

3364-50-01 The university of Toledo Title IX policy.**(A) Policy statement**

The university of Toledo “the university” is committed to providing a workplace and educational environment, as well as other benefits, programs, and activities that are free from sex discrimination, sexual harassment and retaliation. To ensure compliance with federal and state civil rights laws and regulations, and to affirm its commitment to promoting the goals of fairness and equity in all aspects of the educational program or activity. Title IX of the Education Amendments of 1972 “Title IX” is a federal law that prohibits sex discrimination.

The university has developed internal policies and procedures that provide a prompt, fair, and impartial process for those involved in an allegation of sex discrimination, sexual harassment or retaliation. The university values and upholds the equal dignity of all members of its community and strives to balance the rights of the parties in the grievance process during what is often a difficult time for all those involved.

(B) Purpose of policy

The university seeks, through this policy, to acknowledge and comply with its duties under federal and state laws and set forth a comprehensive framework for receiving, processing, investigating, and resolving complaints of sex discrimination, sexual harassment and retaliation related to participation in a process covered by this policy. This policy also provides the university community with necessary information regarding how to file complaints, receive assistance and support.

(C) Scope

The core purpose of this policy is to prohibit sex discrimination, sexual harassment and retaliation. When an alleged violation of this policy is reported, the allegations are subject to resolution under this policy as detailed in this paragraph.

When the respondent is a member of the university community, a grievance process may be available regardless of the status of the complainant, who may or may not be a member of the university community. The university community includes, but is not limited to, students, (see rule 3364-30-04 of the Administrative Code for the definition of student.), student groups/organizations, faculty, administrators, staff, and third parties such as guests, visitors, volunteers, invitees, and campers.

The Title IX procedures may be applied to incidents, to patterns, and/or to the campus climate, all of which may be addressed and investigated in accordance with this policy.

(D) Definitions:

Advisor: a person chosen by a party to accompany the party to some or all meetings related to the resolution process, to advise the party on that process, and to conduct cross-examination for the party at the hearing, if applicable. Advisor also includes a person appointed by the university to conduct cross-examination for the party at the hearing if the party does not bring one.

Appointing authority: means those employees holding titles designated by the board of trustees as appointing authorities.

Complainant: an individual who is alleged to be the victim of sex discrimination, sexual harassment or retaliation.

Complaint (formal): a document submitted or signed by a complainant or signed by the Title IX coordinator alleging sexual harassment or retaliation for engaging in a protected activity against a respondent and requesting that the university investigate the allegation.

Confidential resource: an employee who is not a mandated reporter of notice of sexual harassment and/or retaliation (irrespective of Clery Act campus security authority status).

Business day: Monday through Friday, excluding Saturday, Sunday, recognized university holidays, and approved university breaks.

Education program or activity: locations, events, or circumstances where the university exercises substantial control over both the respondent and the context in which the sex discrimination, sexual harassment or retaliation occurs and also includes any building owned or controlled by a student organization that is officially recognized by the university.

Employee: an individual holding either a faculty and/or staff appointment at the university.

Final determination: a conclusion by the preponderance of evidence standard of proof that the alleged conduct did or did not violate this policy.

Finding: a conclusion by the preponderance of evidence standard of proof that the conduct did or did not occur as alleged (as in a “finding of fact”).

Formal complaint: a document submitted or signed by the complainant or signed by the Title IX coordinator alleging a Title IX policy violation by a respondent and requesting that the university investigate the allegation(s).

Formal grievance process: a method of formal resolution designated by the university to address alleged conduct that falls within this policy, and which complies with requirements of Title IX law and regulations ([34 C.F.R. 106.45](#)).

Grievance process pool: any investigators, hearing officers, appeal officers, and university-appointed advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).

Hearing decision-maker or panel: those who have decision-making and sanctioning authority within the university's formal grievance process.

- (1) Under rule 3364-30-04 of the Administrative Code ("[Student Code of Conduct](#)"), the hearing decision-maker is referred to as a hearing authority and the panel is referred to as a board.
- (2) University faculty and staff decision makers and sanctioning authorities are appointing authorities.

Investigator: the person(s) charged by the university with gathering facts about an alleged violation of this policy, assessing relevance and credibility, synthesizing the evidence, and compiling the information into an investigation report and file of directly related evidence.

Mandated reporter: a university employee who is obligated by this policy to share knowledge, notice, and/or reports/allegations of sexual harassment and/or retaliation with the Title IX coordinator.

Notice: an employee, student, or third-party informs the Title IX coordinator or other official with authority of the alleged occurrence of sexual harassment and/or retaliatory conduct.

Official with authority "OWA": An employee of the university explicitly vested with the responsibility to implement corrective measures for sexual harassment and/or retaliation on behalf of the university. OWAs including all appointing authorities are listed on the Title IX website.

Parties: the complainant(s) and respondent(s), collectively.

Preponderance of the evidence standard: standard of proof for alleged violation(s) of the Title IX policy. This standard requires that the information utilized shows that it is more likely than not that the alleged violation(s) occurred.

Remedies: are post-finding actions directed to the complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to the university's educational program.

Respondent: an individual who has been reported to have engaged in conduct that could constitute sexual harassment or retaliation under this policy or its procedures.

Resolution: the result of a formal grievance process.

Retaliation: limited to retaliation for participation in a process covered by this policy or for participating in a process asserting Title IX through the federal government or courts.

Sanction: a consequence imposed by the university on a respondent who is found to have violated this policy. For employees, the term sanction as used in this policy means discipline or corrective action.

Sexual harassment: the umbrella category including the offenses of sexual harassment, sexual assault, stalking, and dating violence and domestic violence as defined by 34 C.F.R. part 106. See [paragraph \(N\)](#) of this rule for greater detail.

Sex discrimination: negative or adverse treatment based on sex, sexual orientation, gender, gender expression, or gender identity.

Title IX coordinator: is the official designated by the university to ensure compliance with Title IX and the university's Title IX program. References to the coordinator throughout this policy may also encompass a designee(s) of the coordinator for specific tasks.

Title IX team: the Title IX coordinator and any member of the grievance process pool.

University: the university of Toledo, which includes the university of Toledo medical center.

(E) Title IX coordinator

The director, Title IX and compliance serves as the Title IX coordinator and oversees implementation of this policy. The Title IX coordinator has the primary responsibility for coordinating the university's efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent sex discrimination, sexual harassment, and retaliation prohibited under this policy.

(1) Independence and conflict of interest

The Title IX coordinator manages the Title IX team and acts with independence and authority free from bias and conflicts of interest. The Title IX coordinator oversees all resolutions under this policy and the related.

The members of the Title IX team are trained to avoid bias for or against any gender, gender identity, gender expression, or sexual orientation, or other protected characteristic, any party in a specific case, or for or against complainants and/or respondents, generally.

To raise any concern involving bias or conflict of interest by the Title IX coordinator, contact the university of Toledo vice president for student affairs and vice provost or designee. Concerns of bias or a potential conflict of interest by any other Title IX team member should be raised with the Title IX coordinator.

Reports of misconduct committed by the Title IX coordinator should be reported to the university of Toledo vice president for student affairs and vice provost or designee. Reports of misconduct committed by any other Title IX team member should be reported to the Title IX coordinator.

(2) Administrative contact information

Complaints or notice of alleged policy violations, or inquiries about or concerns regarding this policy may be made internally to:

“Vicky Kulicke
Director, Title IX and Compliance & Title IX Coordinator
Office of Title IX and Compliance
Mail Stop 137
2801 W. Bancroft St.
Toledo, OH 43606-3390
Snyder Memorial Hall 1120
(419) 530-4191
titleix@utoledo.edu
<https://www.utoledo.edu/title-ix/>”

- (a) The university has identified that specified administrators are officials with authority to address and correct sex discrimination, sexual harassment and/or retaliation. In addition to the Title IX team members these officials with authority may also accept notice or complaints on behalf of the university of Toledo. A list of these officials is located on the Title IX website.

- (b) The university of Toledo has also classified all employees as mandated reporters of any knowledge they have that a member of the community is experiencing sexual harassment and/or retaliation.
- (c) This paragraph on mandated reporting details which employees have this responsibility and their duties, accordingly.

Inquiries may be made externally to:

“Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100
Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
TDD#: (877) 521-2172
Email: OCR@ed.gov
Web: <http://www.ed.gov/ocr>”

“United States Equal Employment Opportunity Commission
Patrick V. McNamara Building
477 Michigan Avenue
Room 865
Detroit, MI 48226
Phone: 1-800-669-4000
Fax: 313-226-4610
TTY: 1-800-669-6820
ASL Video Phone: 844-234-5122”

“U.S. Department of Health and Human Services
200 Independence Avenue, SW
Room 509F, HHH Building
Washington, D.C. 20201
Phone: 1-800-868-1019, 800-537-7697 (TDD)
Complaint forms are available
at <http://www.hhs.gov/ocr/office/file/index.html>”

“Ohio Civil Rights Commission
One Government Center
Room 936

Jackson & Erie Streets
Toledo, Ohio 43604
Phone: (419) 245-2900
TTY: (614) 752-2391”

(F) Notice/complaints of sex discrimination, sexual harassment and/or retaliation

Notice or complaints of sex discrimination, sexual harassment and/or retaliation may be made using any of the following options:

- (1) File a complaint with, or give verbal notice to, the Title IX coordinator. Such a report may be made at any time (including during non-business hours) by using the telephone number or email address, or by mail to the office address, listed for the Title IX coordinator or any other official with authority.

- (2) Report online, using the reporting form posted at https://cm.maxient.com/reportingform.php?UnivofToledo&layout_id=7

Anonymous reports are accepted but can give rise to difficulty investigating. The university tries to provide supportive measures to all complainants, which is impossible with an anonymous report. Reporting carries no obligation to initiate a formal response as the university respects complainant requests to dismiss complaints unless there is a compelling threat to the health and/or safety of the university community. The complainant is largely in control due to this process being complainant-driven.

- (3) Report using the university anonymous reporting hotline 1-888-416-1308

A formal complaint means a document submitted or signed by the complainant or signed by the Title IX coordinator alleging a violation of this policy by a respondent and requesting that the university investigate the allegation(s).

A complaint may be filed with the Title IX coordinator in person, by mail, or by electronic mail, by using the contact information in this policy. As used in this paragraph, the phrase “document filed by a complainant” means a document or electronic submission (such as by electronic mail or through an online portal) provided for this purpose by the university that contains the complainant’s physical or digital signature, or otherwise indicates that the complainant is the person filing the complaint, and requests that the university investigate the allegation(s).

If notice is submitted in a form that does not meet this standard, the Title IX coordinator will contact the complainant to ensure that it be filed correctly to allow the university to treat it as a formal complaint. Even if the complainant declines, the university's Title IX coordinator may sign the formal complaint and commence the investigative process.

(G) Supportive measures

The university will offer and implement appropriate and reasonable supportive measures to the parties upon notice of alleged sex discrimination, sexual harassment and/or retaliation.

Supportive measures are non-disciplinary, non-punitive, individualized services offered as appropriate, as reasonably available, and without fee or charge to the parties to restore or preserve access to the university's education program or activity, including measures designed to protect the safety of all parties or the university's educational environment, and/or deter sex discrimination, sexual harassment and/or retaliation.

The Title IX coordinator promptly makes supportive measures available to the parties upon receiving notice of a complaint. At the time that supportive measures are offered, the university will inform the complainant, in writing, that they may file a formal complaint with the university either at that time or in the future, if they have not done so already.

The Title IX coordinator works with the complainant to take into account their wishes with respect to the supportive measures that are planned and implemented.

The university will seek to impose minimal academic and/or employment impact on the parties and will seek to implement measures in a way that does not unreasonably burden the other party.

- (1) These actions may include, but are not limited to:
 - (a) Referral to counseling, medical, and/or other healthcare services.
 - (b) Referral to the employee assistance program.
 - (c) Referral to community-based service providers.
 - (d) Student financial aid counseling.
 - (e) Education to the institutional community or community subgroup(s).
 - (f) Altering campus housing assignment(s).
 - (g) Altering work arrangements for university employees.
 - (h) Safety planning.

- (i) Providing campus safety escorts.
- (j) Implementing contact limitations (no contact directive) between the parties.
- (k) Academic support, extensions of deadlines, or other course/program-related adjustments.
- (l) Persona non grata “PNG” order, or be-on-the-lookout “BOLO” notice.
- (m) Class schedule modifications, withdrawals, or leaves of absence.
- (n) Increased security and monitoring of certain areas of the campus.
- (o) Any other actions deemed appropriate by the Title IX coordinator.

Violations of no contact directives will be referred to appropriate student or employee conduct processes for enforcement.

(H) Emergency removal

(1) Students

The university can impose an interim suspension on a student who is involved in the Title IX process on an emergency basis when an individualized safety and risk analysis has determined that an immediate threat to the physical health or safety of any student or other individual justifies removal.

- (a) Interim suspension for students is the immediate removal of the student from all university of Toledo premises.
- (b) The vice president for student affairs and vice provost or designee may impose an interim suspension.
- (c) A student may be placed on interim suspension to – ensure the safety and well-being of the university community, ensure the student’s own physical or emotional safety and well-being, or to ensure the student does not pose an ongoing threat, disruption, or interference with normal university activity.
- (d) The interim suspension may be effective immediately without prior notice and may provide for partial or complete exclusion from university premises.

- (e) The student will be notified of the interim suspension in writing via their university assigned email address, and the reasons for the interim suspension.
 - (f) The student will be given a date and time to meet with the vice president for student affairs and vice provost or designee to show cause why their continued presence on-campus does not constitute a threat.
 - (g) After the meeting, the vice president for student affairs and vice provost or designee may retain or lift the interim suspension and will communicate the decision and rationale in writing to the student via their university assigned email address. This decision is final, and no further appeal is available.
 - (h) If the vice president for student affairs and vice provost or designee chooses to leave the interim suspension in place, the student will remain on interim suspension until the alleged behavior is investigated and/or adjudicated. The interim suspension process does not replace the Title IX and/or the student conduct process.
- (2) Student groups/organizations
- (a) Interim suspension for a student group/organization is the immediate cessation of all activities until further notice. A student group/organization that is placed on interim suspension cannot hold meetings and events on-campus and cannot function as a student group/organization until further notice.
 - (b) The vice president for student affairs and vice provost or designee may impose an interim suspension.
 - (c) A student group/student organization may be placed on interim suspension if the student group/organizations continued operation poses a danger to the university or any of its members, or constitutes an ongoing threat, disruption, or interference with normal university activity.
 - (d) The interim suspension may be effective immediately without prior notice and will remain in place until an investigation into the alleged Title IX violation(s) is completed, and a decision regarding appropriate next steps is determined.

- (e) The student group/organization (or like position) will be notified of the interim suspension in writing via their university assigned email address, and the reasons for the interim suspension.
- (f) The student group/organization president (or like position) will be given a date and time to meet with the vice president for student affairs and vice provost or designee to show cause why their student group/organizations' behavior did not and does not continue to constitute a threat to the university community.
- (g) After the meeting, the vice president for student affairs and vice provost or designee may retain or lift the interim suspension and will communicate the decision and rationale in writing via their university assigned email address to the student group/organization president (or like position). This decision is final, and no further appeal is available.
- (h) If the vice president for student affairs and vice provost or designee chooses to leave the interim suspension in place, the student group/organization will remain on interim suspension until the alleged behavior is investigated and/or adjudicated.
- (i) The interim suspension process does not replace the university student conduct process.

A respondent may be accompanied by an advisor of their choice when meeting with the vice president for student affairs and vice provost or designee for the show cause meeting. The respondent will be given access to a written summary of the basis for the emergency removal/interim suspension prior to the meeting.

The university will seek to implement the least restrictive emergency actions possible in light of the circumstances and safety concerns. As determined by the vice president of student affairs and vice provost or designee on consultation with the Title IX coordinator, these actions could include, but are not limited to: removing a student from a residence hall, restricting a student's access to or use of facilities or equipment, allowing a student to withdraw or take grades of incomplete, and suspending a student's participation in extracurricular activities, student employment, student organizational leadership, or intercollegiate/intramural athletics.

At the discretion of the Title IX coordinator, alternative coursework options may be pursued to ensure as minimal an academic impact as possible on the parties.

(3) Employees

- (a) Where the respondent is an employee, existing provisions for interim action are applicable.
- (b) The university may use the pertinent administrative leave process with respect to an employee who is the subject of a Title IX complaint. The notice of administrative leave will be implemented by an appointing authority in accordance with university policy.

(I) Promptness

All allegations are acted upon promptly by the university once it has received notice or a formal complaint. Formal complaints will be handled in a timely manner. There are always exceptions and extenuating circumstances that can cause a resolution to take longer, but the university will seek to avoid undue delays.

(J) Privacy

The university understands the sensitivity of reports. The university uses discretion when disclosing reports or information in reports internally, but all parties and witnesses should realize that there are circumstances when due process, Ohio public records laws, or other law requires the university to disclose information and/or records.

(K) Jurisdiction of Title IX policy

This policy applies to sex discrimination, sexual harassment and retaliation as those terms are defined in 34 C.F.R. part 106. This applies to the educational and employment program of the university, related to conduct that takes place on the campus or on property owned or controlled by the university, at university-sponsored events, or in buildings owned or controlled by the university's recognized student groups/organizations. The respondent must be a member of the university's community in order for its policies to apply.

This policy can also be applicable to the effects of off-campus misconduct that effectively deprives someone of access to the university's educational or employment program. Regardless of where the conduct occurred, the university will evaluate notices and complaints to determine whether the conduct occurred in the context of its employment or educational program or activity and/or has continuing effects on campus or in an off-campus sponsored program or activity.

If the respondent is unknown or is not a member of the university community, the Title IX coordinator will assist the complainant in identifying campus and local resources and support

options and/or, when criminal conduct is alleged, in contacting local or campus law enforcement if the individual would like to file a police report.

Further, even when the respondent is not a member of the university community, supportive measures, remedies, and resources may be accessible to the complainant by contacting the Title IX coordinator or Title IX designees.

All vendors serving the university through third-party contracts are subject to the policies and procedures of their employers or to these policies and procedures to which their employer has agreed to be bound by their contracts.

When the respondent is enrolled in or employed by another institution, the Title IX coordinator can assist the complainant in liaising with the appropriate individual at that institution, as it may be possible to allege violations through that institution's policies.

Similarly, the Title IX coordinator or designee may be able to assist and support a student or employee complainant who experiences sexual harassment or retaliation in an externship, study abroad program, or other environment external to the university where sexual harassment policies and procedures of the facilitating or host organization may give recourse to the complainant.

(L) Time limits on reporting

There is no time limitation on providing notice/complaints to the Title IX coordinator. However, if the respondent is no longer subject to this policy's scope and/or significant time has passed, the ability to investigate, respond, and provide remedies under this policy may be more limited or impossible.

Acting on notice/complaints significantly impacted by the passage of time is at the discretion of the Title IX coordinator, who may document allegations for future reference, offer supportive measures and/or remedies, and/or engage in informal or formal action, as appropriate.

Any complaint received on or after August 14, 2020, whether the alleged sexual harassment occurred before or after August 14, 2020, will be reviewed and handled in accordance with this policy and the procedures implemented August 14, 2020. ~~With respect to sexual harassment that allegedly occurred prior to August 14, 2020, The university will apply the Title IX statute and the Title IX regulations in place at the time that the alleged sexual harassment occurred.~~

(M) Online sex discrimination, sexual harassment and/or retaliation

This policy is intended to include online manifestations of any of the behaviors prohibited, when those behaviors occur in or have an effect on the university's education or employment program and activities or use the university's technology or equipment.

Although the university may not control websites, social media, and other venues in which sexually harassing communications are made, when such communications are reported to the university, it may engage in a variety of means to address or mitigate the effects.

Any online posting or other electronic communication by students or employees including cyber-stalking (based on sex), cyber-harassment (based on sex), or occurring outside of the university's control (e.g., not on university networks or websites) will only be subject to this policy when such online conduct can be shown to cause a substantial in-program disruption or infringement on the rights of others.

Otherwise, such communications are considered speech protected by the first amendment. Reasonable supportive measures for complainants will be provided, but protected speech cannot legally be subjected to discipline.

Off-campus sexually harassing speech by employees, whether online or in person, may be regulated by the university only when such speech is made in an employee's official or work-related capacity, and not as a private citizen or as part of a student, staff, or faculty member's academic freedom.

(N) Definition of sexual harassment

Under federal and state law, sexual harassment is an unlawful discriminatory practice.

The university has adopted the following definition of sexual harassment for this policy. Acts of sexual harassment may be committed by any person upon any other person, regardless of the sex, sexual orientation, and/or gender identity or gender expression of those involved. Sexual harassment, as an umbrella category, includes sexual harassment; actual or attempted sexual assault; domestic violence; dating violence; and stalking, and is defined as:

Conduct on the basis of sex or that is sexual that satisfies one or more of the following:

- (1) Quid pro quo:
 - (a) A university employee.
 - (b) Conditions, implicitly or explicitly, the provision of an aid, benefit, or service of a university aid, benefit, or service.

- (c) On an individual's participation in unwelcome sexual conduct.
- (2) Sexual harassment:
- (a) Unwelcome conduct,
 - (b) Determined by a reasonable person,
 - (i) To be so severe, and
 - (ii) Pervasive, and,
 - (iii) Objectively offensive,
 - (c) That it effectively denies a person equal access to the university's education or employment program or activity. Unwelcomeness is subjective and determined by the complainant (except when the complainant is younger than the age of consent). Severity, pervasiveness, and objective offensiveness are evaluated based on the totality of the circumstances from the perspective of a reasonable person in the same or similar circumstances ("in the shoes of the complainant"), including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.
- (3) Sexual assault, defined as:
- (a) Sex offenses, forcible:
 - (ii) Any sexual act directed against another person (this would include having another person touch you sexually, forcibly, or without their consent.) Sexual acts include:
 - (a) Forcible rape:
 - (i) Penetration,
 - (ii) No matter how slight,

- (iii) Of the vagina or anus with any body part or object, or
 - (iv) Oral penetration by a sex organ of another person,
 - (v) Without the consent of the complainant.
- (b) Forcible sodomy:
 - (i) Oral or anal sexual intercourse with another person,
 - (ii) Forcibly,
 - (iii) And/or against that person's will (non-consensually), or
 - (iv) Not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.
- (c) Sexual assault with an object:
 - (i) The use of an object or instrument to penetrate,
 - (ii) However slightly,
 - (iii) The genital or anal opening of the body of another person,
 - (iv) Forcibly,
 - (v) And/or against that person's will (non-consensually),
 - (vi) Or not forcibly or against the person's will in instances in which the complainant is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity.

- (4) Dating violence, defined as:
- (a) Violence,
 - (b) On the basis of sex,
 - (c) Committed by a person,
 - (d) Who is in or has been in a social relationship of a romantic or intimate nature with the complainant.
 - (i) The existence of such a relationship shall be determined based on the complainant's statement and with consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. For the purposes of this definition:
 - (ii) Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.
 - (iii) Dating violence does not include acts covered under the definition of domestic violence.
- (5) Domestic violence, defined as:
- (a) Violence,
 - (b) On the basis of sex,
 - (c) Committed by a current or former spouse or intimate partner of the complainant,
 - (d) By a person with whom the complainant shares a child in common, or
 - (e) By a person who is cohabitating with, or has cohabitated with, the complainant as a spouse or intimate partner, or
 - (f) By a person similarly situated to a spouse of the complainant under the domestic or family violence laws of the state of Ohio, or
 - (g) By any other person against an adult or youth complainant who is protected from that person's acts under the domestic or family violence laws of the state of Ohio.

[To categorize an incident as domestic violence, the relationship between the respondent and the complainant must be more than just two people living together as roommates. The people cohabitating must be current or former spouses or have an intimate relationship.]

- (6) Stalking, defined as:
 - (a) Engaging in a course of conduct,
 - (b) On the basis of sex,
 - (c) Directed at a specific person, that would cause a reasonable person to:
 - (i) Fear for the person's safety, or
 - (ii) Fear for safety of others; or
 - (iii) Suffer substantial emotional distress.
 - (d) For the purposes of this definition:
 - (i) Course of conduct means two or more acts, including, but not limited to, acts in which the respondent 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.
 - (ii) Reasonable person means a reasonable person under similar circumstances and with similar identities to the complainant.
 - (iii) Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

The university reserves the right to impose any level of sanction, ranging from a reprimand up to and including suspension or expulsion/termination, for any offense under this policy. Please refer to the Title IX procedures for a list of potential sanctions.

- (7) Force, coercion, consent, and incapacitation

As used in the listed offenses, the following definitions and understandings apply:

Force: force is the use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent (e.g., “have sex with me or I’ll hit you,” “okay, don’t hit me, I’ll do what you want.”).

Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

Coercion: coercion is unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.

Consent is: knowing, and voluntary, and clear permission by word or action to engage in sexual activity.

Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each party to determine that the other has consented before engaging in the activity.

Consent requires unambiguous communication and mutual agreement concerning the act in which the participants are engaging throughout the entirety of the interaction.

For consent to be valid, there must be a clear expression in words or actions that the other individual consented to that specific sexual conduct. Reasonable reciprocation can be implied. For example, if someone kisses you, you can kiss them back (if you want to) without the need to explicitly obtain their consent to being kissed back.

Consent can also be withdrawn once given, as long as the withdrawal is reasonably and clearly communicated. If consent is withdrawn, that sexual activity should cease immediately.

Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.

Proof of consent or non-consent is not a burden placed on either party involved in an incident. Instead, the burden remains on the university to determine whether its policy has been violated. The existence of consent is based on the totality of the circumstances evaluated from the perspective of a reasonable person in the same or similar circumstances, including the context in which the alleged incident occurred and any similar, previous patterns that may be evidenced.

A person cannot consent if they are unable to understand the fact, nature, or extent of the sexual situation or are disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated in this paragraph, a respondent violates this policy if they engage in sexual activity with someone who is incapable of giving consent in that.

A person cannot give consent if force, expressed or implied is used; or if, duress; intimidation; threats; or, deception is used on the complainant. Silence or the absence of resistance does not imply consent.

Consent in relationships must also be considered in context. When parties consent to BDSM (bondage, discipline/dominance, submission/sadism, and masochism) or other forms of kink, non-consent may be shown by the use of a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so the university’s evaluation of communication in kink situations should be guided by reasonableness, rather than strict adherence to policy that assumes non-kink relationships as a default.

Minors under the age of sixteen are incapable of giving consent under Ohio law under any circumstance.

Incapacitation: incapacitation occurs when someone cannot make rational, reasonable decisions because they lack the capacity to give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).

Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk. In considering whether a complainant is incapacitated due to the consumption of drugs or alcohol, the university will consider the

circumstances, including factors such as whether there is evidence of slurred speech, vomiting, stumbling or the inability to walk, or periods of “blacking out.” The presence of one of these factors, standing alone, may not be sufficient to establish incapacitation; the totality of the circumstances must be examined.

This policy also covers a person whose incapacity results from a temporary or permanent physical or mental health condition, involuntary physical restraint, and/or the consumption of incapacitating drugs.

(O) Retaliation

Protected activity under this policy includes reporting an incident that may implicate this policy, participating in the grievance process described in this policy, supporting a complainant or respondent in a proceeding under this policy, assisting in providing information relevant to an investigation under this policy or conducted by the federal government with respect to Title IX, filing or participating in a lawsuit alleging Title IX violations, and/or acting in good faith to oppose conduct that constitutes a violation of this policy.

Acts of alleged retaliation should be reported immediately to the Title IX coordinator and will be promptly investigated. The university will take available steps to avoid subjecting students or employees who have engaged in protected activity to retaliation.

The university and any member of the university’s community are prohibited from taking materially adverse action by intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by Title IX or this policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this policy and procedure or before a federal administrative agency investigating Title IX or in a lawsuit alleging Title IX violations.

The exercise of rights protected under the first amendment does not constitute retaliation.

Charging an individual with an alleged policy violation for making a materially false statement in bad faith in the course of a grievance proceeding under this policy does not constitute retaliation. In such a matter, determination regarding responsibility, alone, is not sufficient to conclude that any party has made a materially false statement in bad faith. There may be other university policies and procedures which may be applicable.

(P) Mandated reporting

Generally, all university employees are mandated reporters and expected to report actual or suspected sexual harassment or retaliation to the Title IX coordinator and/or official with authority immediately, though there are some limited exceptions.

In order to make informed choices, it is important to be aware of confidentiality and mandatory reporting requirements when consulting campus resources. On campus, some resources may maintain confidentiality and are not required to report actual or suspected sexual harassment or retaliation. They may offer options and resources without any obligation to inform an outside agency or campus official unless a complainant has requested the information be shared.

If a complainant expects formal action in response to their allegations, reporting to any mandated reporter can connect them with resources to report crimes and/or policy violations, and these employees will immediately pass reports to the Title IX coordinator (and/or police, if desired by the complainant), who will take action when an incident is reported to them.

The following paragraphs describe the reporting options at the university of Toledo for a complainant or third-party (including parents/guardians when appropriate):

- (1) Confidential resources
 - (a) If a complainant would like the details of an incident to be kept confidential, the complainant may speak with:
 - (ii) On-campus licensed professional counselors and staff.
 - (iii) On-campus health service providers and staff.
 - (iii) On and off-campus victim advocates.
 - (iv) Off-campus (non-employees).

The first three bulleted above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, and/or professional credentials, except in situations where their professional licensure requires disclosure, or when required to disclose by law or court order. The university cannot make representations about what off campus resources' confidentiality practices are.

Campus counselors and/or the employee assistance program may be available depending on an individual's status as a student or employee and may be consulted during normal business hours.

- (2) Anonymous notice

Anonymous notice will be investigated by the university to the extent possible, both to assess the underlying allegation(s) and to determine if supportive measures or remedies can be provided.

However, anonymous notice typically limits the university's ability to investigate, respond, and provide remedies, depending on what information is shared.

(3) Mandated reporters and formal notice/complaints

All employees of the university (including student employees), with the exception of those who are designated as confidential resources, are mandated reporters and must promptly share with the Title IX coordinator all known details of a report made to them in the course of their employment.

Employees must also promptly share all details of behaviors under this policy that they observe or have knowledge of, even if not reported to them by a complainant or third-party.

Complainants may want to carefully consider whether they share personally identifiable details with non-confidential mandated reporters, as those details must be shared with the Title IX coordinator.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as "take back the night" marches or speak-outs do not provide notice that must be reported to the coordinator by employees, unless the complainant clearly indicates that they desire a report to be made or a seek a specific response from the university.

Supportive measures may be offered as the result of such disclosures without a formal complaint to the university.

Failure of a mandated reporter to report an alleged incident of sexual harassment or retaliation of which they become aware is a violation of this policy and may be the subject of disciplinary action. It may also constitute a violation of law.

A mandated reporter who experiences sexual harassment or retaliation under this policy is not required to report their own experience.

(Q) When a complainant does not wish to proceed

If a complainant does not wish for their name to be shared or does not wish for a formal investigation under this policy to take place, they may make such a request in writing to the Title IX coordinator, who will evaluate that request in light of the university's duty to the campus community and to comply with state or federal law.

The Title IX coordinator has ultimate discretion over whether to proceed under this policy when the complainant does not wish to do so, and the Title IX coordinator may sign a formal complaint to initiate a grievance process upon completion of an appropriate risk assessment.

The Title IX coordinator's decision is to be based on results of the risk assessment that leads the Title IX coordinator to reach a conclusion that there is a compelling risk to health and/or safety that requires the university to pursue formal action to protect the university community.

A compelling risk to health and/or safety may result from evidence of patterns of sexual harassment, retaliation, predatory conduct, threats, abuse of minors, use of weapons, and/or violence. The university may be compelled to act irrespective of a complainant's wishes.

The Title IX coordinator must also consider the effect that non-participation by the complainant may have on the availability of evidence and the university's ability to pursue a formal grievance process under this policy fairly and effectively.

When the Title IX coordinator executes the formal complaint, they do not become the complainant. The complainant is the individual who is alleged to be the victim of conduct that could constitute a violation of this policy.

When the university proceeds, the complainant (or their advisor) may have as much or as little involvement in the process as they wish. The complainant retains all rights of a complainant under this policy irrespective of their level of participation. Typically, when the complainant chooses not to participate, the advisor may be appointed as proxy for the complainant throughout the process, acting to ensure and protect the rights of the complainant except that in no situation may an advisor provide evidence or answer questions in the place of the complainant.

The university's ability to remedy and respond to notice may be limited if the complainant does not want to proceed with an investigation and/or grievance process. The goal is to provide the complainant with as much control over the process as possible, while balancing the university's obligation to the university community.

In cases in which the complainant requests confidentiality/no formal action and the circumstances allow the university to honor that request, the university will offer supportive measures and remedies to the complainant and the community but will not otherwise pursue formal action under this policy. It may pursue action under other applicable policies, however.

If the complainant elects to take no action, they can change that decision if they decide to pursue a formal complaint at a later date if the university has not taken action on the matter. Upon making a formal complaint, a complainant can expect to have allegations taken seriously by the university, and to have the incidents investigated and resolved. Delays may cause limitations on access to evidence, or present issues with respect to the status of the parties.

(R) Federal timely warning obligations

Parties reporting sexual assault, domestic violence, dating violence, and/or stalking should be aware that under the [Clery Act](#), the university must issue timely warnings for incidents reported to it that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

The university is obligated to provide enough information for community members to make safety decisions in light of the potential danger.

(S) False allegations and evidence

Deliberately false and/or malicious accusations under this policy are a serious offense and will be subject to appropriate disciplinary action. This does not include allegation(s) that are made in good faith but are ultimately shown to be erroneous or do not result in a policy violation determination.

Additionally, witnesses and parties knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting an investigation can be subject to discipline under the university.

(T) Amnesty

Rule [3364-30-03](#) of the Administrative Code (student conduct amnesty policy) may apply in certain circumstances. Please review the university's policy website for additional information.

(U) Federal statistical reporting obligations

Certain campus officials, those deemed campus security authorities, have a duty to report the following for federal statistical reporting purposes (Clery Act):

- (1) All "primary crimes," which include homicide, sexual assault, robbery, aggravated assault, burglary, motor vehicle theft, and arson;

- (2) Hate crimes, which include any bias-motivated primary crime as well as any bias motivated larceny or theft, simple assault, intimidation, or destruction/damage/vandalism of property;
- (3) VAWA-based crimes,¹ which include sexual assault, domestic violence, dating violence, and stalking; and
- (4) Arrests and referrals for disciplinary action for weapons-related law violations, liquor-related law violations, and drug abuse-related law violations.

All personally identifiable information is kept private, but statistical information must be shared with the Clery Act compliance officer and the university of Toledo police regarding the type of incident and its general location (on or off-campus or in the surrounding area, but no addresses are given) for publication in the annual security and fire safety report as well as the campus daily crime log.

Campus security authorities include but are not limited to: student affairs/student conduct staff, campus law enforcement/public safety/security, 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.

(V) Recordkeeping

The university will maintain for a period of seven years records of:

- (a) Each sex discrimination and sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required under federal regulation;
- (b) Any disciplinary sanctions imposed on the respondent;
- (c) Any remedies provided to the complainant designed to restore or preserve equal access to the university's education program or activity;
- (d) Any appeal and the result therefrom;
- (e) All materials used to train Title IX coordinators, investigators, decision-makers, The university will make these training materials publicly available on the university's

¹ VAWA is the Violence Against Women Act, enacted in 1994 codified in part at 42 U.S.C. sections 13701 through 14040.

Title IX website.

- (f) Any actions, including any supportive measures, taken in response to a report or formal complaint of sex discrimination and/or sexual harassment, including:
 - (i) The basis for all conclusions that the response was not deliberately indifferent;
 - (ii) Any measures designed to restore or preserve equal access to the university's education program or activity; and
 - (iii) If no supportive measures were provided to the complainant, document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

The university will also maintain any and all records in accordance with state and federal laws.

(W) Confidentiality

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

(X) Immediate assistance and resources

The university is committed to educational and working environments that are free from sexual harassment, sexual assault, interpersonal relationship violence, stalking, or retaliation based on sex discrimination. Individuals who experience sexual harassment in a university program or activity are encouraged to utilize one or more of the following options:

- (1) On-campus
 - (a) Medical assistance (confidential). Available to students, faculty, staff, visitors, third parties.

The university of Toledo medical center (enter through the emergency room entrance), “3000 Arlington Avenue, Toledo, Ohio 43614, phone: 419.383.4000” [sexual assault nurse examiner “SANE” available – please ask for SANE nurse]

- (b) Assistance from law enforcement (non-confidential). Available to students, faculty, staff, visitors, third parties.

University of Toledo police department “UTPD” at 911 and non-emergency 419.530.2600

Reports may be made to law enforcement and the university concurrently.

- (c) Center for student advocacy and wellness “CSAW” (confidential). Available to students, faculty, staff.

CSAW provides free and confidential counseling and advocacy services for students, staff, and faculty. Victim advocates are available to provide support services for victims of sexual assault, domestic violence, dating violence, stalking, education/training programs and wellness events related to sexual assault, sexual harassment, interpersonal violence, stalking, bystander intervention, and outreach and engagement regarding victim risk awareness programs. A full-time counselor is also available for any faculty, staff or student who wishes to schedule an appointment. CSAW is located in the college of health and human services, room 3017, and can be reached by calling the sexual assault hotline at 419.530.3431 (answered twenty-four hours a day/seven days a week). This number may be forwarded to the YWCA rape crisis center for twenty-four hours a day/seven days a week when CSAW staff is not available.

- (d) University of Toledo counseling center (confidential). Available to students only.

The university of Toledo counseling center “UCC” provides free and confidential counseling services to enrolled UToledo students. Counselors are available Monday through Friday during regular office hours 8:15 am to 5:00 pm. To schedule an appointment during regular office hours, call 419.530.2426 to initiate services. Support services are available for emergencies after hours and on weekends by contacting the UCC at 419-530-2426 and selecting the after-hours prompt to connect to a provider. To learn more about the programs and services available at UCC, visit <http://www.utoledo.edu/studentaffairs/counseling/>. Counselors are available to assist complainants, those with whom have an established relationship with the UCC, and respondents involved in Title IX,

sexual assault, harassment, retaliation and related matters. UCC is located in the “University Health Center, Room 1030, 1735 W. Rocket Drive.”

- (e) Report to the university Title IX office (non-confidential). Available to students, faculty, staff, visitors, third parties. Anonymous reporting is available through website.

“Vicky Kulicke
 Director, Title IX and Compliance & Title IX Coordinator
 Office of Title IX and Compliance
 Mail Stop 137
 2801 W. Bancroft St.
 Toledo, OH 43606-3390
 Snyder Memorial Hall 1120
 (419) 530-4191
 titleix@utoledo.edu
<https://www.utoledo.edu/title-ix/>”

You may also report online through our website at <http://www.utoledo.edu/title-ix/>. This report may be made anonymously or with identifying information. To report anonymously, do not fill in your name, position, phone number, or email under “reporters’ information.”

- (f) Employee assistance program “EAP” (confidential). Available to faculty and staff only.

IMPACT employee assistance and work/life program (twenty-four/seven support)
 1-800-227-6007
www.MyImpactSolution.com member login: UT

- (2) Off-campus resources

- (a) Medical assistance (confidential). Available to students, faculty, staff, visitors, third parties.

The Toledo hospital (enter through the emergency room entrance),
 “2142 N Cove Boulevard, Toledo, Ohio 43606, phone: 419.291.4600”
 [sexual assault nurse examiner “SANE” available – please ask for SANE nurse]

- (b) Assistance from law enforcement (non-confidential). Available to students, faculty, staff, visitors, third parties. Dial nine-one-one to reach local law enforcement.

Reports may be made to law enforcement and the university concurrently.

- (c) Report to the university (non-confidential). Available to students, faculty, staff, visitors, third parties. Anonymous reporting available.

“Vicky Kulicke
 Director, Title IX and Compliance & Title IX Coordinator
 Office of Title IX and Compliance
 Mail Stop 137
 2801 W. Bancroft St.
 Toledo, OH 43606-3390
 Snyder Memorial Hall 1120
 (419) 530-4191
 titleix@utoledo.edu
<https://www.utoledo.edu/title-ix/>”

You may also report online through our website at <http://www.utoledo.edu/title-ix/>. This report may be made anonymously or with identifying information. To report anonymously, do not fill in your name, position, phone number, or email under “reporters’ information.”

- (d) Off-campus resources (confidential). Available to students, faculty, and staff.

YWCA center twenty-four-hour rape crisis hotline 419.241.7273

YWCA domestic violence shelter 419.241.7386

- (e) Employee assistance program “EAP” (confidential). Available to faculty and staff only.

IMPACT employee assistance and work/life program (twenty-four/seven support) .

1-800-227-6007

www.MyImpactSolution.com

member login: UT

Atixa 2020 interim model sexual harassment policies and procedures use and adaptation of this model with citation to atixa is permitted through a limited license to the university of Toledo. All other rights reserved.

©2020. Atixa

This policy is not intended, and does not create, any rights beyond those established by Title IX, its implementing regulations, and applicable case law.

Effective: 12/28/2020

CERTIFIED ELECTRONICALLY

Certification

12/17/2020

Date

Promulgated Under: 111.15
Statutory Authority: 3364
Rule Amplifies: 3364
Prior Effective Dates: 11/05/2018, 04/09/2020, 11/16/2020