Listen to both sides of the complaint;
- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Evaluate information;
- To make determination based on the preponderance of evidence standard of proof.
- To confer with the Hearing Panel Members to render and issue a written opinion as to whether or not a Title IX policy violation took place; and
- If it is determined that a Title IX policy violation has been proven to have occurred, the hearing officer and Title IX Hearing Members will jointly determine disciplinary sanctions to be imposed on the respondent and whether remedies will be provided to the complainant. Sanction and remedy determinations will be included in the hearing officer's written determination following hearing.

Description of the duties of the Title IX Hearing Members will include but not limited to the following:

- Read and understand the Title IX Policy and Procedures, which include the hearing process.
- Read and understand all of the information of the Title IX case provided by the Coordinator prior to the hearing as part of a hearing packet.
- Read and understand the procedures of the Title IX hearing provided by the Coordinator prior to the hearing as part of a hearing packet.
- Have a clear understanding of the incident in question before going into deliberations for a decision.
- Attend the hearing and listen to both sides of the complaint;
- Record the proceedings; and
- Upon finding that a Title IX policy violation has occurred, jointly determine with each other and the hearing officer the disciplinary sanctions to be imposed on the respondent and whether remedies will be provided to the complainant.

#### Complainant's Rights:

- Be given a written explanation of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide TMCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing;
- Be given a timely hearing;
- Exclude evidence of the victim's past sexual history from discussion during the hearing. The past sexual history of the victim with persons other than the respondent shall be presumed irrelevant;
- Clarifying that evidence of a prior consensual dating or sexual relationship between the parties by itself does not imply consent or preclude a finding of sexual harassment;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the college community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, transportation, and work site situations if reasonable;
- Written notification of an avenue for appeal.

#### Respondent's Rights:

- Be given written notice of the allegations and the hearing process;
- Have access to evidentiary material in advance of the hearing;
- Be present during the entire hearing;
- Have no violation presumed until found responsible;



- Be given a timely hearing;
- Be accompanied by an advisor during the hearing. The advisor is limited to advising the student and may not present the case, or make statements during the proceedings. Students must provide TMCC with the name and contact information for the student's advisor as soon as practical but at least three (3) days prior to the hearing;
- Written notification of the outcome of the hearing including any sanctions; remedies/accommodations for the complainant; additional remedies for the college community;
- Written notification of any external counseling services that may be available;
- Written notification of options for changing academic, transportation, and work site situations, if reasonable;
- Written notification of an avenue for appeal.

The hearing will include opening statements, unless waived by the parties, each party's evidence and witnesses, and closing statements, unless waived by the parties. The hearing officer, at the hearing officer's discretion, is authorized to require the parties to submit simultaneous closing argument briefs, in lieu of oral arguments, by a deadline to be set by the hearing officer.

At the hearing, the hearing officer must permit each party's advisor to ask the other party and any witness all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally.

At the request of either party, TMCC must provide for the live hearing to occur with the parties in separate rooms with technology enabling the parties to simultaneously see and hear the party or witness answering questions.

Before a complainant, respondent or witness answers a cross-examination or other question, the hearing officer must first determine if the question is relevant and explain any decision to exclude a question as not relevant.

Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent.

If a witness does not submit to cross-examination at the live hearing, the hearing officer must not rely on any statement of that witness when reaching a determination; provided however that the hearing officer cannot draw an inference about the determination regarding responsibility based solely on a party's or a witness's absence from live hearing or refusal to answer cross-examination questions.

Live hearings may be conducted with all parties physically present in the same geographic location or, at the discretion of the hearing officer, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The parties have a right to be present at hearing.

The standard of proof used in TMCC Title IX Hearings is the preponderance of the evidence, which means the determination to be made, is whether it is more likely than not a violation occurred.

TMCC must create an audio or audiovisual recording, or transcript, of any live hearing and make it available for the parties for inspection and review.

TMCC shall be authorized to have representatives present, including legal counsel, to observe the hearing.

### **Outcome**

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is not responsible for a Sex Discrimination or Sexual Harassment policy violation the complaint will be dismissed.

If it is determined under the preponderance of evidence standard (more likely than not to have occurred) that the respondent is responsible for a Title IX policy violation the following sanctions will be considered. The listing of sanctions below is not intended to be exclusive; in addition, sanctions may be imposed singularly or in combination when a violation of this policy is found.

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

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- Organizational Sanctions
- Other Actions

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

- Warning
- Performance Improvement Plan
- Required Counseling
- Required Training or Education
- Suspension without Pay
- Suspension with Pay
- Termination

Both parties will be notified at the same time of the outcome in writing by certified mail or other agreed upon form of notice within ten (10) days after the conclusion of hearing or submission of

written closing argument, whichever is later. Both parties have the right to appeal the decision reached through the hearing proceedings within five days after the hearing.

### **Appeal Procedures**

Each party has the right to appeal the written decision issued by the hearing officer. However, appeals may only be filed on one or more of the following grounds:

1. Procedural irregularity that affected the outcome;
2. New evidence not reasonably available at the time of hearing;
3. Title IX coordinator, investigator, or decision maker had a bias or conflict of interest;  
or
4. The sanction is not appropriate for the violation. This provision is intended to be utilized when a determined sanction is inherently inconsistent with TMCC procedures or precedent. Simple dissatisfaction with a sanction is not grounds for overturning a sanction under this provision.

An appeal is not a new hearing, but is a review of the record for error. The burden of proof shifts from TMCC to the party filing the appeal.

Appeals must be submitted in writing to the TMCC President, within seven (7) days of receiving the decision. Failure to file an appeal within the prescribed time constitutes a waiver of any right to an appeal.

The TMCC President will oversee the appeal of either party, will review the record of the original hearing, including documentary evidence. It is the President's discretion to convert any sanction imposed to a lesser sanction, to rescind any previous sanction, or to return a recommended sanction to the hearing officer and Title IX Coordinators for review/or reconsideration.

If there is new evidence (unavailable at the time of the hearing through no fault of the parties) which is believed to substantially affect the outcome, or a finding that a substantial procedural error resulting in prejudice occurred, the matter may be remanded to either a rehearing of the entire matter or reconsideration of specific issues.

If remanded to the original hearing committee, either or both parties may appeal the hearing officer's decision in the same manner, and under the same conditions, as set forth for an original appeal.

If the hearing officer's decision is properly and timely appealed, the President, shall issue an opinion to the complainant and respondent within twenty (20) days after the time to appeal the hearing officer's decision closed. The decision of the President, on appeal shall be final.

## **TMCC's Officers and Designees**

The designation of a TMCC official responsible for prescribed actions shall automatically include the official's designee in instances where an official is unable, unavailable or has concluded that the official may have a conflict of interest that causes the official to recuse from involvement in the matter. The official's designee shall have the same authority as the official in matters involving this policy.

## **Recordkeeping Protocol**

TMCC will document all reports and complaints of sex discrimination and provide copies of those reports to the Title IX Coordinator. The TMCC Title IX Office will maintain a secured electronic and hard copy file system of all Title IX cases, reports, and complaints by academic year. The cases will include all information related to the individual case, which includes but is not limited to the initial complaint, letters sent to all parties, response from the respondent, immediate assistance, investigation notes, mediation agreement if applicable, notice of a hearing, committee selection, hearing notes, hearing decision, written notice of the outcome, and any recordings made of the hearing or in the course of the investigation. The time period to maintain the case records will be no less than seven (7) years from the date of TMCC's final action or decision (whether through report of the investigation, mediation, or hearing). The confidential reporting of the number of incidents and types will be sent to TMCC Safety Compliance Officer for the preparation of the Annual Crimes Report.

## **Prevention and Education**

### **A. Education**

TMCC requires all employees to take the following educational/training courses on an annual basis:

Mandatory annual Title IX Training. This training will include, but is not limited to, TMCC Title IX Policy, Responsible Employee reporting procedures, Bystander Intervention, and supportive services. This training will be conducted either in-person or online.

Additional in-person trainings are also offered periodically and on request.

### **B. Bystander Intervention**

If you witness a policy violation, or behaviors that may lead to a policy violation, there are a variety of things you can do as a bystander:

- Divert the intended victim (e.g. "help me out of here; I don't feel well")
- Distract the perpetrator (e.g. "looks like your car is being towed")
- Delegate to a person of authority (e.g. let staff or faculty know of situation)
- Direct, confront the perpetrator (e.g. "don't speak to them in that manner; you are going to get yourself into trouble")

### **C. Risk Reduction Tips**

Risk reduction tips can often take a victim-blaming tone, even unintentionally. With no intention to blame victims, and with recognition that only those who commit sexual

violence are responsible for those actions, these suggestions may nevertheless help you reduce your risk of experiencing a non-consensual sexual act.

- Make your limits known as early as possible.
- Be aware of your alcohol intake. 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 or colleagues and ask that they take care of you.

#### D. Potential Aggressor

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 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. 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 one form of sexual behavior does not automatically imply consent to 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.

### **Training**

Training on sexual misconduct: discrimination, harassment, and violence is included in TMCC's education program.

In-person training for student groups and students will be conducted through a variety of presentations, student orientation, and other meetings. In-person training for Active Bystander Intervention skills may include: On-going campus campaigns and information at a variety of events concerning the policy and appropriate behaviors, including Bystander Intervention. Informational website and brochures devoted to educating students will be presented at prevention workshops. When in-person training is neither practical nor safe, alternative modes of training shall be utilized.

Mandatory training for employees will be provided through virtual and in-person training on sexual misconduct: discrimination, harassment, and violence and mandatory reporting through new employee orientations and other periodic training opportunities and upon request. In-person training for Active Bystander Intervention skills may include: ongoing campus campaigns and information at a variety of events, concerning the policy and appropriate behaviors, including Bystander Intervention. Informational website and brochures devoted to educating employees.

Available Resources to all of the TMCC community:

- TMCC Human Resource Department (701)477-7938
- TMCC Counselor (701)477-7947
- TMCC Safety Compliance/Title IX Coordinator (701)477-7814
- TMCC Security (701)477-7862

### **Retaliation**

The Federal civil rights laws, including Title IX, make it unlawful to retaliate against an individual for the purpose of interfering with any right or privilege secured by these laws. This means that if an individual brings concerns about possible civil rights problems to a school's attention, including publicly opposing sexual harassment or filing a sexual harassment complaint with the school or any State or Federal agency, it is unlawful for the school to retaliate against that individual for doing so. It is also unlawful to retaliate against an individual because he or she testified, or participated in any manner, in an OCR or school's investigation or proceeding. Therefore, if a student, parent, teacher, sponsor coach, or other individual complains formally or informally about sexual harassment or participates in an OCR or school's investigation or proceedings related to sexual harassment, the school is prohibited from retaliating (including intimidating, threatening, coercing, or in any way discriminating against the individual) because of the individual's complaint or participation. Individuals who, apart from official associations with TMCC, engage in retaliatory activities will also be subject to TMCC's policies insofar as they are applicable to third party actions.

TMCC will take steps to prevent retaliation against a student who filed a complaint either on his or her own behalf or on behalf of another student, or against those who provided information as witnesses. Complaints of retaliation will follow the same process of investigation, hearing, and appeal.

If it is determined under the preponderance of evidentiary standard (more likely than not to have occurred) that a student or employee is responsible for retaliation the following sanction will be imposed.

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

- Warning
- Probation
- Suspension
- Expulsion
- Withholding Diploma
- 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
- Suspension without Pay
- Suspension with Pay
- Termination

### **Free Speech and Academic Freedom**

Members of the TMCC community enjoy significant free speech protections guaranteed by the First Amendment of the United States Constitution. This policy is intended to protect members of the TMCC community from discrimination and is not designed to regulate protected speech. No provision of this policy shall be interpreted to prohibit conduct that is legitimately related to course content, teaching methods, scholarship, or public commentary of an individual faculty member or the educational, political, artistic or literary expression of students in classrooms and public forums. However, freedom of speech and academic freedom are not limitless and do not protect speech or expressive conduct that violates federal or state anti-discrimination laws.

### **Availability of other Complaint Procedures**

In addition to seeking criminal charges through local law enforcement, members of the TMCC community may also file complaints with the following entity regardless of whether they choose to file a complaint under this procedure:

Office for Civil Rights  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
OCR Hotline: 1-800-421-3481  
Email: [ocr@ed.gov](mailto:ocr@ed.gov)

### **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 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.

### **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.