



University Policies and Procedures

06-01.60 – POLICY ON SEXUAL MISCONDUCT

- I. Policy Statement:** Towson University (the “University”) is committed to providing a working and learning environment free from Sexual Misconduct, including sexual and gender-based harassment, sexual violence, dating violence, domestic violence, sexual exploitation, and sexual intimidation. The University prohibits and will not tolerate Sexual Misconduct. Sexual Misconduct is a form of sex discrimination prohibited by state and federal laws, including Title IX of the Education Amendments of 1972 as amended (“Title IX”) and Title VII of the Civil Rights Act of 1964 as amended, and also may constitute criminal activity.

The University endeavors to foster a climate free from Sexual Misconduct through training, education, prevention programs, and through policies and procedures that promote prompt reporting, prohibit Retaliation, and promote timely, fair and impartial investigation and resolution of Sexual Misconduct cases in a manner that eliminates the Sexual Misconduct, prevents its recurrence, and addresses its effects. All University community members are subject to this policy, regardless of sex, sexual orientation, gender identity and gender expression. This includes all students, faculty, and staff of the University (including regional centers), as well as third parties and contractors under University control. This policy applies to Sexual Misconduct in connection with any University education programs or activities, including Sexual Misconduct: (1) in any University facility or on any University property; (2) in connection with any University sponsored, recognized or approved program, visit or activity, regardless of location; (3) that impedes equal access to any University education program or activity or adversely impacts the employment of a member of the University community; or (4) that otherwise threatens the health or safety of a member of the University community. Nothing in this policy is intended to supersede or conflict with any federal compliance obligation.

A violation of this policy may constitute professional misconduct and/or moral turpitude under the Towson University Policy on Appointment, Rank and Tenure of Faculty, and/or gross misconduct and/or moral turpitude under Towson University’s Policy on Separation for Regular Exempt Employees.

II. Definitions:

- A. Confidential Employees means mental health counselors, pastoral counselors, social workers, psychologists, health center employees, and

any other persons with professional licenses requiring confidentiality when their official responsibilities include providing mental health counseling to members of the University community. Confidential Employees are not Responsible Employees.

- B. Consent means a knowing, voluntary, and affirmatively communicated willingness to mutually participate in a particular sexual activity or behavior. It must be given by a person with the ability and capacity to exercise free will and make a rational and reasonable judgment. Consent may be expressed either by affirmative words or actions, as long as those words or actions create a mutually understandable permission regarding the conditions of sexual activity. Consent may be withdrawn at any time. Consent cannot be obtained by force, threat, coercion, fraud, manipulation, reasonable fear of injury, intimidation, or through the use of one's mental or physical helplessness or incapacity. Consent cannot be implied based upon the mere fact of a previous consensual dating or sexual relationship. Consent to engage in sexual activity with one person does not imply Consent to engage in sexual activity with another. In order to give effective Consent, one must not be mentally or physically incapacitated (e.g., by alcohol or drugs, unconsciousness, mental disability).
- C. Dating Violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency or interaction between the persons involved in the relationship. Dating Violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating Violence does not include acts covered under the definition of domestic violence.
- D. Domestic Violence means violence committed by a current or former spouse or intimate partner of the complainant, by a person with whom the complainant shares a child in common, by a person who is cohabitating with or has cohabitated with the complainant as a spouse or intimate partner, by a person similarly situated to a spouse of the complainant, or by any other person against an adult or youth complainant protected from those acts by domestic or family violence laws of Maryland.
- E. Interim Measures means reasonably available steps an institution may take to protect the parties while a Sexual Misconduct investigation is pending.

Examples of Interim Measures include moving a student to another lab/lecture section; allowing a student to take an incomplete or withdraw from a class without penalty; moving a student to another residence hall; allowing a student to break a housing contract without penalty; changing a student/employee's employment arrangements (hours, location, job

placement, etc.); allowing for use of vacation days without prior approval; providing escort services; providing counseling services; providing student health services; and/or providing academic support services (tutoring).

F. Non-Confidential Employees means all University employees except for Confidential Employees.

G. Responsible Employee includes any employee who

1. has the authority to take action regarding Sexual Misconduct;
2. is an employee who has been given the duty of reporting Sexual Misconduct; or
3. is someone another individual could reasonably believe has this authority or duty, and
4. is not a Confidential Employee.

Responsible Employees include: the Title IX Coordinator and any Title IX Team members, all University administrators, all Non-Confidential Employees in their supervisory roles, all faculty, all athletic coaches, University law enforcement, resident assistants, and all other Non-Confidential first responders. Responsible Employees are required to report any knowledge of Sexual Misconduct to the Title IX Coordinator.

H. Retaliation means intimidating, threatening, coercing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or USM and/or the University policy relating to Sexual Misconduct, or because an individual has made a report, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing related to Sexual Misconduct. Retaliation includes retaliatory harassment.

I. Sexual Assault

1. Sexual Assault I. – Non-Consensual Intercourse – any act of sexual intercourse with another individual without Consent. Sexual intercourse includes vaginal or anal penetration, however slight, with any body part or object, or oral penetration involving mouth to genital contact.
2. Sexual Assault II. – Non-Consensual Sexual Contact – any intentional touching of the intimate parts of another person, causing another to touch one’s intimate parts, or disrobing or exposure of another without Consent. Intimate parts may include genitalia, groin, breast, or buttocks, or clothing covering them, or

any other body part that is touched in a sexual manner. Sexual contact also includes attempted sexual intercourse.

3. Sexual Assault also includes any offense that meets the definition of rape, fondling, incest or statutory rape as used in the Federal Bureau of Investigation's Uniform Crime Reporting Program.

- J. Sexual Exploitation means taking non-consensual or abusive sexual advantage of another person for one's own advantage or benefit or for the advantage or benefit of anyone other than the person being exploited.

Examples of Sexual Exploitation include: prostitution; using any kind of photographic or recording device to capture, post and/or publish images of a person's intimate parts and/or of a sexual act without the Consent or knowledge of the involved party/ies; intentionally or unintentionally publishing, recreating, or reproducing images of a person's intimate parts or of a sexual act without the knowledge or Consent of the party/ies involved; voyeurism; inducing incapacitation for the purpose of Sexual Exploitation or of having sex with the incapacitated person (regardless of whether Sexual Exploitation and/or sexual activity actually takes place); and/or knowingly transmitting a sexually transmitted infection to a partner without their Consent.

- K. Sexual Harassment is any unwelcome sexual advance, unwelcome request for sexual favors, or other unwelcome verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, evaluation of academic work, or participation in any aspect of a University program or activity; (2) submission to or rejection of such conduct by an individual is used as the basis for academic, employment, or activity or program participation related decisions affecting an individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work or academic performance, i.e., it is sufficiently severe or pervasive to create an intimidating, hostile, humiliating, demeaning or sexually offensive working, academic, residential or social environment.

Examples of Sexual Harassment include: harassment through public or private insult, sexually suggestive comments concerning a person's body or behavior, and/or sexual demands; subtle or overt pressure to comply with sexual demands; undue and unwanted remarks about another person's clothing, body, sexual activities, sexual preferences, or sexual orientation; unwelcome flirting, teasing, jokes, or gestures that are sexual in nature; unwanted kissing, touching, pinching, patting or brushing another's body or clothing; unwanted kissing, touching, pinching, patting or indecent exposure of one's own private body parts; unwanted

communications of a sexual nature verbally, in writing, by telephone, computer, or by other means; requests or demands for sexual favors accompanied by implied or overt threats or promised rewards (e.g., grades, references or awards (for students) or assignments, promotions or discipline (for employees)); repetition of unwanted invitations for dates.

- L. Sexual Intimidation means (1) threatening to sexually assault another person; (2) gender or sex-based Stalking, including cyber-Stalking; or (3) engaging in indecent exposure.
- M. Sexual Misconduct is an umbrella term that includes Dating Violence, Domestic Violence, Sexual Exploitation, Sexual Harassment, Sexual Intimidation, Sexual Violence, and Stalking.
- N. Sexual Violence is a form of Sexual Harassment and refers to physical sexual acts perpetrated without Consent. Sexual Violence includes rape, Sexual Assault, sexual battery, and sexual coercion. Sexual Violence, in any form, is a criminal act.
- O. Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress. For purposes of this definition, (a) course of conduct means two or more acts, including, but not limited to, acts in which the stalker directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person or interferes with a person's property; (b) substantial emotional distress means a significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling; (c) reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
- P. USM Policy means the University System of Maryland Policy on Sexual Misconduct (policy VI-1.60).

III. Responsible Executive and Office:

Responsible Executive: Title IX Coordinator

Responsible Office: Title IX

IV. Entities Affected by this Policy: University community.

V. Procedures:

A. Title IX Compliance Oversight

1. Title IX Coordinator

The President of the University shall designate a Title IX Coordinator responsible for coordinating the University's efforts to comply with and carry out its responsibilities under Title IX. The current Title IX Coordinator is listed on Appendix A attached hereto and incorporated by reference herein, and at <http://www.towson.edu/titleIX>. Appendix A may be amended from time to time whenever the Title IX Coordinator or his/her contact information changes, without the need for any amendment to this policy, or any formal process.

The Title IX Coordinator must have adequate training on the requirements of Title IX, including what constitutes Sexual Misconduct, Consent, credibility assessments, and counter-intuitive behaviors resulting from Sexual Misconduct. The Coordinator must understand how the University procedures operate and must receive notice of all reports raising Title IX issues at the University.

2. Title IX Team

The University may identify a Title IX Team, which may include the Title IX Coordinator, Deputy Title IX Coordinators, Title IX investigators, and representatives from campus safety, Student Affairs, the Provost's Office, and Human Resources. The Title IX Coordinator shall be responsible for coordinating the activities of the Title IX Team. The current Title IX Team is listed on Appendix A attached hereto and incorporated by reference herein, and at <http://www.towson.edu/titleIX>. Appendix A may be amended from time to time whenever the members of the Title IX team or their contact information changes, without the need for any amendment to this policy, or any formal process.

B. Notice of Nondiscrimination

1. Content

The University will publish a notice of nondiscrimination that contains the following content:

- a. Title IX prohibits the University from discriminating on the basis of sex in its education program and activities;
- b. inquiries concerning the application of Title IX may be referred to the institution's Title IX Coordinator or the Office for Civil Rights (information on the Office for Civil Rights can be found in Appendix B, as it may be amended from time to time, and at <http://www.towson.edu/titleIX>); and
- c. the Title IX Coordinator and any Title IX Team Member's title, office address, telephone number and email address. The University's web site shall be kept up to date with the name of its current Title IX Coordinator.

2. Dissemination of Notice

The notice must be widely distributed to all students, employees, applicants for admission and employment, and other relevant persons. The notice must be prominently displayed on the University's web site and at various locations throughout its campus, and must be included in publications of general distribution that provide information to students and employees about the University's services and policies. The notice should be available and easily accessible on an ongoing basis.

C. Information and Notifications

1. Information about existing confidential and non-confidential counseling, health, mental health, victim advocacy, legal assistance, visa and immigration assistance, student financial aid and other services (including Sexual Assault centers, victim advocacy offices, women's centers, and health centers) available for individuals affected by Sexual Misconduct, both within the University and in the community is available at <http://www.towson.edu/titleIX>.
2. Information about options for, available assistance in, and how to request changes to academic, living, transportation and working situations, and/or other Interim Measures, as applicable is available at <http://www.towson.edu/titleIX>. Interim Measures will be provided if requested and if reasonably available, regardless of whether the complainant chooses to report the crime to campus police or to local law enforcement.
3. When a student or employee reports to the University that the student or employee has experienced Dating Violence, Domestic

Violence, Sexual Assault or Stalking, the Title IX coordinator, or if the Title IX coordinator is not available, to the appropriate deputy Title IX coordinator (or, if the matter is not referred to the Title IX coordinator by a Confidential Employee, then the Confidential Employee), will provide the student or employee a written explanation (available at <http://www.towson.edu/titleIX> of the student's or employee's rights and options (e.g., options to notify law enforcement and/or campus authorities, including the right to be assisted by campus authorities in notifying such authorities; guidance in preservation of evidence; encouragement to obtain immediate medical help; obtaining and/or enforcing no contact and/or protective orders).

4. Resources and education programs, and other community resources and programs, geared to promote the awareness of and eliminate Sexual Misconduct, prevent its recurrence and, as appropriate, remedy its effects, can be found at <http://www.towson.edu/titleIX>.
5. Information on external options for reporting Sexual Misconduct, including local law enforcement, and the Equal Employment Opportunity Commission are available at <http://www.towson.edu/titleIX> . Information on the Office for Civil Rights can be found in Appendix B, as it may be amended from time to time, and at <http://www.towson.edu/titleIX>.

D. Preservation of Evidence

If a complainant thinks she or he may want to press charges, the complainant is encouraged to immediately be examined at one of the SAFE programs (locations identified at: <http://www.mcasa.org/for-professionals/nursing-medical-2/>) which provide free (anonymous) exams focused on evidence collection. Evidence can be collected up to 120 hours after assault but the sooner it is done the more likely that useful evidence can be recovered. Prior to a SAFE exam, it is important not to bathe, shower, douche, change one's clothes or disturb anything at the crime scene. Extremely valuable physical evidence can be obtained from the complainant, the complainant's clothing and objects at the scene of the crime. Persons should be aware that because police reports are public records under state law, the University Police Department cannot hold reports of a crime in confidence.

Complainants of Dating Violence or Domestic Violence should take steps to preserve evidence that may aid in any administrative action and/or criminal prosecution that may result. Examples of items that may serve as evidence include any recorded media such as voice mails, e-mails, text

messages, Facebook or other social media messaging, and any other notes, writings, correspondence etc. that may be relevant to the case. Depending on the situation, clothing worn by the complainant and/or the accused may also be needed as evidence and therefore should be preserved in its original state. Do not disturb the scene of any Dating Violence or Domestic Violence incident, as police may want to photograph the scene upon their arrival. They will also want to photograph any injuries that are immediately apparent or that may appear days later. If any weapon was used or any object was used as a weapon, leave it in position and do not touch it until police arrive.

It is very important to seek medical attention as soon as possible so a complainant can receive treatment for any physical injuries, be screened for sexually transmitted diseases/pregnancy/date rape drugs and/or obtain emergency contraception. A complainant is encouraged to seek medical care even if one does not think one will report the assault.

E. Prompt Investigation and Resolution

1. Investigation

Once the University knows or reasonably should know of possible Sexual Misconduct, it will take immediate and appropriate action, in accordance with its procedures, to investigate or otherwise determine what occurred. This obligation applies to Sexual Misconduct covered by this policy regardless of where the Sexual Misconduct allegedly occurred, regardless of whether a parallel law enforcement investigation or action is pending, and regardless of whether a formal complaint is filed.

2. Prompt Resolution

If the University determines that Sexual Misconduct has occurred, it will take prompt and effective steps to eliminate the Sexual Misconduct, prevent its recurrence, and address its effects.

- a. In this subsection, “prompt” generally means within 60 calendar days from the time a report is brought to the University’s attention until an initial decision is rendered.
- b. There may be circumstances that prevent the University from meeting the 60-day timeline. When the University is unable to meet the 60-day timeline, the University will document the reasons why it was unable to meet the 60-day timeline.

3. Notice of Outcome

As permitted by law, the University will notify the parties concurrently, in writing, about the outcome of the complaint and whether or not Sexual Misconduct was found to have occurred. The University will also concurrently inform the parties of any change to the results or outcome that occurs before the results or outcome become final, and the University will inform the parties when the results or outcome become final.

F. Policy & Procedures

1. This policy prohibits Retaliation against any individual who reports, testifies, assists, or participates in any manner in a Sexual Misconduct investigation, hearing, or proceeding.
2. Procedures that provide for the reporting, investigation and adjudication of Sexual Misconduct and/or Retaliation cases against students are found at <http://www.towson.edu/titleIX>. University students, University employees, third parties, or the University itself may initiate a complaint. Such procedures may be amended from time to time in accordance with the University procedures and without amending this policy; however, any amended versions of the procedures will comply with the requirements of applicable law, the USM Policy on Sexual Misconduct, and this policy.
3. Procedures that provide for the reporting, investigation and adjudication of Sexual Misconduct and/or Retaliation cases against employees or third parties are found at <http://www.towson.edu/titleIX>. University students, University employees, third parties or the University itself may initiate a complaint. Such procedures may be amended from time to time in accordance with the University procedures and without amending this policy; however, any amended versions of the procedures will comply with the requirements of applicable law, the USM Policy on Sexual Misconduct, and this policy.
4. The University will promptly implement Interim Measures, as necessary, to protect the parties during the investigation process (see section II.E. above).
5. The University will ensure that Sexual Misconduct cases undergo an appropriate legal sufficiency review by counsel prior to any decision.

6. Options and procedures for immediate and ongoing assistance following an incident of Sexual Misconduct are available at <http://www.towson.edu/titleIX>. This includes, but is not limited to, the nearest hospitals which offer the SAFE exam; help in obtaining appropriate medical attention, including transporting the complainant to the nearest designated hospital; and counseling from mental health services provided by the University, other victim service entities, or the nearest State designated rape crisis program.
7. Procedures described in section 2 and 3 above must comply with the requirements of applicable law, and the USM Policy on Sexual Misconduct, including but not limited to the requirements in section II.D. 2. and 3. of the USM Policy. These requirements include, but are not limited to:
 - a. using a “preponderance of the evidence” as the standard of review; and
 - b. including an amnesty for parties or witnesses who violate drug use, alcohol or other student conduct policies. At a minimum, as more fully set forth in its procedures, the university will not take student conduct action (except for a mandatory intervention of substance abuse) for a violation of alcohol or drug use policies by a student who reports Sexual Misconduct to the university or law enforcement or participates in a Sexual Misconduct matter as a witness, if the university determines (i) that the violation occurred during or near the time of the alleged Sexual Misconduct; (ii) the student made the report of Sexual Misconduct, or is participating in an investigation as a witness, in good faith; and (iii) the violation was not an act that was reasonably likely to place the health or safety of another individual at risk.

G. Clery Act Compliance

In handling Sexual Misconduct reports, the University remains responsible for complying with the requirements of the Crime Awareness and Campus Security Act of 1990 (“Clery Act”) and its amendments. The University must comply with Clery Act requirements, including crime recording and reporting requirements, where compliance is not otherwise achieved by actions under this policy.

H. MOU with Local Law Enforcement

The University will pursue formalized agreements with (1) its local law enforcement agency and (2) a State designated rape crisis program and/or federally recognized sexual assault coalition. Agreements with law enforcement agencies must comply with Title IX and clearly state when the university will refer a matter to a local law enforcement agency. Agreements with rape crisis or sexual assault programs must formalize a commitment to provide trauma-informed services to complainants of sexual assault and to improve the university's overall response to sexual assault.

I. Training

1. Prevention and Awareness Education

The University will develop and implement preventive education, directed toward both employees and students, to help reduce the occurrence of Sexual Misconduct. At a minimum, these educational initiatives must contain information regarding what constitutes Sexual Misconduct, definitions of Consent and prohibited conduct, the University's procedures, bystander intervention, risk reduction, a description of University policy, standards for proceedings, and the consequences of engaging in Sexual Misconduct. These educational initiatives shall be for all incoming students and new employees. The University will also develop ongoing prevention and awareness campaigns for all students and employees addressing, at a minimum, the same information.

2. Training for Persons Involved in Sexual Misconduct Cases

All persons involved in any way in responding to, investigating, or adjudicating Sexual Misconduct reports, including but not limited to, the Title IX Team, Responsible Employees, law enforcement, pastors, counselors, health professionals, resident advisers, and complainant advocates, will have annual training in receiving, reporting and handling complaints of Sexual Misconduct; must be familiar with the institution's procedures; and must understand the parameters of confidentiality.

J. Confidentiality

Confidential Employees are generally exempt from reporting requirements while performing that role. Exceptions to this confidentiality policy may occur (for example) when an individual reports incidents of child abuse, or

to comply with a court order. As appropriate, Confidential Employees will inform those they counsel of procedures for reporting crimes on a voluntary, anonymous basis to the University Police for inclusion in the annual security report.

With respect to complaints made to Responsible Employees, the University will evaluate a complainant's requests for anonymity in the context of the university's responsibility to provide a safe and secure environment. (A statement on Confidentiality and Sexual Misconduct is available at <http://www.towson.edu/titleIX>.) All reports received, including anonymous reports, are to be included in the annual disclosure of crime statistics (see section G above). The University will protect the identity of complainants by excluding identifying information about the complainant from publicly available records to the extent permitted by law.

The University will maintain as confidential any Interim Measures, accommodations or protective measures provided to the complainant, to the extent that maintaining such confidentiality would not impair the University's ability to provide the Interim Measures, accommodation or protective measures.

K. Record Keeping

The University will keep records of Sexual Misconduct matters, including, but not limited to, records of any (1) complaints/reports of Sexual Misconduct; (2) investigation, adjudication and resolution of complaints; (3) training (including, but not limited to, lists of trainees, dates of training, and training content); and (4) related surveys and reports. Records must be maintained in accordance with the University's Records Retention Schedule.

L. Campus Sexual Assault Climate Survey

On or before March 1, 2016, and at least every two (2) years thereafter, the University shall: (1) develop an appropriate Sexual Assault campus climate survey using nationally recognized best practices for research and climate surveys; and (2) administer the Sexual Assault campus climate survey to students in accordance with the procedures set by the Maryland higher Education Commission (MHEC). On or before June 1, 2016, and at least every two (2) years thereafter, the University shall submit to MHEC a report in accordance with the requirements set forth in Maryland Code Annotated, Education Article, Section 11-601(g).

M. Implementation

The University's President will promptly communicate this policy and applicable procedures to the University community, after the Board of Regents approves the policy. The University's President will also promptly identify the University's Title IX coordinator and other designee(s), as appropriate for this policy. No later than December 31, 2014, the University will develop procedures as necessary to implement this policy, and will forward a copy of its Title IX designations and procedures, and any subsequent changes in such designations and procedures, to the Chancellor.

Replacement for: TU Policy 06-1.20, on Sexual Harassment
TU Policy 06-01.30, on Sexual Assault
TU Policy 06-01.70, on Dating Violence, Domestic Violence
and Stalking

Related Policies: USM Policy VI-1.60, on Sexual Misconduct
USM Policy VI-1.50, on the Reporting of Child Abuse & Neglect
TU Policy 06-01.10, on Threats and Violence
TU Policy 06-01.50, on the Reporting of Suspected Child
Abuse and Neglect

Approval Date: 12/09/2014

Effective Date: 12/09/2014

Amended Date: 08/19/2015
10/14/2015
03/27/2016

Approved by: President's Council 11/19/2014

Appendix A

Title IX Coordinator

Dr. Leah Cox
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Title IX Team

Tricia Brandenburg (Deputy Title IX Coordinator for Athletics Equity)
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Appendix B

Philadelphia Office
Office for Civil Rights
U.S. Department of Education
The Wanamaker Building
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323

Telephone: 215-656-8541
Fax: 215-656-8605
TTD: 800-877-8339
Email: OCR.Philadelphia@ed.gov

Information is also available on OCR's webpage at
<https://wdcrobcop01.ed.gov/CFAPPS/OCR/contactus.cfm>.

If you wish to file a discrimination complaint with OCR, you can use the online complaint form available at
<http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

OCR also has a complaint portal at <https://ocrportal.hhs.gov/ocr/portal/lobby.jsf>.