

# *Creating A World of Opportunities*



## TMCC Title IX

Cory Poitra

TMCC Safety Compliance Officer/  
Title IX Coordinator



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## TMCC Title IX

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.



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## TMCC Title IX

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.



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## TMCC Title IX

**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.



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## TMCC Title IX

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.



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## TMCC Title IX

### AGENDA

- Why is this an issue on our college campuses?
- Legal Foundations of Title IX
- Overview of TMCC Policy
- Reporting Incidents



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## TMCC Title IX

LEGAL OBLIGATIONS OF TITLE IX

**Title IX of the Education Amendments of 1972**  
**20 U.S.C. §1681**

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



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## TMCC Title IX

Enacted by Congress, Title IX seeks to reduce or eliminate barriers to educational opportunity caused by sexual discrimination in **all areas of education** that receive federal funding



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## TMCC Title IX

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.



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## TMCC Title IX

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).



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## TMCC Title IX

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.



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## TMCC Title IX

**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).



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## TMCC Title IX

**Sex Discrimination:** 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.



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## TMCC Title IX

**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.



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## TMCC Title IX

**Sexual Harassment:** 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.



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## TMCC Title IX

**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.



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## TMCC Title IX

**Hostile Environment:** 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;



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### Hostile Environment:

- 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.



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## TMCC Title IX

**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.



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## TMCC Title IX

**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).



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## TMCC Title IX

**Sexual Violence:** 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.



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## TMCC Title IX

**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.



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## TMCC Title IX

**Non-Consensual Sexual Contact:** 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.



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## TMCC Title IX

**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.



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## TMCC Title IX

### Non-Consensual Sexual Intercourse:

**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.



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## TMCC Title IX

### Non-Consensual Sexual Intercourse:

**Rape:** 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.



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## TMCC Title IX

**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.



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## TMCC Title IX

**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



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## TMCC Title IX

**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.



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## TMCC Title IX

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

**DOMESTIC VIOLENCE cont.:** 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.



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## TMCC Title IX

**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”.



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## TMCC Title IX

**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



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## TMCC Title IX

### Consent:

- Consent to one form of sexual activity cannot imply consent to other forms of sexual activity.
- Previous relationships or consent does not imply consent to future sexual acts.
- Consent cannot be procured by use of physical force, compelling threats, intimidating behavior, or coercion. Coercion is unreasonable pressure for sexual activity.



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## TMCC Title IX

**Consent:** 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.



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## TMCC Title IX

### Consent:

- 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.



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## TMCC Title IX

**Consent:** Use of alcohol, medications, or other drugs will not excuse behavior that violates this policy.



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## TMCC Title IX

### Reporting

**Complainant:** an individual who is alleged to be the victim of conduct that could constitute sexual harassment.

**Respondent:** an individual who has been reported to be the perpetrator of conduct that could constitute sex discrimination or sexual harassment.



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## TMCC Title IX

### Reporting

**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.



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## TMCC Title IX

### Reporting

**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.



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## TMCC Title IX

### Reporting

**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.



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## TMCC Title IX

### Reporting

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** [cpoitra1@tm.edu](mailto:cpoitra1@tm.edu)



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## TMCC Title IX

### Reporting

**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)



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## TMCC Title IX

### Reporting

**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. All TMCC employees are considered responsible employees with a duty to report any incident to the Title IX Coordinator.



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## TMCC Title IX

### Reporting

**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; Local rape crisis counselors; Domestic violence resources; Local or state assistance agencies,
- On or off-campus Spiritual Leaders



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## TMCC Title IX

### Reporting

**Confidential Reporting:** 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.



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## TMCC Title IX

### Reporting

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



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## TMCC Title IX

### Reporting

**Reporting to the Police:** TMCC strongly encourages anyone to report sexual violence and any other criminal offenses to law enforcement.

**This is not a requirement of TMCC in order to file a Title IX complaint with the college.**



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## TMCC Title IX

### Reporting

**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.



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## TMCC Title IX

### Reporting

**Reporting of Student Instances:** 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.



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## TMCC Title IX

### Reporting

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.



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## TMCC Title IX

### Reporting

**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.



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## TMCC Title IX

### Reporting

#### Written notice includes:

- Notice of the grievance process, including any informal resolution process;
- 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



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## TMCC Title IX

### Reporting

#### Written notice includes:

- 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;
- 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
- 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.



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## TMCC Title IX

### Reporting

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

- 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.
- Individuals' rights protected under the U.S. Constitution, including the First Amendment, Fifth Amendment, and Fourteenth Amendment, must not be restricted.



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## TMCC Title IX

### Reporting

- 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.
- 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.



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## TMCC Title IX

### Reporting

- 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.
- 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.
- All evidence, inculpatory and exculpatory, must be evaluated objectively.



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## TMCC Title IX

### Reporting

- 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.
- 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.



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## **TMCC Title IX**

### **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.



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## **TMCC Title IX**

### **Investigation**

Both parties will be treated equitably throughout the investigative process.



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## TMCC Title IX

### Investigation

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,



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## TMCC Title IX

### Investigation

- 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.



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## **TMCC Title IX**

### **Investigation**

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.

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.



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## TMCC Title IX

### Mandatory and Permissive Dismissals

**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.



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## TMCC Title IX

### Mandatory and Permissive Dismissals

**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.



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## **TMCC Title IX**

### **Mandatory and Permissive Dismissals**

If a Title IX complaint is dismissed for any of the above reasons, TMCC may still address allegations of misconduct under the Student Code of Conduct, Employee Handbook or other applicable internal policies.



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## TMCC Title IX

### Institutional Action: Informal Resolution

**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.



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## TMCC Title IX

### **Institutional Action: Informal Resolution**

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:



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## TMCC Title IX

### Institutional Action: Informal Resolution

- 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;



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## TMCC Title IX

### Institutional Action: Informal Resolution

- Obtains the parties' voluntarily and written consent to the informal resolution process; and
- Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student or claims involving sexual violence.



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## TMCC Title IX

### Institutional Action: Informal Resolution

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.



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## TMCC Title IX

### Institutional Action: Title IX Hearing

**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.



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## **TMCC Title IX**

### **Institutional Action: Title IX Hearing**

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.



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## TMCC Title IX

### Institutional Action: Title IX Hearing

Criteria for the hearing members will include:

- have received all appropriate training,
- not a current instructor of either party involved,
- have no previous substantive or direct knowledge of the incident, and
- have no other perceived conflict of interest as determined by interview process with the Title IX Coordinator.



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## **TMCC Title IX**

### **Institutional Action: Title IX Hearing**

Both parties will be treated equitably throughout the hearing process.  
Listed below are the rights afforded to each party:



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## TMCC Title IX

### Institutional Action: Title IX Hearing

#### 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;



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## TMCC Title IX

**Institutional Action: Title IX Hearing**

**Complainant's Rights:**

- 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;



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## TMCC Title IX

**Institutional Action: Title IX Hearing**

**Complainant's Rights:**

- 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.



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## **TMCC Title IX**

### **Institutional Action: Title IX Hearing**

#### **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;



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## TMCC Title IX

### Institutional Action: Title IX Hearing

#### Respondent's Rights:

- 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;



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## TMCC Title IX

Institutional Action: Title IX Hearing

### Respondent's Rights:

- 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.



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## TMCC Title IX

### **Institutional Action: Title IX Hearing**

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.



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## TMCC Title IX

### **Institutional Action: Title IX Hearing**

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.



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## **TMCC Title IX**

### **Institutional Action: Title IX Hearing**

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.



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## **TMCC Title IX**

### **Institutional Action: Title IX Hearing**

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



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## **TMCC Title IX**

### **Institutional Action: Title IX Hearing**

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.



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## **TMCC Title IX**

### **Institutional Action: Title IX 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.



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## TMCC Title IX

### Institutional Action: Outcome

**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.



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## TMCC Title IX

### Institutional Action: Outcome

**Outcome:** 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.



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## TMCC Title IX

### Institutional Action: Outcome

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

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



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## TMCC Title IX

### Institutional Action: Outcome

### 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



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## TMCC Title IX

### **Institutional Action: Outcome**

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.



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## TMCC Title IX

### **Institutional Action: Outcome**

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.



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## TMCC Title IX

### Institutional Action: Appeals

**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:

- Procedural irregularity that affected the outcome;
- New evidence not reasonably available at the time of hearing;



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## TMCC Title IX

### Institutional Action: Appeals

- Title IX coordinator, investigator, or decision maker had a bias or conflict of interest; or
- 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.



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## TMCC Title IX

### **Institutional Action: Appeals**

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.



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## TMCC Title IX

### **Institutional Action: Appeals**

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.



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## TMCC Title IX

### **Institutional Action: 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.



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## TMCC Title IX

### **Institutional Action: Retaliation**

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.



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## TMCC Title IX

### **Institutional Action: Retaliation**

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.



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## TMCC Title IX

### **Institutional Action: Retaliation**

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.



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## TMCC Title IX

### **Institutional Action: Retaliation**

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 same sanctions used in the finding of responsibility in a Title IX hearing** will be imposed.



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## TMCC Title IX

### 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)



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## TMCC Title IX

### Availability of other Complaint Procedures:

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## TMCC Title IX

**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.



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## TMCC Title IX

### Supports: 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**

[cpoitra1@tm.edu](mailto:cpoitra1@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)



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## TMCC Title IX

Supports: TMCC Counselor

*Joseph LaFountain*: TMCC Counselor TMCC Main Campus 10145 BIA  
Road 7 P.O. Box 340 Belcourt, ND 58316 Phone #: **(701)477-7862/1036**

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



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## TMCC Title IX

### Supports: 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



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## TMCC Title IX

### Supports: Community Resources

- 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



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## TMCC Title IX

You can find the TMCC Title IX policy on the TMCC webpage:

[www.tm.edu](http://www.tm.edu) or by clicking the following link: [TMCC Title IX](#)

If you want a printed copy, please contact one of the TMCC Title IX coordinators.



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