



## Transylvania University

### Grievance Process for Alleged Violations of Title IX (Process A)

For All Faculty, Students, Employees, And Third Parties

## Table of Contents

Overview.....	4
Nondiscrimination Administrator Contact .....	4
Notice/Complaint.....	5
Collateral Misconduct .....	5
Mandated Reporting and Confidential Resources .....	5
Title IX Formal Grievance Process .....	11
1. Initial Assessment .....	11
2. Dismissal (Mandatory and Discretionary) .....	12
3. Appeal of Dismissal.....	13
4. Emergency Removal / Interim Suspension of a Student .....	14
5. Placing Employees on Leave .....	15
6. Counter-Complaints .....	15
7. Advisors in the Formal Grievance Process .....	16
8. Resolution Options .....	18
9. Resolution Process Pool .....	22
10. Notice of Investigation and Allegations (NOIA) .....	23
11. Resolution Timeline.....	24
12. Ensuring Impartiality.....	25
13. Witness Role and Participation in the Investigation.....	26
14. Interview Recording .....	26
15. Evidentiary Considerations .....	26
16. Investigation .....	27
17. Referral for Hearing .....	28
18. Hearing Decision-Maker.....	29
19. Live Hearing Requirements .....	29
20. Hearing Notice .....	31
21. Witness Participation.....	32
22. Pre-Hearing Meetings .....	33
23. Hearing Procedures.....	34
24. Deliberation and Determination.....	36
25. Notice of Outcome .....	37

26.	Rights of the Parties.....	37
27.	Sanctions .....	40
28.	Withdrawal or Resignation Before Complaint Resolution .....	43
29.	Appeal of the Final Determination .....	44
30.	Long-Term Remedies / Other Actions.....	47
31.	Failure to Comply with Sanctions and/or Responsive Actions.....	48
32.	Recordkeeping and Record Maintenance .....	48
33.	Disabilities Accommodations in the Resolution Process.....	49
34.	Other Support.....	49
	Appendix A: Definitions.....	51
	Appendix B: Privacy and Confidentiality .....	54
	Appendix C: Violence Risk Assessment .....	55
	Appendix D: State Law Definitions .....	57
	Domestic Violence .....	57
	Dating Violence .....	57
	Sexual Assault .....	58
	Stalking .....	61
	Consent .....	64

## Overview

Transylvania University is committed to providing an educational and employment environment that is free from discrimination based on protected characteristics, harassment, and retaliation in protected activity.

Transylvania University will act on any Notice/Formal Complaint of violation of the Policy on Equal Opportunity, Harassment, and Nondiscrimination (“the Policy”) that is received by the Title IX Coordinator<sup>1</sup> or any other Official with Authority. Transylvania uses two sets of procedures, known as Process A and Process B.

Process A is compliant with the federal Title IX regulations. It involves an investigation and live hearing, including cross-examination. It also includes an Informal Resolution option. Process A is applicable to all Formal Complaints of alleged Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking that occur within the University’s Education Program and Activity.

Process B applies to Formal Complaints of alleged Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, or Stalking that fall outside of the University’s Education Program and Activity and therefore cannot be adjudicated under the Title IX Formal Grievance Process. Process B is also used for all other complaints of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the basis of all Protected Characteristics as listed in Transylvania University Equal Opportunity, Harassment, and Nondiscrimination Policy that do not fall under Process A.

Occasionally, a Formal Complaint will include conduct that falls within both Processes A and B. When that occurs, Process A will typically be used to address all allegations.

## Nondiscrimination Administrator Contact

The Title IX Coordinator at Transylvania University oversees implementation of Transylvania University’s Equal Opportunity, Harassment, and Nondiscrimination policy and coordinates Transylvania University’s timely, thorough, and fair response through investigation and resolution of all alleged prohibited conduct under this Policy.

In addition to the Title Coordinator, Lisa Ladanyi, Transylvania University has determined the following administrators as Officials with Authority (OWA): Vice President of Student Life & Dean of Students, Michael Covert or designee, Vice President of Human Resources, Michelle Bliffen or designee, and Director of Public Safety, Steve Herold or designee. For the purpose of this policy, OWA’s have been vested with the authority of the University President to address and correct harassment, discrimination, and/or retaliation when the Title IX Coordinator is not

---

<sup>1</sup> Anywhere this procedure indicates “Title IX Coordinator,” Transylvania University may substitute a trained designee.

available. In addition to the Title IX Coordinator, the listed Officials with Authority may also accept notice or complaints on behalf of Transylvania University.

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

Lisa Ladanyi

Title IX/Accessibility Coordinator

238 Young Campus Center

300 North Broadway, Lexington KY

Phone: (859) 233 8502

Email: [titleix@transy.edu](mailto:titleix@transy.edu)

Web: <https://www.transy.edu/campus/campus-safety/title-ix/>

## **Notice/Complaint**

Upon receipt of Notice or a Formal Complaint of an alleged Policy violation, the Title IX Coordinator will initiate a prompt initial assessment to determine the University's next steps. The Title IX Coordinator will contact the Complainant to offer supportive measures, provide information regarding resolution options, and determine how they wish to proceed.

## **Collateral Misconduct**

Collateral misconduct includes potential violations of other Transylvania University policies that occur in conjunction with alleged violations of the Policy, or that arise through the course of the investigation, for which it makes sense to provide one resolution for all allegations. Thus, the collateral allegations may be charged along with potential violations of the Policy, to be resolved jointly under these Procedures. In such circumstances, the Title IX Coordinator may consult with University officials who typically oversee such conduct (e.g., human resources, student conduct, academic affairs) to solicit their input as needed on what charges should be filed, but the exercise of collateral charges under these procedures is within the Title IX Coordinator's discretion. All other allegations of misconduct unrelated to incidents covered by the Policy will typically be addressed separately through procedures described in the Student, Faculty, or Employee Handbook(s).

## **Mandated Reporting and Confidential Resources**

### **A. Mandated Reporting**

All Transylvania University Employees (faculty, staff, student employees, administrators) are encouraged to report actual or suspected discrimination, harassment, retaliation, and/or other prohibited conduct as outlined in this Policy to the appropriate official(s), although there are some limited exceptions. Transylvania University has designated all employees, with the exception of

confidential resources, as Mandated Reporters for Title IX purposes. Mandatory Reporters are obligated to share knowledge, notice and/or reports of sex-based discrimination, harassment, retaliation, and/or other prohibited conduct with the appropriate official(s) immediately.

To make informed choices, it is important to be aware of confidentiality or mandatory reporting requirements when consulting institutional resources. Within the institution, some resources may maintain confidentiality and are not required to report actual or suspected harassment, discrimination, or retaliation in a way that identifies the Parties. They may offer options and resources without any obligation to inform an outside agency or institution 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 alleged crimes and/or policy violations, and these Employees will pass reports to the Title IX Coordinator (and/or police, if desired by the Complainant or required by law), who will act when an incident is reported to them.

The following sections describe Transylvania University's reporting options for a Complainant or third party:

## **B. Confidential Resources**

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

- Counseling Center (for Students only)  
Appointment via [counseling@transy.edu](mailto:counseling@transy.edu)  
Tricia Hite, LPCC; [thite@transy.edu](mailto:thite@transy.edu)  
Ann Pedersen, LCSW; [apedersen@transy.edu](mailto:apedersen@transy.edu)  
Jessica Tazelaar, [jtazelaar@transy.edu](mailto:jtazelaar@transy.edu)
- Student Health  
Appointment via my.transy.edu – My Health Portal  
Melissa Harris, ARNP; [mharris@transy.edu](mailto:mharris@transy.edu); 859-233-8127
- Director of the Lula Morton Drewes Center  
Dr. Krissalyn Love; [Klove@transy.edu](mailto:Klove@transy.edu); 859-233-8804; 252 Campus Center
- Director of Religious Life  
Sarah Harcourt Watts; [sharcourtswatts@transy.edu](mailto:sharcourtswatts@transy.edu); 859-233-8608; 244 Campus Center
- Employee Assistance Program  
The Woodland Group; [info@woodlandgroup.org](mailto:info@woodlandgroup.org); 859-255-4864)
- Community-based agencies:

- Licensed professional counselors
- Medical providers
- Local rape crisis counselors (e.g. Sexual Violence Resource Center)
- Domestic violence resources (e.g. Green House 17)
- Clergy/chaplains
- Attorneys

All of the above-listed individuals will maintain confidentiality when acting under the scope of their licensure, professional ethics, professional credentials, or official designation, except in extreme cases of immediacy of threat or danger or abuse of a minor/elder/individual with a disability, or when required to disclose by law or court order.

Institutional resources and the Employee Assistance Program are available to help free of charge and may be consulted on an emergency basis during normal business hours.

Employees who have confidentiality as listed above, and who receive reports within the scope of their confidential roles will timely submit anonymous statistical information for Clery Act purposes unless they believe it would be harmful to their client, patient, or parishioner.

Failure of a Mandated Reporter to report an incident of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct of which they become aware is a violation of Transylvania University Policy and can be subject to disciplinary action for failure to comply/failure to report. This also includes situations when a Respondent is a Mandated Reporter. Such individuals are obligated to report their own misconduct and failure to do so is a chargeable offense under the Policy.

A Mandated Reporter who is themselves a target of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct under this Policy is not required to report their own experience, though they are, of course, encouraged to do so.

## **Consent, Force, and Incapacitation**

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

### **A. Consent**

- Knowing, and
- voluntary, and
- clear permission
- by word or action
- to engage in sexual activity.

Individuals may perceive and 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.

If consent is not clearly provided prior to engaging in the activity, consent may be ratified by word or action at some point during the interaction or thereafter, but clear communication from the outset is strongly encouraged.

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, the sexual activity should cease within a reasonably immediate time.

Silence or the absence of resistance alone should not be interpreted as 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.

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. If an individual expresses conditions on their willingness to consent (e.g., use of a condom) or limitations on the scope of their consent, those conditions and limitations must be respected. If a sexual partner shares the clear expectation of the use of a condom, or to avoid internal ejaculation, and those expectations are not honored, the failure to use a condom, removing a condom, or internal ejaculation can be considered acts of sexual assault.

Proof of consent or non-consent is not a burden placed on any party involved in a Formal Complaint. Instead, the burden remains on Transylvania 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.

Going beyond the boundaries of consent is prohibited. Thus, unless a sexual partner has consented to slapping, hitting, hair pulling, strangulation, or other



physical roughness during otherwise consensual sex, those acts may constitute dating violence or sexual assault<sup>2</sup>.

## **B. Force**

Force is the use of physical violence and/or physical imposition to gain sexual access. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced.

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.").

Coercion is unreasonable pressure for sexual activity. Coercive conduct, if sufficiently severe, can render a person's consent ineffective, because it is not voluntary. When someone makes it 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. Coercion is evaluated based on the frequency, intensity, isolation, and duration of the pressure involved.

## **C. Incapacitation**

Incapacitation is a state where a person is incapable of giving consent. An incapacitated person 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, and how" of their sexual interaction). A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious, for any reason, including due to alcohol or other drug consumption.

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 substances.

Incapacitation is determined through consideration of all relevant indicators of a person's state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.

If the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated, the Respondent is not in violation of this

---

<sup>2</sup> Consent in relationships must also be considered in context. When parties consent to BDSM (bondage, discipline, sadism, 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

Policy. "Should have known" is an objective, reasonable person standard which assumes that a reasonable person is both sober and exercising sound judgment.

## **Preservation of Evidence**

The preservation of evidence in incidents of sexual assault and stalking is critical to potential criminal prosecution and to obtaining restraining/protective orders and is particularly time sensitive. Transylvania University will inform the Complainant of the importance of preserving evidence by taking actions such as the following:

### **A. Sexual Assault**

- Seek forensic medical assistance at a local hospital, ideally within 120 hours of the incident (sooner is better).
- Avoid urinating, showering, bathing, washing hands or face, or douching, if possible, but evidence may still be collected even if you do.
- If oral sexual contact took place, refrain from smoking, eating, drinking, or brushing teeth.
- If clothes are changed, place soiled clothes in a paper bag (plastic destroys evidence) or secure evidence container (local police).
- Seeking medical treatment can be essential even if it is not for the purposes of collecting forensic evidence.

### **B. Stalking, Dating or Domestic Violence, Sexual Harassment**

- Evidence in the form of text and voice messages will be lost in many cases if the Complainant changes their phone number.
    - Make a secondary recording of any voice messages and/or save the audio files to a cloud server.
    - Take screenshots and/or a video recording of any text messages or other electronic messages (e.g. Instagram, Snapchat, Facebook).
  - Save copies of emails and social media correspondence, including notifications related to account access alerts.
  - Take time-stamped photographs of any physical evidence including notes, gifts, etc. in place when possible.
  - Save copies of any messages, to include those showing any request for no further contact.
  - Obtain copies of call logs showing the specific phone number being used rather than a saved contact name if possible.
  - If changing devices, make sure to transfer files needed to the new device.
- During the initial meeting between the Complainant and the Title IX Coordinator, the importance of taking these actions will be discussed, if timely.

# Title IX Formal Grievance Process

## 1. Initial Assessment

Following receipt of Notice or a Formal Complaint of an alleged violation of the Equal Opportunity, Harassment, and Nondiscrimination Policy, the Title IX Coordinator<sup>3</sup> engages in an initial assessment, typically within five (5) business days. The initial assessment typically includes:

- Assessing whether the reported conduct may reasonably constitute a Policy violation
- Determining whether Transylvania has jurisdiction over the reported conduct
- Offering and coordinating supportive measures for the Parties
- Notifying the Complainant, or the person who reported the allegation(s), of the available resolution options
- Determining whether the Complainant wishes to file a Formal Complaint
- Notifying the Respondent of the available resolution options if a Formal Complaint is made

### A. Helping a Complainant Understand Resolution Options

If the Complainant indicates they wish to file a Formal Complaint, the Title IX Coordinator will work with the Complainant to determine which resolution option they prefer. The Title IX Coordinator will seek to abide by the Complaint's wishes but may have to take another approach depending upon their assessment of the situation.

If the Formal Grievance Process is pursued, the Title IX Coordinator will initiate an investigation.

If any party indicates that they want to pursue an Informal Resolution option, the Title IX Coordinator will determine if Informal Resolution is available and the other Parties consent to participate. Informal Resolution cannot be used to resolve a Formal Complaint of Title IX Sexual Harassment involving an Employee Respondent and a Student Complainant.<sup>4</sup>

If the Complainant does not want any action taken, the Title IX Coordinator will consider that request. Typically, allegations of Student-on-Student and Employee-on-Employee misconduct will not prompt the Formal Grievance Process unless deemed necessary by the Title IX Coordinator, though the Complainant can elect to pursue the formal process in the future. The Title IX Coordinator may need to refer allegations of Employee-on-Student misconduct to the Formal Grievance

---

<sup>3</sup> If circumstances require, the President or Title IX Coordinator will designate another person to oversee the process below should an allegation be made about the Coordinator or the Coordinator be otherwise unavailable or unable to fulfill their duties.

<sup>4</sup> 34 C.F.R. § 106.45.

Process regardless of the Complainant's wishes, depending on the nature of the allegations.

Elements such as patterns of behavior, predation, threats, violence, use of weapons, or involvement of minors will be considered when determining whether to sign a Formal Complaint.

## **B. Title IX Coordinator to Initiate a Complaint**

The Title IX Coordinator has ultimate discretion as to whether a Formal Complaint is made and may consult with appropriate University administrators, and/or conduct a violence risk assessment to aid their determination whether to sign a Formal Complaint on behalf of the Complainant.<sup>5</sup>

If a Complainant is not participating or attempting to participate in Transylvania's Education Program or Activity at the time of making a Formal Complaint, they can request that the Title IX Coordinator sign a Formal Complaint. When the Title IX Coordinator signs a Formal Complaint, they do not become the Complainant. The Complainant is the person who experienced the alleged misconduct. If the Title IX Coordinator declines to sign a Formal Complaint, alternative processes may be available and can be explored with the Title IX Coordinator.

## **2. Dismissal (Mandatory and Discretionary)**

Transylvania University **must** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing, it is determined that:

- 1) The conduct alleged in the formal complaint would not constitute Title IX Sexual Harassment as defined in the Policy above, even if proven
- 2) The sex-based conduct did not occur in an educational program or activity controlled by Transylvania University (including buildings or property controlled by recognized Student organizations), and/or Transylvania University does not have control of the Respondent
- 3) The conduct did not occur against a person in the United States
- 4) The Complainant alleging sex-based conduct is not participating in or attempting to participate in the education program or activity of Transylvania University at the time of filing the Formal Complaint, and based on the available information, the Title IX Coordinator has determined that they do not need to sign a Formal Complaint on behalf of Transylvania University

Transylvania University **may** dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

- 1) A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein

---

<sup>5</sup> See detailed information regarding Violence Risk Assessment in C

- 2) The Respondent is no longer enrolled in or employed by Transylvania University<sup>6</sup>
- 3) Specific circumstances prevent Transylvania University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein

A Complainant who decides to withdraw a Formal Complaint may later request to reinstate it or refile it.

Upon any dismissal, Transylvania University will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

This dismissal decision is appealable by any party under the procedures for appeal below. The decision not to dismiss is also appealable by any party claiming that a dismissal is required or appropriate.

When the Title IX Coordinator has signed a Formal Complaint and later determines that the basis for signing is no longer compelling, the Title IX Coordinator may rescind the Formal Complaint and notify the Parties accordingly. This is not a dismissal, and there is no opportunity to appeal because the Complainant may still file a Formal Complaint if they wish to, in most circumstances.

### **3. Appeal of Dismissal**

The Parties may appeal a decision to dismiss or not to dismiss their Formal Complaint. All dismissal appeal requests must be filed within five (5) business days of the notification of the dismissal decision.

A dismissal may be appealed on the following grounds:

- 1) A procedural irregularity affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the determination regarding dismissal was made, that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter
- 4) The dismissal was erroneously granted or denied

The appeal should specify at least one of the grounds above and provide any reasons or supporting evidence for why the ground is met. Upon receipt of a written dismissal appeal request from one or more Parties, the Title IX Coordinator will share the request and supporting documentation with all other Parties and provide five (5) business days for other Parties and the Administrator to respond to the request. At the conclusion of the response period, the Administrator will

---

<sup>6</sup> Transylvania University may continue the resolution process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the prohibited conduct or determine whether a degree should be issued or revoked.

forward the request, as well as any response provided by the other Parties and/or the Title IX Coordinator to the Dismissal Appeal Decision-Maker for consideration.

If the appeal request does not provide information that meets the grounds in the Policy, the Dismissal Appeal Decision-Maker will deny the request, and the Parties, their Advisors, and the Administrator will be notified in writing of the denial and the rationale.

If any of the asserted grounds in the appeal satisfy the grounds described in the Policy, then the Dismissal Decision-Maker will notify all Parties and their Advisors, and the Title IX Coordinator of their decision and rationale in writing. The effect will be to reinstate the Complaint.

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Dismissal Appeal Decision-Maker has seven (7) business days to review and decide on the appeal, though extensions can be granted at the Title IX Coordinator's discretion, and the Parties will be notified of any extension.

Appeal decisions are deferential to the original determination, making changes only if there is a compelling justification to do so.

The Dismissal Appeal Decision-Maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

#### **4. Emergency Removal / Interim Suspension of a Student**

Transylvania University may emergency remove a Student accused of Title IX Sexual Harassment upon receipt of a Formal Complaint or at any time during the Formal Grievance Process. Prior to an emergency removal, Transylvania will conduct an individualized risk assessment and may remove the Student if that assessment determines an immediate threat to the physical health or safety of any Student or other individual justifies removal. Students accused of other forms of Discrimination, Harassment, Retaliation, or Other Prohibited Conduct (not Sex-based) are subject to interim suspension, which can be imposed for safety reasons.

When an emergency removal or interim suspension is imposed, wholly or partially, the affected Student will be notified of the action, which will include a written rationale, and the option to challenge the emergency removal or interim suspension within three (3) business days of the notification. Upon receipt of a challenge, the Title IX Coordinator will meet with the Student (and their Advisor,

if desired) as soon as reasonably possible thereafter to allow them to show cause why the removal/action should not be implemented or should be modified.

This meeting is not a hearing on the merits of the allegation(s), but rather is an administrative process intended to determine solely whether the emergency removal or interim suspension is appropriate, should be modified, or should be lifted. When this meeting is not requested within three (3) business days, objections to the emergency removal or interim suspension will be deemed waived. A Student can later request a meeting to show why they are no longer an immediate threat because conditions related to the threat have changed. A Complainant and their Advisor may be permitted to participate in this meeting if the Title IX Coordinator determines it is equitable for them to do so.

The Respondent may provide information, including expert reports, witness statements, communications, or other documentation for consideration prior to or during the meeting. When applicable, a Complainant may provide information to the Title IX Coordinator for review.

An emergency removal or interim suspension may be affirmed, modified, or lifted as a result of a requested review or as new information becomes available. The Title IX Coordinator will communicate the final decision in writing, typically within three (3) business days of the review meeting.

## **5. Placing Employees on Leave**

When the Respondent is an Employee, or a Student-Employee accused of misconduct in the course of their employment, existing provisions in the Employee Handbook for interim action are typically applicable instead of the above emergency removal process.

## **6. Counter-Complaints**

Transylvania University is obligated to ensure that the Formal Grievance Process is not abused for retaliatory purposes. Although Transylvania permits the filing of counter-complaints, the Title IX Administrator will use an initial assessment, described above, to assess whether the allegations in the counter-complaint are made in good faith. When counter-complaints are not made in good faith, they will not be permitted. They will be considered potentially retaliatory and may constitute a Policy violation.

Counter-complaints determined to have been reported in good faith will be processed using the Formal Grievance Process. At the Title IX Coordinator's discretion, investigation of such claims may take place after resolution of the underlying initial Formal Complaint.

## **7. Advisors in the Formal Grievance Process**

The Parties may each have an Advisor of their choice present with them for all meetings, interviews, and hearings within the Formal Grievance Process, if they so choose.

Choosing an Advisor who is also a witness in the process creates potential for bias and conflict of interest. A party who chooses an Advisor who is also a witness can anticipate that issues of potential bias will be explored by the Decision-Maker.

### **A. Who Can Serve as an Advisor**

The Parties may each have an Advisor (friend, mentor, family member, attorney, or any other individual a party chooses) present with them for all meetings, interviews, and hearings within the resolution process. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. Parties have the right to choose not to have an Advisor in the initial stages of the Formal Grievance Process, prior to a hearing.

The Title IX Coordinator will also offer to assign a trained Advisor for any party if the party chooses so. If the Parties choose an Advisor from the pool available from Transylvania University, the Advisor will be trained by Transylvania University and be familiar with Transylvania University's resolution process.

Transylvania University cannot guarantee equal Advisory rights, meaning that if one party selects an Advisor who is an attorney, but the other party does not, or cannot afford an attorney, Transylvania is not obligated to provide an attorney to advise that party.

If the Parties choose an Advisor from outside Transylvania-trained Advisors, the Advisor may not have been trained by Transylvania University and may not be familiar with Transylvania University policies and procedures.

A party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. Parties are expected to provide the Title IX Coordinator with timely notification if they change Advisors. If a party changes Advisors, consent to share information with the previous Advisor is assumed to be terminated, and a release for the new Advisor must be submitted.

Transylvania may permit Parties to have more than one Advisor, or an Advisor and a support person, upon special request to the Title IX Coordinator. The decision to grant this request is at the Title IX Coordinator's sole discretion and will be granted equitably to all Parties.

### **B. Advisor's Role in the Formal Grievance Process**

Advisors should help the Parties to prepare for each meeting or hearing and are expected to advise ethically, with integrity, and in good faith. Advisors may not



provide testimony or speak on behalf of their advisee unless given specific permission to do so.

The Parties are expected to respond to questions on their own behalf throughout the Formal Grievance Process. Although the Advisor generally may not speak on behalf of their advisee, except for conducting cross-examination during a hearing, the Advisor may consult with their advisee, either privately as needed, or by conferring or passing notes during any Resolution Process meeting or interview. For longer or more involved discussions, the Parties and their Advisors should ask for breaks to allow for private consultation.

The Title IX Regulations require a form of indirect questioning during the hearing, which must be conducted by the Parties' Advisors. The Parties are not permitted to directly question each other or any witnesses. If a party does not have an Advisor for a hearing, Transylvania will appoint a trained Advisor for the limited purpose of conducting any questioning of the Parties and witnesses.

### **C. Records Shared with Advisors**

Advisors are entitled to the same opportunity as their advisee to receive copies of the Draft and Final Investigation Reports, as well as the Directly Related Evidence file. Parties will be asked to sign releases for Transylvania University to share materials with an Advisor.

Advisors are expected to maintain the confidentiality of the records Transylvania shares with them. Accordingly, Advisors will be asked to sign Non-Disclosure Agreements (NDAs). Transylvania may decline to share materials with any Advisor who has not executed the NDA. Transylvania may restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Transylvania's confidentiality expectations.

### **D. Advisor Expectations**

Transylvania University generally expects an Advisor to adjust their schedule to allow them to attend Transylvania meetings/interviews/hearings when planned, but Transylvania may change scheduled meetings/interviews/hearings to accommodate an Advisor's inability to attend, if doing so does not cause an unreasonable delay.

Transylvania may also make reasonable provisions to allow an Advisor who cannot be present in person to attend a meeting/interview/hearing by telephone, video conferencing, or other similar technologies, as may be convenient and available.

All Advisors are subject to the same University policies and procedures, whether they are attorneys or not, and whether they are selected by a party or appointed by Transylvania. Advisors are expected to advise without disrupting proceedings.

## **E. Advisor Policy Violations**

Any Advisor who oversteps their role as defined by the Policy, who shares information or evidence in a manner inconsistent with the Policy, or who refuses to comply with Transylvania's established rules of decorum will be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting/interview/hearing may be ended, or other appropriate measures implemented, including Transylvania requiring the party to use a different Advisor or providing a different Transylvania-appointed Advisor. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

## **8. Resolution Options**

The Formal Title IX Grievance Process is Transylvania's primary resolution approach for alleged violations of Title IX unless all Parties and Transylvania University agree to an Informal Resolution. The process considers the Parties' preferences but is ultimately determined at the Title IX Coordinator's discretion.

Resolution proceedings are private. All persons present at any time during a resolution process are expected to maintain the privacy of the proceedings in accordance with the Policy.

There is an expectation of privacy around what Investigators share with Parties during interviews and for any materials the institution shares with the Parties during the resolution process. The Parties have discretion to share their own knowledge and evidence with others if they choose, except for information the Parties agree not to disclose as part of an Informal Resolution. Transylvania encourages Parties to discuss any sharing of information with their Advisors before doing so.

### **A. Informal Resolution**

Informal Resolution is a process by which a mutually agreed upon resolution of an allegation is reached by the Parties. Informal Resolution is an alternative to the Formal Grievance process to resolve conflicts. It may be used for less serious, yet inappropriate, behaviors, but can be used to address other more serious behaviors if at the time of the allegation the university does determine that there is not an ongoing threat to the Complainant or campus community.

Informal Resolution may not be used in complaints involving a Student Complainant and an Employee Respondent.

To initiate Informal Resolution, a Complainant or Respondent may make such a request to the Title IX Coordinator at any time prior to a Final Determination or the Title IX Coordinator may offer the option to the Parties. Participation in Informal Resolution is strictly voluntary. Transylvania University will obtain

voluntary, written confirmation that all Parties wish to resolve the matter through Informal Resolution before proceeding and will not pressure the Parties to participate in Informal Resolution.

To engage in Informal Resolution, a Complaint must first submit a Formal Complaint.

It is not necessary to pursue Informal Resolution first in order to pursue a Formal Grievance Process. Any party participating in Informal Resolution can withdraw from the Informal Resolution process at any time and initiate or resume the Formal Grievance Process.

The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process should the Informal Resolution not be successful.<sup>7</sup>

If an investigation is already underway, the Title IX Coordinator has discretion to determine if the investigation will be paused, if it will be limited, or if it will continue during the Informal Resolution process.

Prior to engaging in Informal Resolution, Transylvania will provide the Parties with written notice of the reported misconduct and any sanctions (only in the case of Accepted Responsibility) or measures that may result from participating in such a process, including information regarding any records that Transylvania will maintain, and under which circumstances they may be released.

There are three approaches to Informal Resolution which are detailed below.

## **B. Informal Resolution Approaches**

### **1) Supportive Resolution**

A Supportive Resolution can be offered when the Title IX Coordinator can resolve the matter informally by providing supportive measures only designed to remedy the situation. Supportive Resolutions involve only the party who opts for it.

Most commonly offered once a Formal Complaint is filed (whereas supportive measures, as described in [Section 9](#) of the Policy, are offered in response to Notice). The Title IX Coordinator will meet with the Complainant to determine reasonable supports that are designed to restore or preserve the

---

<sup>7</sup> The Parties may not want discussions that take place within Informal Resolution to be admissible in a later Resolution Process, but essential facts must and do transfer from the informal process to subsequent resolution proceedings. Disclosing something in an informal setting to shield it from formal admissibility is a cynical strategy, so administrators should take care in determining the terms of any assurances of the confidentiality of the Informal Resolution.

Complainant's access to Transylvania's Education Program and Activity. Such supports can be modified as the Complainant's needs evolve over time or circumstances change. If the Respondent has received the NOIA, the Title IX Coordinator may also provide reasonable supports for the Respondent as deemed appropriate. This option is available when the Complainant does not want to engage in the other resolution options, and the Title IX Coordinator does not believe there is a need to sign a Formal Complaint. At the discretion of the Title IX Coordinator, this resolution option can result in an agreement between the Complainant and Transylvania that does not require assent from any other party, as long as it does not unduly burden any other party or function punitively with respect to them.

## 2) Accepted Responsibility

An Accepted Responsibility Resolution can occur when the Respondent accepts responsibility for violating policy, and accepts the recommended sanction(s), and the Complainant(s) and the Title IX Coordinator are agreeable to the resolution terms.

The Respondent may accept responsibility for any or all of the alleged Policy violations at any point during the Formal Grievance Process. If the Respondent indicates an intent to accept responsibility for **all** alleged Policy violations, the ongoing process will be paused, and the Title IX Coordinator will determine whether Informal Resolution is an option.

If Informal Resolution is available, the Title IX Coordinator will determine whether all Parties and Transylvania are able to agree on responsibility, restrictions, sanctions, restorative measures, and/or remedies. If so, the Title IX Coordinator implements the accepted Finding that the Respondent is in violation of Transylvania University Policy, implements agreed-upon restrictions and remedies, and determines any other appropriate responses in coordination with other appropriate administrator(s), as necessary.

This resolution is not subject to appeal once all Parties indicate their written agreement to all resolution terms. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will either begin or resume.

When a resolution is reached, the appropriate sanction(s) or responsive actions are promptly implemented to effectively stop the Discrimination or Harassment, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

## 3) Alternative Resolution

Alternative Resolutions can occur when the Parties agree to resolve the matter through an alternative resolution mechanism (which could include, but is not

limited to, mediation, shuttle negotiation, restorative practices, facilitated dialogue, etc.), as described below.

Transylvania University offers a variety of alternative resolution mechanisms to best meet the specific needs of the Parties and the nature of the allegations. Alternative resolution may involve agreement to pursue individual or community remedies, including targeted or broad-based educational programming or training; supported direct conversation or interaction between the Parties; indirect action by the Title IX Coordinator or other appropriate Transylvania officials; and other forms of resolution that can be tailored to the needs of the Parties. Some alternative resolution mechanisms will result in an agreed-upon outcome, while others are resolved through dialogue. All Parties must consent to the use of an alternative resolution approach, and the Parties may, but are not required to, have direct or indirect contact during an alternative resolution process.

The Title IX Coordinator has the authority to determine whether alternative resolution is available or successful, to facilitate a resolution that is acceptable to all Parties, and/or to accept the Parties' proposed resolution, usually through their Advisors, often including terms of confidentiality, release, and non-disparagement.

Parties do not have the authority to stipulate restrictions or obligations for individuals or groups that are not involved in the alternative resolution process. The Title IX Coordinator will determine whether additional individual or community remedies are necessary to meet the institution's compliance obligations in addition to the alternative resolution.

The Title IX Coordinator maintains records of any informal resolution that is reached and will provide notification to the Parties of what information is maintained. Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions (e.g., dissolution of the agreement and resumption of the Formal Grievance Process, referral to the conduct process for failure to comply, application of the enforcement terms of the agreement). Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy a Policy violation, the Title IX Coordinator must consider whether to dissolve the agreement and reinstate the Formal Grievance Process to remedy the impact as required by law. The results of Formal Complaints resolved by alternative resolution are not appealable.

If an Informal Resolution option is not available or selected, Transylvania University will initiate or continue an investigation and subsequent Formal Grievance Process to determine whether the Policy has been violated.

## **C. Formal Grievance Process**

The Formal Grievance Process begins with Section 10. below.

## **9. Resolution Process Pool**

The Formal Grievance Process relies on a pool of internal or external administrators to carry out the process.

### **A. Pool Member Roles**

Members of the Pool are trained annually, and can serve in the following roles, at the discretion of the Title IX Coordinator:

- To provide appropriate intake of and initial guidance pertaining to complaints
- To act as an Advisor to the Parties
- To serve in a facilitation role in Informal Resolution or Alternative Resolution if appropriately trained in appropriate resolution approaches (e.g., mediation, restorative practices, facilitated dialogue)
- To perform or assist with initial assessment
- To investigate complaints
- To serve as a Hearing Facilitator (process administrator, no decision-making role)
- To serve as a Decision-Maker regarding the complaint
- To serve as an Appeal Decision-Maker

### **B. Pool Member Appointment**

The Title IX Coordinator, in consultation with senior administrators as necessary, appoints the Pool, which acts with independence and impartiality.

### **C. Pool Member Training**

Pool members receive annual training. This training includes, but is not limited to:

- The scope of Transylvania University's Equal Opportunity, Harassment, and Nondiscrimination Policy and Procedures
- How to conduct investigations and hearings that protect the safety of Complainants and Respondents, and promote accountability
- Implicit bias
- Disparate treatment
- Reporting, confidentiality, and privacy requirements
- Applicable laws, regulations, and federal regulatory guidance
- How to implement appropriate and situation-specific remedies
- How to investigate in a thorough, reliable, timely, and impartial manner
- How to conduct a sexual harassment investigation

- Trauma-informed practices pertaining to investigations and resolution processes
- How to uphold fairness, equity, and due process
- How to weigh evidence
- How to conduct questioning
- How to assess credibility
- Impartiality and objectivity
- How to render Findings and generate clear, concise, evidence-based rationales
- The definitions of all offenses
- How to apply definitions used by Transylvania University with respect to consent (or the absence or negation of consent) consistently, impartially, and in accordance with policy
- How to conduct an investigation and grievance process including hearings, appeals, and Informal Resolution Processes
- How to serve impartially by avoiding prejudgment of the facts at issue, conflicts of interest, and bias against Respondents and/or for Complainants, and on the basis of sex, race, religion, and other protected characteristics
- Any technology to be used at a live hearing
- Issues of relevance of questions and evidence
- Issues of relevance to create an investigation report that fairly summarizes relevant evidence
- How to determine appropriate sanctions in reference to all forms of harassment, discrimination, and/or retaliation allegations
- Recordkeeping

Materials used to train members of the Pool are publicly posted on the Transylvania University's Title IX website.

## **10. Notice of Investigation and Allegations (NOIA)**

The Title IX Coordinator will provide written Notice of Investigation and Allegations ("NOIA") to the Respondent upon commencement of the Formal Grievance Process. This facilitates the Respondent's ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also copied to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

The NOIA will include:

- A meaningful summary of all of allegations
- The identity of the Parties involved (if known)
- The precise misconduct being alleged
- The date and location of the alleged incident(s) (if known)

- The specific policies implicated
- A description of the applicable procedures
- A statement of the potential sanctions/responsive actions that could result
- A statement that Transylvania University presumes the Respondent is not responsible for the reported misconduct unless and until the evidence supports a different determination
- A statement that determinations of responsibility are made at the conclusion of the process and that the Parties will be given an opportunity to inspect and review all directly related and/or relevant evidence obtained during the review and comment period
- A statement about Transylvania University 's policy on retaliation
- Information about the confidentiality of the process
- Information on the need for each party to have an Advisor of their choice and suggestions for ways to identify an Advisor
- A statement informing the Parties that Transylvania University 's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process
- Detail on how the party may request disability accommodations during the interview process
- A link to Transylvania University's Equal Opportunity, Harassment, and Nondiscrimination Policy
- If available at the time of notice, the name(s) of the Investigator(s), along with a process to identify, in advance of the interview process, to the Title IX Coordinator any conflict of interest that the Investigator(s) may have, and
- An instruction to preserve any evidence that is directly related to the allegations

Notification will be made in writing and may be delivered by one or more of the following methods: in person, emailed to the Parties' Transylvania-issued email account, or mailed to the local or permanent address(es) of the Parties as indicated in official Transylvania University records. Once emailed, mailed, and/or received in-person, notice will be presumptively delivered.

## **11. Resolution Timeline**

Transylvania University will make a good faith effort to complete the resolution process in a timely manner within sixty to ninety (60-90) business days, including any appeals, which the Title IX Coordinator can extend as necessary for appropriate cause. The Parties will receive regular updates on the progress of the Formal Grievance Process, as well as notification and a rationale for any extensions or delays, and an estimate of how much additional time will be needed to complete the process.



Investigations are completed expeditiously, normally within sixty (60) business days, though some investigations may take longer, depending on the nature, extent, and complexity of the allegations, witness availability, law enforcement involvement, and other factors.

Transylvania University may undertake a short delay in its investigation (several days to a few weeks) if circumstances require. Such circumstances include, but are not limited to, a request from law enforcement to temporarily delay the investigation, the need for language assistance, the absence of Parties and/or witnesses, and/or health conditions. Transylvania will promptly resume its Formal Grievance Process as soon as feasible. During such a delay, Transylvania will implement and maintain supportive measures for the Parties as deemed appropriate.

Transylvania action(s) or processes are not typically altered or precluded on the grounds that civil or criminal charges involving the underlying incident(s) have been filed or that criminal charges have been dismissed or reduced.

Transylvania University will make a good faith effort to complete the Formal Grievance Process as promptly as circumstances permit and will regularly communicate with the Parties to update them on the progress and timing of the process.

## **12. Ensuring Impartiality**

No individual materially involved in the Formal Grievance Process, including the Title IX Coordinator, Investigator(s), or Decision-Maker(s), may have or have demonstrated a conflict of interest or bias for a party generally, or for a specific Complainant or Respondent.

The Title IX Coordinator will vet the assigned Investigator(s), Decision-Maker(s), and Appeal Decision-Maker(s) for impartiality by ensuring there are no actual or apparent conflicts of interest or disqualifying biases. The Parties may, at any time during the resolution process, raise a concern regarding bias or conflict of interest, and the Title IX Coordinator will determine whether the concern is reasonable and supportable. If so, another trained Title IX Team member will be assigned and the impact of the bias or conflict, if any, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the Title IX Coordinators direct supervisor, Vice President of Human Resources.

The Formal Grievance Process involves an objective evaluation of all Relevant Evidence obtained, including evidence which supports that the Respondent engaged in a policy violation and evidence which supports that the Respondent did not engage in a policy violation. Credibility determinations may not be based solely on an individual's status or participation as a Complainant, Respondent, or witness. All Parties have a full and fair opportunity, through the investigation

process, to suggest witnesses and questions, to provide evidence, and to receive a written Investigation Report that accurately summarizes this evidence.

### **13. Witness Role and Participation in the Investigation**

Witnesses who are Employees of Transylvania University are expected to cooperate with and participate in Transylvania University's investigation and resolution process. Student witnesses and witnesses from outside the Transylvania community are encouraged to cooperate with Transylvania University investigations and to share what they know about a complaint.

Interviews may be conducted in person, via online video platforms (e.g., Zoom, Microsoft Teams, FaceTime, Google Meet), or, in limited circumstances, by telephone. Transylvania University will take appropriate steps to ensure the security/privacy of remote interviews.

Parties and witnesses may also provide written statements in lieu of interviews or choose to respond to written questions, if deemed appropriate by the Investigator(s), though not preferred.

### **14. Interview Recording**

It is standard practice for Investigators to create a record of all interviews pertaining to the Formal Grievance Process, by recording, transcript, or written summary. The Parties may review copies of their own interviews upon request. No unauthorized audio or video recording of any kind is permitted during investigation meetings.

All interviews are recorded, and all involved persons should be made aware of the audio recording. The recording and/or transcript and a summary of those meetings will be provided to the Parties for their review, after which the Parties may suggest additional questions to be asked of another party or witness or additional witnesses. Those subsequent meetings or interviews are also recorded and/or transcribed and summarized.

### **15. Evidentiary Considerations**

The Investigator(s) and the Decision-Maker(s) will only consider Relevant or Directly Related Evidence.

Neither the investigation nor the hearing will consider:

- 1) Questions or evidence about the Complainant's sexual predisposition<sup>8</sup>

---

<sup>8</sup> Transylvania University defines "predisposition" in alignment with its commonly understood and dictionary definition of being inclined toward a thing, action, or person. Predisposition does not encompass an aversion, or being disinclined to a thing, action, or person.

- 2) Questions or evidence about the Complainant's prior sexual behavior, unless such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the alleged conduct, or if the questions or evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent<sup>9</sup>
- 3) Questions or evidence about a party or witness's records that are made or maintained by a physician, psychologist, or psychiatrist unless the party or witness provides voluntary, written consent for the records to be considered

Within the boundaries stated above, the investigation and the hearing can consider character evidence, if offered, but that evidence is unlikely to be relevant unless it is factual evidence or relates to a pattern of conduct.

Previous disciplinary action of any kind involving the Respondent may not be considered unless there is an allegation of a pattern of misconduct. Such information may also be considered in determining an appropriate sanction upon a determination of responsibility. Barring a pattern allegation, this information is only considered at the sanction stage of the process and is not shared until then.

## **16. Investigation**

All investigations are thorough, reliable, impartial, prompt, and fair. They involve interviewing all available, relevant Parties and witnesses, obtaining Relevant Evidence, and identifying sources of expert information, as necessary.

After an interview, Parties and witnesses will be asked to verify the accuracy of the recording, transcript, or summary of their interview. They may submit changes, edits, or clarifications. If the Parties or witnesses do not respond within the time period designated for verification, objections to the accuracy of the recording, transcript, or summary will be deemed to have been waived, and no changes will be permitted.

Transylvania University may consolidate Complaints against more than one Respondent, or by more than one Complainant against one or more Respondent(s), when the allegations arise from the same facts or circumstances or implicate a pattern, collusion, and/or other shared or similar actions.

Investigations involve the following:

- Determining the names of and contacting all involved Parties and potential witnesses to participate in an investigation interview

---

<sup>9</sup> Transylvania University defines "prior sexual behavior" to include only sexual actions taken by or involving a Complainant prior to the reported incident(s), not the absence of such actions.

- Identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for the Parties and witnesses
- Providing written notification of the date, time, and location of all investigation meetings, including the expected participants and purpose
- Conducting any necessary follow-up interviews with Parties or witnesses
- Providing the Parties and witnesses an opportunity to verify the accuracy of either a summary or transcript of their interview(s)
- Soliciting the names of suggested witnesses and questions each party wishes to have asked of another party or witness
- Writing a Draft Investigation Report that gathers, assesses, and synthesizes the evidence, accurately summarizes the investigation and party and witness interviews, and provides all Relevant Evidence
- Compiling a Directly Related Evidence File
- Providing the Parties and their respective Advisors an electronic or hard copy of the Draft Investigation Report as well as an opportunity to inspect and review all of the evidence obtained as part of the investigation that is directly related to the reported misconduct, including evidence upon which Transylvania University does not intend to rely in reaching a determination, for a ten (10) business day review and comment period so that each party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) days.
- Incorporating any new, Relevant Evidence and information obtained through the Parties' review of the Draft Investigation Report and any follow-up meetings into the Final Investigation Report
- Responding in writing (typically within the Final Investigation Report) to the relevant elements of the Parties' responses to the Draft Investigation Report
- Sharing the Final Investigation Report with the Title IX Coordinator for their review and feedback
- Providing the Title IX Coordinator with the Final Investigation Report and Directly Related Evidence File

## **17. Referral for Hearing**

Provided that the Formal Complaint is not resolved through Informal Resolution, once the Final Investigation Report is shared with the Parties, the Title IX Coordinator will refer the matter for a hearing.

The hearing cannot be held less than ten (10) business days from the conclusion of the investigation – when the Final Investigation Report is transmitted to the Parties and the Decision-Maker – unless all Parties and the Decision-Maker agree to an expedited timeline.

The Title IX Coordinator will select an appropriate Decision-Maker(s) and provide a copy of the Final Investigation Report and the file of Directly Related Evidence.

## **18. Hearing Decision-Maker**

The Decision-Maker will not have had any previous involvement with the Formal Complaint. The Title IX Coordinator may elect to have an alternate from the Title IX Team Pool sit in throughout the hearing process if a substitute is needed for any reason.

Those who have served as Investigators will be witnesses in the hearing and therefore may not serve as Decision-Makers. Those who are serving as Advisors for any party may not serve as Decision-Makers in that matter.

The Title IX Coordinator may not serve as a Decision-Maker in the matter but may serve as an administrative facilitator of the hearing if their previous role(s) in the matter do not create a conflict of interest. Otherwise, a designee may fulfill the facilitator role. The hearing will be convened at a time and venue determined by the Title IX Coordinator.

## **19. Live Hearing Requirements**

The following provisions apply to a live hearing:

### **A. Hearing Venue Options and Recordings**

The live hearing may occur in person or via video technology. The Decision-Maker and Parties must be able to simultaneously see and hear a party or witness while that person is speaking. Both options are considered fair and equitable. Alternative arrangements may also be made at the Title IX Coordinator's discretion.

- The Parties may make a request to the Title IX Coordinator that the hearing be held in person or via video technology, but they must do so at least five (5) business days prior to the hearing. The Title IX Coordinator retains discretion to determine whether the hearing will occur in person or via video technology.
- All hearings will be recorded, and Parties may request a copy of the recording from the Title IX Coordinator following the live hearing.
- No unauthorized recordings are permitted.

### **B. Scheduling**

Hearings for possible violations that occur near or after the end of an academic term (assuming the Respondent is still subject to the Policy) and are unable to be resolved prior to the end of term will typically be held immediately after the end of the term, including during the summer, as needed, to meet Transylvania University's resolution timeline and ensure a prompt resolution. Employees, including Parties and witnesses, who do not have 12-month contracts are still

expected to participate in Formal Grievance Processes that occur during months between contracts.

### **C. Hearing Participants**

Persons who may be present for a hearing include the Decision-Maker, Hearing Facilitator, Investigator(s), the Parties and their Advisors, anyone providing authorized accommodations, interpretation, and/or assistive services, and anyone else deemed necessary by the Decision-Maker. Witnesses are present only during their portion of the testimony.

### **D. Advisors**

The Parties may have the assistance of an Advisor of their choice at the hearing or can request that Transylvania University appoint a trained Advisor for them. Appointed Advisors are not attorneys. If a party wishes to have an attorney as their Advisor, they must locate and pay for that attorney themselves.

- During the pre-hearing meeting and live hearing, Parties may only be accompanied by their Advisor. No other persons (e.g., additional support persons, Advisors, friends, family) may accompany, attend, or listen in on the hearing unless explicitly authorized by the Title IX Coordinator, with each party being provided the same opportunity.
- Parties and Advisors are permitted to have their phones and a laptop or tablet, but these should only be used during the hearing in a matter consistent with the Policy.
- During the hearing, all questions that a party wishes to ask must be posed by the Advisor, not the Parties.
- If the party does not have an Advisor, the Title IX Coordinator will provide the party with an Advisor for the purpose of Advisor-conducted questioning.

### **E. Impact Statements**

Each party may submit an impact and/or mitigation statement to the Administrator that the Decision-Maker will review during any sanction determination.

- Upon receipt of an impact and/or mitigation statement, the Title IX Coordinator will review the impact/mitigation statement to determine whether any immediate needs exist.
- The Title IX Coordinator will only provide the impact statements to the Decision-Maker if the Decision-Maker determines that the Policy has been violated. When the Title IX Coordinator shares the impact statements with the Decision-Maker, they will also be shared with the Parties.

## **F. Disability Accommodations and Other Assistance**

Parties should contact the Administrator at least five (5) business days prior to the hearing to arrange any disability accommodations, language assistance, and/or interpretation services that may be needed at the hearing, if possible.

## **G. Conflicts of Interest or Bias**

The Decision-Maker must not have a bias for or against Complainants or Respondents generally or the individual Complainant or Respondent involved in the Formal Complaint.

- The Decision-Maker must recuse themselves if such bias or conflict of interest exists.
- If the Decision-Maker believes there is possible conflict of interest or bias, they will consult with the Title IX Coordinator about possible recusal or removal.
- The Parties may raise challenges that the Decision-Maker is biased or has a conflict of interest. The Parties must raise challenges with the Administrator within three (3) business days of receiving the hearing notice.
- The Title IX Coordinator will only remove and replace a Decision-Maker in situations of demonstrated bias or conflicts of interest. Perceptions of bias or conflict are not sufficient to cause removal.
- If a Decision-Maker recuses themselves as the result of a conflict of interest or bias, or is removed, the Title IX Coordinator will promptly appoint a new Decision-Maker who does not have a conflict of interest or bias and notify the Parties accordingly.

## **H. Evidence Provided to Decision-Maker and Parties**

- The Decision-Maker will be provided electronic copies of the Final Investigation Report and all relevant but not impermissible evidence, including the names of all Parties, witnesses, and Advisors, at least ten (10) business days in advance of the hearing.
- The Parties will be provided with electronic copies of all the materials provided to the Decision-Maker as part of the hearing notice, unless those materials have already been provided.<sup>10</sup>

## **20. Hearing Notice**

The Title IX Coordinator will send the Parties a notice of hearing letter no less than ten (10) business days prior to the hearing. Once emailed, mailed, and/or received in-person, notice is presumptively delivered. The notice includes:

---

<sup>10</sup> Hard-copy materials may be provided upon request to the Title IX Coordinator. The Final Investigation Report and Relevant Evidence may be shared using electronic means that preclude downloading, forwarding, or otherwise sharing.

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable hearing procedures, and a statement of the potential sanctions/responsive actions that could result
- The time, date, and location of the hearing
- A description of any technology that will be used to facilitate the hearing
- Relevant information regarding hearing logistics, pre-hearing meetings, the Final Investigation Report, the Parties and witnesses participating in the hearing, the identity of the Decision-Maker, details related to questioning, the role of Advisors, impact/mitigation statements, and how to request disability accommodations or other assistance

## 21. Witness Participation

Witnesses are encouraged to participate in, and make themselves reasonably available for, the hearing. They may participate in-person or via video technology that allows the Decision-Maker and the Parties to see and hear the witness while that person is speaking. Witnesses are not permitted to be accompanied by an Advisor without the Title IX Coordinator's express permission.

The Title IX Coordinator will notify all witnesses of their requested participation in the hearing at least five (5) business days prior to the hearing. Witnesses will be present for the hearing only during their testimony.

If any party or witness does not appear at the scheduled hearing, the hearing may be held in their absence. For compelling reasons, the Title IX Coordinator may reschedule the hearing.

- Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s), unless:
- All Parties and the Decision-Maker assent to the new witness's participation in the hearing without remanding the Formal Complaint back to the Investigator,
- The Decision-Maker deems the evidence presented by the new witness to be relevant and not information already established in the record, and
- The witness's late involvement was not the result of bad faith by the witness, the Parties, or others.

If the above criteria are not met, but the witness's evidence is deemed relevant and not duplicative, the Decision-Maker may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with at least five (5) business days to review the relevant portions of the new witness's statements, if such statements are submitted
- Remand the Formal Complaint back to the Investigator for further investigation or verification



- Allow the Parties to review and comment on the testimony of the new witness<sup>11</sup>

If the evidence is deemed not relevant, the Decision-Maker may proceed with the hearing absent the new witness's participation.

## 22. Pre-Hearing Meetings

The Decision-Maker will offer to convene pre-hearing meeting(s) with the Parties and their Advisors to familiarize them with the hearing process and invite them to submit the questions or topics they wish to ask or discuss at the hearing. This allows the Decision-Maker to consider their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or to provide recommendations for more appropriate phrasing.

However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the hearing or from asking for a reconsideration on a Decision-Maker's pre-hearing decision based on any new information or testimony offered at the hearing. The Decision-Maker will consider arguments that evidence identified as relevant in the Final Investigation Report is, in fact, not relevant. Similarly, evidence identified by the Investigator(s) as directly related but not relevant may be argued to be relevant. The Decision-Maker will document and share their rationale for any evidence or question exclusion or inclusion, if any, at a pre-hearing meeting with each party.

The Decision-Maker will work with the Parties to finalize a witness list for the hearing, and the Title IX Coordinator will notify any witnesses of the hearing's logistics. The Decision-Maker, **only** with the agreement of all Parties, may decide in advance of the hearing that certain witnesses do not need to be present if their testimony can be adequately summarized by the Investigator(s) in the Final Investigation Report or during the hearing, and their presence is not essential to assess their credibility.

Pre-hearing meeting(s) will not be recorded. The pre-hearing meetings will typically be conducted as separate meetings with each party/Advisor, and can be done remotely, or as a written communication exchange. The Decision-Maker will work with the Parties to establish the format and timing of the meetings and will circulate a summary of any rulings made to ensure all Parties and Advisors are aware.

---

<sup>11</sup> 34 C.F.R. § 668.46(k)(3)(B)(3) requires "timely and equal access to the accuser, the accused, and appropriate officials to any information that will be used during informal and formal disciplinary meetings and hearings."

## **23. Hearing Procedures**

### **A. Evidentiary Considerations**

The Parties must provide all evidence to the Investigator(s) prior to completion of the Final Investigation Report. Evidence offered after that time will be evaluated by the Decision-Maker for relevance. If deemed relevant, the Parties and Decision-Maker must agree to admit it into the record. If the evidence is deemed not relevant, the Decision-Maker may proceed with the hearing absent the new evidence.

The new Relevant Evidence will be admitted to the record if:

- All Parties and the Decision-Maker assent to the new evidence being included in the hearing without remanding the Formal Complaint back to the Investigator,
- The evidence is not duplicative of evidence already in the record, and
- The new evidence was either not reasonably available prior to the conclusion of the Final Investigation Report, or the failure to provide it in a timely manner was not the result of bad faith by the Parties, witnesses, or others.

If the above criteria are not met, but the evidence is deemed materially relevant and not duplicative, the Decision-Maker may, at their discretion, engage in any of the following actions:

- Delay the hearing
- Provide the Parties with at least five (5) business days to review the Relevant Evidence
- Remand the Formal Complaint back to the Investigator for further investigation or analysis
- Allow the Parties time to review and comment on the new evidence

If the evidence is deemed not relevant, the Decision-Maker may proceed with the hearing without allowing the new evidence.

### **B. Collateral Misconduct**

The Decision-Maker has the authority to hear and make determinations on all allegations of Discrimination, Harassment, Retaliation, and Other Prohibited Conduct under the Policy and may also hear and make determinations on any additional alleged collateral misconduct that occurred in concert with the Discrimination, Harassment, Retaliation, or Other Prohibited Conduct, even though those collateral allegations may not specifically fall within the Policy.

### **C. Joint Hearings**

In complaints involving more than one Respondent and/or involving more than one Complainant accusing the same individual of substantially similar conduct, the default procedure will be to hear the allegations jointly.

However, the Title IX Coordinator may permit the investigation and/or hearings pertinent to each Respondent to be conducted separately if there is a compelling reason to do so. In joint hearings, separate determinations of responsibility will be made for each Respondent with respect to each alleged policy violation.

### **D. Introductions and Hearing Procedure Explanation**

The Decision-Maker will:

- Explain the hearing procedures
- Introduce the participants
- Answer any procedural questions prior to and as they arise throughout the hearing

### **E. Investigator Presentation of Final Investigation Report**

The Investigator(s) will present a summary of the Final Investigation Report, including a review of the facts that are contested and those that are not. The Investigator may be questioned first by the Decision-Maker and then by the Parties through their Advisors. The Investigator may attend the duration of the hearing or be excused after their testimony at the Decision-Maker's discretion.

### **F. Testimony and Questioning**

The Parties and witnesses may provide relevant information in turn, beginning with the Complainant's opening statement, then the Respondent's, and then questioning in the order determined by the Decision-Maker. The Decision-Maker will facilitate questioning of the Parties and witnesses first by the Decision-Maker and then by the Parties through their Advisors.

All questions are subject to the Decision-Maker's relevance determination. The Advisor will pose the proposed question orally, electronically, or in writing (orally is the default, but other means of submission may be permitted). The proceeding will pause to allow the Decision-Maker to consider the question (and state it if it has not already been stated aloud), and the Decision-Maker will determine whether the question will be permitted, disallowed, or rephrased. The Decision-Maker will explain any decision to exclude a question as not relevant, or to reframe it for relevance.

The Decision-Maker will limit or disallow questions they deem not appropriate on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), seek or pertain to impermissible evidence, or are abusive and has the final say on all

questions and relevance determinations. The Decision-Maker may consult with legal counsel on any admissibility questions.

If the Parties raise an issue of bias or conflict of interest of an Investigator or Decision-Maker at the hearing, the Decision-Maker may elect to address those issues, consult with legal counsel, refer them to the Title IX Coordinator, and/or preserve them for appeal. If bias is not an issue at the hearing, the Decision-Maker should not permit irrelevant questions that probe for Investigator bias.

## **G. Refusal to Submit to Questioning and Inferences**

Any party or witness may choose not to offer evidence and/or answer questions at the hearing, either because they do not attend the hearing, or because they attend but refuse to participate in some or all questioning. The Decision-Maker can only rely on the available Relevant Evidence in making a Final Determination. The Decision-Maker may not draw any inference **solely** from a party's or witness's absence from the hearing or refusal to answer any or all questions. Typically, after brief opening statements, the order of questioning will be questions from the Decision-Maker, questions from the party's own Advisor, then questions from the other Parties' Advisors. The same order will be used for questioning witnesses, who do not typically make opening statements. The Parties then make brief closing statements, and then the hearing transitions into closed session for deliberation.

An Advisor may not be called as a witness at a hearing to testify to what their advisee has told them during their role as an Advisor unless the party being advised consents to that information being shared.

## **H. Hearing Recordings**

Transylvania University records hearings (but not deliberations) for purposes of review in the event of an appeal. No unauthorized audio or video recording of any kind is permitted during the hearing.

The Decision-Maker, the Parties, their Advisors, Appeal Decision-Makers, and other appropriate Transylvania University officials will be permitted to review the recording or review a transcript of the recording upon request to the Title IX Coordinator. No unauthorized disclosure, including sharing, copying, or distribution of the recording or transcript, is permitted.

## **24. Standard of Evidence**

Transylvania University uses the preponderance of the evidence when determining whether a Policy violation occurred. This means that Transylvania University will decide whether it is more likely than not, based upon the available information at the time of the decision, that the Respondent violated the Policy.

## **25. Deliberation and Determination**

The Decision-Maker will also review any pertinent conduct history provided by the Dean of Students and/or Vice President of Human Resources and will determine the appropriate sanction(s) in consultation with other appropriate administrators as necessary.

The Decision-Maker will then prepare a written statement detailing all Findings and Final Determinations, the rationale(s) explaining the decision(s), the evidence used in support of the determination(s), the evidence not relied upon in the determination(s), any credibility assessments, and any sanction(s) and rationales explaining the sanction(s) and will deliver the statement to the Title IX Coordinator.

This statement must be submitted to the Title IX Coordinator within five (5) business days of the end of deliberations unless the Title IX Coordinator grants an extension. If an extension is granted, the Title IX Coordinator will notify the Parties.

## **26. Notice of Outcome**

The Title IX Coordinator will provide the Parties with a written outcome notification within ten (10) business days of the conclusion of the Formal Grievance Process. The outcome notification will specify the Finding for each alleged Policy violation, any sanction(s) that may result, which Transylvania University is permitted to share pursuant to federal or state law, and a detailed rationale, written by the Decision-Maker, supporting the Findings to the extent Transylvania University is permitted to share under federal or state law.

The notification will also detail the Parties' equal rights to appeal, the grounds for appeal, the steps to request an appeal, and when the determination is considered final if no party appeals.

The Title IX Coordinator will provide the Parties with the outcome notification simultaneously, or without significant time delay between notifications. The written outcome notification may be delivered by one or more of the following methods: in person, emailed to the Parties' Transylvania-issued or other approved email account, or mailed to the Parties' local or permanent address as indicated in official Transylvania University records. Once emailed, mailed, and/or received in person, the outcome notification is presumptively delivered.

## **27. Rights of the Parties**

- The right to an equitable investigation and resolution of all credible allegations of prohibited harassment, discrimination, and/or retaliation made in good faith to Transylvania University officials.

- The right to timely written notice of all alleged violations, including the identity of the Parties involved (if known), the precise misconduct being alleged, the date and location of the alleged misconduct (if known), the implicated policies and procedures, and possible sanctions.
- The right to timely written notice of any material adjustments to the allegations (e.g., additional incidents or allegations, additional Complainants, unsubstantiated allegations) and any attendant adjustments needed to clarify potentially implicated policy violations.
- The right to be informed in advance of any public release of information by Transylvania University regarding the allegation(s) or underlying incident(s), whenever possible.
- The right not to have any personally identifiable information released by Transylvania University to the public without consent provided, except to the extent permitted by law.
- The right to be treated with respect by Transylvania University officials.
- The right to have Transylvania University policy and these procedures followed without material deviation.
- The right not to be pressured to mediate or otherwise informally resolve any reported misconduct involving violence, including sexual violence.
- The right not to be discouraged by Transylvania University officials from reporting sexual harassment, discrimination, and/or retaliation to both on-campus and off-campus authorities.
- The right to be informed by Transylvania University officials of options to notify proper law enforcement authorities, including on-campus and local police, and the option(s) to be assisted by Transylvania University in notifying such authorities, if the Party so chooses. This also includes the right not to be pressured to report.
- The right to have allegations of violations of this Policy promptly responded to and with sensitivity by Transylvania University officials.
- The right to be informed of available supportive measures, such as counseling; advocacy; health care; legal, Student financial aid, visa, and immigration assistance; and/or other services, both on campus and in the community.
- The right to Transylvania University implement a no-contact or a no-trespass order against a non-affiliated third party when a person has engaged in or threatens to engage in stalking, threatening, harassing, or other improper conduct.
- The right to be informed of available assistance in changing academic, living, and/or working situations after an alleged incident of discrimination, harassment, and/or retaliation, if such changes are reasonably available. No formal report, or investigation, either institutional or criminal, needs to occur before this option is available.

- The right to have Transylvania University maintain such actions for as long as necessary and for supportive measures to remain confidential, provided confidentiality does not impair Transylvania University's ability to provide the supportive measures.
- The right to receive sufficiently advanced, written notice of any Transylvania University meeting or interview involving another party, when possible.
- The right to identify and have the Investigator(s), Advisors, and/or Decision-Maker(s) question relevant available witnesses, including expert witnesses.
- The right to provide the Investigator(s)/Decision-Maker(s) with a list of questions that, if deemed relevant by the Investigator(s)/Decision-Maker(s), may be asked of any party or witness.
- The right to have inadmissible sexual predisposition/prior sexual history or irrelevant character evidence excluded by the Decision-Maker(s).
- The right to know the relevant and directly related evidence obtained and to respond to that evidence.
- The right to a fair opportunity to provide the Investigator(s) with their account of the alleged misconduct and have that account be on the record.
- The right to receive a copy of all relevant and directly related evidence obtained during the investigation, subject to privacy limitations imposed by state and federal law, and a ten (10)-business-day period to review and comment on the evidence.
- The right to receive a copy of the final investigation report, including all factual, policy, and/or credibility analyses performed, and to have at least ten (10) business days to review and comment on the report prior to the hearing.
- The right to be informed of the names of all witnesses whose information will be used to make a Finding, in advance of that Finding, when relevant.
- The right to regular updates on the status of the investigation and/or resolution.
- The right to have reports of alleged Policy violations addressed by Investigators, Title IX Coordinators, and Decision-Maker(s) who have received relevant annual training.
- The right to preservation of confidentiality/privacy, to the extent possible and permitted by law.
- The right to meetings, interviews, and/or hearings that are closed to the public.
- The right to petition that any Transylvania University representative in the process be recused on the basis of disqualifying bias and/or conflict of interest.
- The right to have an Advisor of their choice to accompany and assist the party in all meetings and/or interviews associated with the Resolution Process.
- The right to the use of the appropriate standard of evidence (preponderance of the evidence) to make a Finding and Final Determination after an objective evaluation of all relevant evidence.
- The right to be present, including presence via remote technology, during all testimony given and evidence presented during any hearing.

- The right to have an impact and/or mitigation statement considered by the Decision-Maker(s) following a determination of responsibility for any allegation, but prior to sanctioning.
- The right to be promptly informed of the Finding(s) and sanction(s) (if any) of the Resolution Process and a detailed rationale of the decision (including an explanation of how credibility was assessed) in a written Notice of Outcome letter delivered simultaneously (without undue delay) to the Parties.
- The right to be informed in writing of when a decision by Transylvania University is considered final and any changes to the Final Determination or sanction(s) that occur post Notification of Outcome.
- The right to be informed of the opportunity to appeal the Finding(s) and sanction(s) of the Resolution Process, and the procedures for doing so in accordance with the standards for appeal established by Transylvania University.
- The right to a fundamentally fair resolution as defined in these procedures.

## 28. Sanctions

Factors considered when determining a sanction/responsive action may include, but are not limited to:

- The nature, severity of, and circumstances surrounding the violation(s)
- The Respondent's disciplinary history
- The need for sanctions/responsive actions to bring an end to the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need for sanctions/responsive actions to prevent the future recurrence of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct
- The need to remedy the effects of Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct on the Complainant and the community
- The impact on the Parties
- The Respondent's acknowledgement of responsibility or contrition
- Any other information deemed relevant by the Decision-Makers

The sanctions will be implemented as soon as is feasible, either upon the outcome of any appeal or the expiration of the window to appeal without an appeal being requested.

The sanctions described in this policy are not exclusive of, and may be in addition to, other actions taken or sanctions imposed by external authorities.



## A. Student Sanctions

The following are the common sanctions<sup>12</sup> that may be imposed upon Students singly or in combination:

### 1) Reprimand

A formal statement that the conduct was unacceptable and a warning that further violation of any Transylvania University policy, procedure, or directive will result in more severe sanctions/responsive actions.

### 2) Required Counseling

A mandate to meet with and engage in either Transylvania University - sponsored or external counseling to better comprehend the misconduct and its effects.

### 3) Restrictions

A Student may be restricted in their activities, including, but not limited to, being restricted from locations, programs, participation in certain activities or extracurriculars, study abroad, or holding leadership roles in Student organizations

### 4) Probation

An official sanction for violation of Transylvania University institutional policy, providing for more severe disciplinary sanctions in the event that the Student is found in violation of any institutional policy, procedure, or directive within a specified period of time. Terms of the probation will be articulated and may include denial of specified social privileges, exclusion from co-curricular activities, exclusion from designated areas of campus, no-contact orders, and/or other measures deemed appropriate.

### 5) Suspension

Separation from Transylvania University, or one or more of its facilities, for a defined period of time, typically not to exceed two years, after which the Student is eligible to return. Eligibility may be contingent upon satisfaction of specific conditions noted at the time of suspension, on successfully applying for readmission, or upon a general condition that the Student is eligible to return if Transylvania University determines it is appropriate to re-enroll/readmit the Student. The Student is typically required to vacate Transylvania University property within 24 hours of notification of the action, though this deadline may be extended at the discretion of the Title IX Coordinator or other appropriate official. During a Transylvania-wide suspension, the Student is banned from Transylvania University property,

---

<sup>12</sup> Transylvania University policies on transcript notation will apply to these proceedings.

functions, events, and activities unless they receive prior written approval from an appropriate Transylvania University official. This sanction may be enforced with a trespass action, as necessary.

#### 6) Expulsion

Permanent separation from Transylvania University. The Student is banned from Transylvania University property, and the Student's presence at any Transylvania University-sponsored activity or events is prohibited. This action may be enforced with a trespass action, as necessary.

#### 7) Withholding Diploma

Transylvania University may withhold a Student's diploma for a specified period of time and/or deny a Student participation in commencement activities if the Student has an allegation pending or as a sanction if the Student is found responsible for an alleged violation.

#### 8) Revocation of Degree

While very rarely exercised, Transylvania University reserves the right to revoke a degree previously awarded from Transylvania University for fraud, misrepresentation, and/or other violation of Transylvania University policies, procedures, or directives in obtaining the degree, or for other serious violations committed by a Student prior to graduation.

#### 9) Other Actions

In addition to or in place of the above sanctions, Transylvania University may assign any other sanctions as deemed appropriate.

### B. Employee Sanctions

Responsive actions for an Employee who has engaged in harassment, discrimination, and/or retaliation include:

- Verbal or Written Warning
- Performance Improvement/Management Process
- Required Counseling
- Required Training or Education
- Probation
- Loss of Annual Pay Increase
- Loss of Oversight or Supervisory Responsibility
- Demotion
- Suspension with pay
- Suspension without pay
- Termination
- Other Actions: In addition to or in place of the above sanctions, Transylvania University may assign any other sanctions as deemed appropriate.

## **29. Withdrawal or Resignation Before Complaint Resolution**

### **A. Students**

Should a Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution.

If a Student Respondent withdraws from Transylvania University, the resolution process typically ends with a dismissal, as Transylvania University no longer has disciplinary jurisdiction over the withdrawn Student. However, Transylvania University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the complaint is dismissed or pursued to completion of the Formal Grievance Process, Transylvania University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When a Student withdraws or leaves while the process is pending may not return to Transylvania University in any capacity until the Formal Complaint is resolved and any sanctions imposed are satisfied. If the Student indicates they will not return, the Title IX Coordinator has discretion to dismiss the Formal Complaint and bar the Student from returning. The appropriate institutional administrators will be notified accordingly.

If the Student Respondent takes a leave for a specific period of time (e.g., one semester or term), the Formal Grievance Process may continue remotely. If found in violation, that Student is not permitted to return to Transylvania University unless and until all sanctions, if any, have been satisfied.

### **B. Employees**

Should an Employee Respondent decide not to participate in the Formal Grievance Process, the process proceeds absent their participation to a reasonable resolution.

If an Employee Respondent leaves their employment with Transylvania University with unresolved allegations pending, the Formal Grievance Process typically ends with dismissal, as Transylvania University has lost primary disciplinary jurisdiction over the former Employee. However, Transylvania University may continue the Resolution Process when, at the discretion of the Title IX Coordinator, doing so may be necessary to address safety and/or remedy any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

Regardless of whether the matter is dismissed or pursued to completion of the Resolution Process, Transylvania University will continue to address and remedy any systemic issues or concerns that may have contributed to the alleged violation(s), and any ongoing effects of the alleged Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct.

When an Employee resigns and the Formal Complaint is dismissed, the Employee may not return to Transylvania University in any capacity. A note will be placed in the Employee's file that they resigned with allegations pending and are not eligible for academic admission or rehire with Transylvania University. The records retained by the Title IX Coordinator and Human Resources Office will reflect that status.

### **30. Appeal of the Final Determination**

The Title IX Coordinator will designate an Appeal Decision-Maker to hear the appeal. No Appeal Decision-Maker will have been previously involved in the Formal Grievance Process for the Formal Complaint. If a panel is used, the Title IX Coordinator will designate a voting chair.

#### **A. Appeal Grounds**

Appeals are limited to the following grounds:

- 1) A procedural irregularity that affected the outcome of the matter
- 2) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter
- 3) The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the specific Complainant or Respondent that affected the outcome of the matter.

If any of the grounds in the Request for Appeal do not meet the grounds in this Policy, that request will be denied by the Appeal Chair and the Parties and their Advisors will be notified in writing of the denial and the rationale.

#### **B. Appeal Requests**

Any party may submit a written request for appeal to the Title IX Coordinator within five (5) business days of the delivery of the Notice of Outcome.

The appeal request will be forwarded to the Appeal Decision-Maker for consideration to determine if the request meets the appeal grounds (a Review for Standing). This is not a review of the merits of the appeal, but solely a determination as to whether the request could reasonably be construed to meet the grounds and is timely filed.

If the appeal request does not provide information that meets the grounds in the Procedures, the request will be denied by the Appeal Decision-Maker, and the Parties and their Advisors will be simultaneously notified in writing of the denial and the rationale.

If any of the information in the appeal request meets the grounds in the Procedures, then the Appeal Decision-Maker will notify all Parties and their Advisors, the Administrator, and, when appropriate, the Investigator(s) and/or the original Decision-Maker.

All other Parties and their Advisors, the Title IX Coordinator, and, when appropriate, the Investigator(s) and/or the Decision-Maker will be provided a copy of the appeal request with the approved grounds and then be given five (5) business days to submit a response to the portion of the appeal that was approved and involves them. The Appeal Decision-Maker will forward all responses, if any, to all Parties for review and comment.

The non-appealing party (if any) may also choose to appeal at this time. If so, that appeal request will be reviewed by the Appeal Decision-Maker to determine if it meets the grounds in the Procedures and will either be approved or denied. If approved, it will be forwarded to the party who initially requested an appeal, the Title IX Coordinator, and the Investigator(s) and/or original Decision-Maker, as necessary, who will submit their responses, if any, within five (5) business days. Any such responses will be circulated for review and comment by all Parties. If denied, the Parties and their Advisors will be notified in writing.

No party may submit any new appeal request after this time period. The Appeal Decision-Maker will collect any additional information needed and all documentation regarding the approved appeal grounds, and the subsequent responses will be shared with the Appeal Decision-Maker, who will promptly render a decision.

### **C. Appeal Determination Process**

In most circumstances, appeals are confined to a review of the written documentation or record of the original determination and pertinent documentation regarding the specific appeal grounds. The Appeal Decision-Maker will deliberate as soon as is practicable and discuss the merits of the appeal.

Appeal decisions are to be deferential to the original determination, making changes to the Finding/Final Determination only when there is clear error and to the sanction(s)/responsive action(s) only if there is a compelling justification to do so. All decisions are made by majority vote and apply the preponderance of the evidence standard of evidence.

An appeal is not an opportunity for the Appeal Decision-Maker to substitute their judgment for that of the original Decision-Maker merely because they disagree with the Finding and/or sanction(s).

The Appeal Decision-Maker may consult with the Title IX Coordinator and/or legal counsel on questions of procedure or rationale, for clarification, if needed. The Title IX Coordinator will maintain documentation of all such consultation.

#### **D. Appeal Outcome**

An appeal may be granted or denied. Appeals that are granted should normally be remanded (or partially remanded) to the original Investigator(s) and/or Decision-Maker with corrective instructions for reconsideration. In rare circumstances where an error cannot be cured by the original Investigator(s) and/or Decision-Maker or the Title IX Coordinator (as in cases of bias), the Appeal Decision-Maker may order a new investigation and/or a new hearing with new Pool members serving in the Investigator and Decision-Maker roles.

A notice of appeal outcome letter will be sent to all Parties simultaneously, or without significant time delay between notifications. The appeal outcome letter will specify the Finding on each appeal ground, any specific instructions for remand or reconsideration, all sanction(s) that may result which Transylvania University is permitted to share according to federal or state law, and the rationale supporting the essential Findings to the extent Transylvania University is permitted to share under federal or state law.

Written notification may be delivered by one or more of the following methods: in person, emailed to the Parties' Transylvania-issued email, or mailed to the Parties' local or permanent address as indicated in official institutional records. Once received in person, emailed and/or mailed, the appeal outcome letter will be presumptively delivered.

Once an appeal is decided, the outcome is final and constitutes the Final Determination; further appeals are not permitted, even if a decision or sanction is changed on remand (except in the case of a new determination). When appeals result in no change to the Finding or sanction, that decision is final. When an appeal results in a new Finding or sanction, that Finding or sanction can be appealed one final time on the grounds listed above and in accordance with the Procedures.

If a remand results in a new Finding or sanction that is different from the original Finding or sanction, that new Finding or sanction can be appealed, once, on any of the available appeal grounds.

## **E. Sanction Status During the Appeal**

Any sanctions imposed as a result of the hearing are stayed (i.e., not implemented) during the appeal process. Supportive measures may be maintained or reinstated until the appeal determination is made.

If any of the sanctions are to be implemented immediately post-determination, but pre-appeal, then emergency removal procedures and interim suspension procedures (detailed above) for a show cause meeting on the justification for doing so must be permitted within two (2) business day hours of implementation.

## **31. Long-Term Remedies / Other Actions**

Following the conclusion of the Formal Grievance Process, and in addition to any sanctions implemented, the Title IX Coordinator may implement additional long-term remedies or actions with respect to the Parties and/or the campus community that are intended to stop the Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct, remedy the effects, and prevent reoccurrence.

These remedies/actions may include, but are not limited to:

- Referral to counseling and health services
- Referral to the Employee Assistance Program
- Course and registration adjustments, such as retroactive withdrawals
- Education to the individual and/or the community
- Permanent alteration of housing assignments
- Permanent alteration of work arrangements for Employees
- Provision of campus safety escorts
- Climate surveys
- Policy modification and/or training
- Provision of transportation assistance
- Implementation of long-term contact limitations between the Parties
- Implementation of adjustments to academic deadlines, course schedules, etc.

At the discretion of the Title IX Coordinator, certain long-term support or measures may also be provided to the Parties even if no policy violation is found.

When no policy violation is found, the Title IX Coordinator will address any remedies Transylvania University owes the Respondent to ensure no effective denial of educational access.

Transylvania University will maintain the privacy of any long-term remedies/actions/measures, provided privacy does not impair Transylvania University's ability to provide these services.

### **32. Failure to Comply with Sanctions and/or Responsive Actions**

All Respondents are expected to comply with the assigned sanctions, responsive actions, and/or corrective actions within the timeframe specified by the final Decision-Makers (including the Appeal Chair/Panel).

Failure to abide by the sanction(s)/action(s) imposed by the date specified, whether by refusal, neglect, or any other reason, may result in additional sanction(s)/action(s), including suspension, expulsion, and/or termination from Transylvania University and may be noted on a Student's official transcript.

Supervisors are expected to enforce the completion of sanctions/responsive actions for their Employees.

A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator.

### **33. Recordkeeping and Record Maintenance**

Transylvania University will maintain for a period of seven (7) years records of:

- 1) Each Discrimination, Harassment, Retaliation, and Other Prohibited Conduct Formal Grievance Process, including any Final Determination regarding responsibility or appeal, and any audio or audiovisual recording or transcript required under federal regulation
- 2) Any disciplinary sanctions imposed on the Respondent
- 3) Any supportive measure provided to the Parties and any remedies provided to the Complainant or the community designed to restore or preserve equal access to Transylvania University 's education program or activity
- 4) Any appeal and the result therefrom
- 5) Any Informal Resolution and the result therefrom
- 6) All materials used to train Title IX Coordinators, Investigators, Decision-Makers, and any person who facilitates an Informal Resolution process. Transylvania University will make these training materials publicly available on Transylvania University 's website.
- 7) Any other actions taken in response to a report or Formal Complaint including:
  - a. The basis for all conclusions that the response was not deliberately indifferent
  - b. Any measures designed to restore or preserve equal access to Transylvania University's Education Program or Activity

This covers records maintained in any medium. All such records are considered private or confidential, in accordance with FERPA and the directive from the Department of Education to maintain the confidentiality of records related to Discrimination, Harassment, and Retaliation. These records may be shared internally with those who have a legitimate educational interest and will be shared



with the Parties to a resolution process under applicable federal and/or state law. The Office of Title IX and Civil Rights controls the dissemination and sharing of any records under its control.

Transylvania University will also maintain any and all records in accordance with state and federal laws.

### **Drafts and Working Files**

Preliminary drafts and “working files” are not considered records that Transylvania University must maintain, and these are typically destroyed during the course of an investigation or at the conclusion of the resolution process. They are preliminary versions of records and other documents that do not state a final position on the subject matter reviewed or are not considered to be in final form by their author and/or the Title IX/Civil Rights Office. An example of a “working file” would be the Investigator’s notes made during an interview on topics that they want to revisit in subsequent interviews. Sole possession records maintained as such in accordance with FERPA are also included in this category. All drafts of Investigation Reports shared with the Parties are maintained.

### **Attorney Work-Product**

Communications from the Title IX/Civil Rights Office or its designees with the Transylvania University’s legal counsel may be work-product protected by attorney-client privilege. These communications are not considered records to be maintained by the Title IX/Civil Rights Office or accessible under this policy unless the Title IX/Civil Rights Coordinator, in consultation with legal counsel as necessary, determines that these communications should be included as accessible records.

## **34. Disabilities Accommodations in the Resolution Process**

Transylvania University is committed to providing reasonable accommodations and support to qualified Students, Employees, or others with disabilities to ensure equal access to Transylvania University’s resolution process.

Anyone needing such accommodations or support should contact the Title IX Coordinator who will work with Accessibility Services for Students and the Vice President of Human Resources for Employees as appropriate to review the request, and in consultation with the person requesting the accommodation, determine which accommodations are appropriate and necessary for full participation.

## **35. Other Support**

Transylvania University will address other reasonable requests for support for the Parties and witnesses, including:

- Language services/Interpreters
- Access and training regarding use of technology throughout a resolution process
- Other support as deemed reasonable and necessary to facilitate participation in a resolution process

## Appendix A: Definitions

- **Advisor** is a person chosen by a party, or appointed by the institution, who may accompany the party to meetings related to the resolution process, advise the party on that process, and conduct cross-examination<sup>13</sup> for the party at the hearing, if any.
- **Appeal** person or panel accepts or rejects a submitted appeal request, determines whether an error occurred that substantially affected the investigation or original determination, and directs corrective action, accordingly.
- **Complainant** means an individual who is alleged to have been subjected to conduct that could constitute discrimination, harassment, retaliation, and/or other prohibited conduct under this policy.
- **Confidential Resource** is an Employee who is not a Mandated Reporter of notice of discrimination, harassment, retaliation, and/or other prohibited conduct under this policy (irrespective of Clery Act Campus Security Authority status).
- **Day** means a business day when Transylvania University is in normal operation. All references in this policy to 'days' refer to business days unless specifically noted as calendar days.
- **Decision-Maker** means the person or panel who reviews evidence, determines relevance, and makes the Final Determination of whether this Policy has been violated and/or assigns sanctions.
- **Directly Related Evidence** is evidence connected to the allegations, but which is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation) and cannot be relied upon by the Decision-Maker(s). Compare to [Relevant Evidence](#), below.
- **Education program or activity** means locations, events, or circumstances where Transylvania University exercises substantial control over both the Respondent and the context in which the discrimination, harassment, retaliation, and/or other prohibited conduct occurs and also includes any building owned or controlled by a Student organization that is officially recognized by Transylvania University.
- **Employee** is a person employed by Transylvania University either full- or part-time, including Student Employees when acting within the scope of the employment.
- **Faculty** is any member of the Transylvania University community who is responsible for academic activities, teaching, research, or the academic evaluation of Students.
- **Final Determination** is a conclusion by a preponderance of the evidence that the alleged conduct did or did not violate policy.

---

<sup>13</sup> The Title IX regulations do not permit a party to conduct cross-examination on their own behalf in any hearing under this policy but instead require that examination be conducted by the party's Advisor.

- ***Finding*** is a conclusion by a preponderance of the evidence that the conduct did or did not violate policy.
- ***Formal Complaint*** is a document submitted or signed by a Complainant or signed by the Title IX Coordinator alleging a Respondent engaged in Discrimination, Harassment, Retaliation, and/or Other Prohibited Conduct under this policy and requesting that Transylvania University investigate the allegation(s).
- ***Formal Grievance Process*** or means a method of formal resolution designated by Transylvania University to address allegations of Title IX Sexual Harassment, and which complies with the requirements of 34 CFR § 106.45 and the Violence Against Women Act §304.
- ***Informal Resolution*** is a complaint resolution agreed to by the Parties and approved by the Title IX Coordinator that occurs prior to a formal Final Determination being reached.
- ***Investigation Report*** is the summary of all relevant evidence gathered during the investigation. Variations include the draft investigation report and the final investigation report.
- ***Investigator*** means the person(s) charged by Transylvania University to gather facts about an alleged violation of this Policy, assess relevance and credibility, synthesize the evidence, and compile this information into an investigation report of relevant evidence and a file of directly related evidence.
- ***Mandated Reporter*** means an Employee of Transylvania University who is obligated by policy to share knowledge, notice, and/or reports of discrimination, harassment, retaliation, and/or other prohibited conduct with the Title IX Coordinator.<sup>14</sup>
- ***Notice*** means that an Employee, Student, or third-party informs the Title IX Coordinator or other Official with Authority of the alleged occurrence of harassing, discriminatory, and/or retaliatory conduct.
- ***Official with Authority*** (OWA) means an Employee of Transylvania University explicitly vested with the responsibility to implement corrective measures for discrimination, harassment, retaliation, and/or other prohibited conduct on behalf of Transylvania University.
- ***Parties*** include the Complainant(s) and Respondent(s), collectively.
- ***Pregnancy*** or Related Condition is pregnancy, childbirth, termination of pregnancy, lactation, or medical conditions related thereto, or recovery therefrom.
- ***Process A*** means the Formal Grievance Process for alleged violations that are applicable under Title IX as outlined by the Federal Government.

---

<sup>14</sup> Mandated Reporters under this policy do not necessarily include persons mandated by state law to report child abuse, elder abuse, and/or abuse of individuals with disabilities to appropriate officials, though these responsibilities may overlap with those who have mandated reporting responsibility under this Policy.

- ***Process B*** means the process applicable when the Title IX Coordinator determines Process A is inapplicable, or offenses subject to Process A have been dismissed.
- ***Protected Characteristic*** is any characteristic for which a person is afforded protection against discrimination, harassment, retaliation, and/or other prohibited conduct by law or Transylvania University policy.
- ***Reasonable Person*** is a person under similar circumstances and with similar identities to the Complainant.
- ***Relevant Evidence*** is evidence that may aid a Decision-Maker in determining whether the alleged discrimination, harassment, retaliation, and/or other prohibited conduct occurred, or in determining the credibility of the Parties or witnesses.
- ***Remedies typically*** are post-resolution actions directed to the Complainant and/or the community as mechanisms to address safety, prevent recurrence, and restore access to Transylvania University 's educational program.
- ***Respondent*** means an individual who is alleged to have engaged in conduct that could constitute discrimination based on a protected characteristic, harassment, or retaliation for engaging in a protected activity under this policy, or other prohibited conduct.
- ***Resolution*** means the result of an Informal Resolution, formal grievance process, or administrative resolution process.
- ***Sanction*** means a consequence imposed by Transylvania University on a Respondent who is found to have violated this policy.
- ***Sex or on the basis of sex*** is birth sex under Title IX. On the basis of sex includes actions that are sexual in nature, and actions targeted to a person because of the person's actual or perceived sex.
- ***Student*** is, for the purpose of this policy, any individual who has accepted an offer of admission, or who is registered or enrolled for credit or non-credit bearing coursework, and who maintains an ongoing educational relationship with Transylvania University.
- ***Title IX Coordinator*** is the individual designated by Transylvania University to ensure compliance with Title IX and Transylvania University 's Title IX program. References to the Coordinator throughout this policy may encompass a designee of the Coordinator for specific tasks.
- ***Title IX Team*** refers to the Title IX Coordinator, any deputy coordinators, investigators, and any member of the Formal Grievance Process Pool.

## Appendix B: Privacy and Confidentiality

For the purpose of this Policy, privacy and confidentiality have distinct meanings.

**Privacy** means that information related to Notice or Formal Complaint will be shared with a limited number of Transylvania University Officials who “need to know” in order to assist in the assessment, investigation, and resolution of the Formal Complaint. All Employees who are involved in Transylvania University’s response to Notice under the Policy receive specific training and guidance about sharing and safeguarding private information in accordance with state and federal law. The privacy of Student education records will be protected in accordance with the Family Educational Rights and Privacy Act (FERPA), as outlined in Transylvania University’s Student Records Policy. The privacy of Employee records will be protected in accordance with Human Resources policies.

**Confidentiality** exists in the context of laws (including Title IX) that protect certain relationships, including those who provide services related to medical and clinical care, mental health providers, and ordained clergy. The law creates a privilege between certain health care providers, mental health care providers, attorneys, clergy, spouses, and others, with their patients, clients, parishioners, and spouses. Transylvania University has designated individuals who can have privileged communications as Confidential Resources. See [Section 6](#) of the Equal Opportunity, Harassment, and Nondiscrimination Policy for more information about Confidential Resources.

When information is shared by a Complainant with a Confidential Resource, the Confidential Resource cannot reveal the information to any third party except when an applicable law or a court order requires or permits disclosure of such information. For example, information may be disclosed when: (1) the individual gives written consent for its disclosure; (2) there is a concern that the individual will likely cause serious physical harm to self or others; or (3) the information concerns conduct involving suspected abuse or neglect of a minor under the age of 18, elders, or individuals with disabilities. Confidential Resources may share non-identifiable information for statistical tracking purposes as required by the federal Clergy Act. Other information may be shared as required by law.

## Appendix C: Violence Risk Assessment

Threat assessment is the process of assessing the actionability of violence by an individual against another person or group following the issuance of a direct or conditional threat. A Violence Risk Assessment (VRA) is a broader term used to assess any potential violence or danger, regardless of the presence of a vague, conditional, or direct threat.

To assess an individual's level of violence risk, the Title IX Coordinator will initiate the VRA process through the Violence Risk Assessment Team who will assign a member(s) to perform the assessment according to the specific nature of the Title IX case. The VRA is conducted independently from the Title IX process, free from outcome pressure, but is informed by it.

VRAs are non-clinical assessments and must be understood as an ongoing process, rather than a singular evaluation or meeting. A VRA is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment.

VRA assesses the risk of actionable violence, often with a focus on targeted/predatory escalations, and is supported by research from the fields of law enforcement, criminology, human resources, and psychology.

When conducting a VRA, the assessor(s) use an evidence-based process consisting of:

- 1) An appraisal of *risk factors* that escalate the potential for violence
- 2) A determination of stabilizing influences that reduce the risk of violence
- 3) A contextual *analysis of violence risk* by considering environmental circumstances, hopelessness, and suicidality; catalyst events; nature and actionability of threat; fixation and focus on target; grievance collection; and action and time imperative for violence
- 4) The application of *intervention and management* approaches to reduce the risk of violence

The assessor(s) will follow the process of conducting a violence risk assessment as outlined in the Care Team manual and will rely on a consistent, research-based, reliable system that allows for the evaluation of the risk levels. Assessors are trained to mitigate any bias and provide the analysis and Findings in a fair and equitable manner.

Some examples of formalized approaches to the VRA process include: The NABITA Risk Rubric, The Structured Interview for Violence Risk Assessment (SIVRA-35), Violence Risk Assessment of the Written Word (VRAWW), Workplace Assessment of Violence Risk (WAVR-21), Historical Clinical Risk Management (HCR-20), and MOSAIC.

The VRA team member(s) conducts a VRA process and makes a recommendation to the Title IX Coordinator as to whether the VRA indicates there is a substantial, compelling, and/or immediate risk to the health and/or safety of an individual or the community.



## Appendix D: State Law Definitions

These state law definitions are for informational purposes only and are included as an appendix as required by the Violence Against Women Act (VAWA).

### Domestic Violence

**Domestic Violence:** Domestic Violence means violence committed by

- a) a person who is a current or former spouse or intimate partner with the victim
- b) a person with whom the victim shares a child in common
- c) a person who is cohabiting with or who has cohabitated with the victim as a spouse or intimate partner
- d) any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws where the violence occurred

KRS 403.720 Definitions for KRS 403.715 to 403.785 (effective January 1, 2016)

- 1) "Domestic violence and abuse" mean physical injury, serious physical injury, stalking, sexual abuse, assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault between family members or members of an unmarried couple;
- 2) "Family member" means a spouse, including a former spouse, a grandparent, a grandchild, a parent, a child, a stepchild, or any other person living in the same household as a child if the child is the alleged victim;

\*\*\*

- 5) "Member of an unmarried couple" means each member of an unmarried couple which allegedly has a child in common, any children of that couple, or a member of an unmarried couple who are living together or have formerly lived together;

### Dating Violence

**Relationship/Dating Violence:** Relationship/Dating Violence is any pattern of behavior used to establish power and control over another person within the context of a current or previous intimate relationship. Categories can include but are not limited to physical battering, sexual assault, emotional or psychological abuse.

- a) 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 victim.
- b) Relationship shall be based on the reporting party'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.
- c) 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.

## **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

- 1) "Dating relationship" means a relationship between individuals who have or have had a relationship of a romantic or intimate nature. It does not include a casual acquaintanceship or ordinary fraternization in a business or social context. The following factors may be considered in addition to any other relevant factors in determining whether the relationship is or was of a romantic or intimate nature:
  - a) Declarations of romantic interest;
  - b) The relationship was characterized by the expectation of affection;
  - c) Attendance at social outings together as a couple;
  - d) The frequency and type of interaction between the persons, including whether the persons have been involved together over time and on a continuous basis during the course of the relationship;
  - e) The length and recency of the relationship; and
  - f) Other indications of a substantial connection that would lead a reasonable person to understand that a dating relationship existed;
- 2) "Dating violence and abuse" means physical injury, serious physical injury, stalking, sexual assault, or the infliction of fear of imminent physical injury, serious physical injury, sexual abuse, or assault occurring between persons who are or have been in a dating relationship;

## **Sexual Assault**

### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

"Sexual assault" refers to conduct prohibited as any degree of rape, sodomy, or sexual abuse under [KRS Chapter 510](#) or incest under [KRS 530.020](#);

### **KRS 510.050 Rape in the second degree**

- 1) A person is guilty of rape in the second degree when:
  - a) Being eighteen (18) years old or more, he engages in sexual intercourse with another person less than fourteen (14) years old; or
  - b) He engages in sexual intercourse with another person who is mentally incapacitated.
- 2) Rape in the second degree is a Class C felony.

### **KRS 510.060 Rape in the third degree**

- 1) A person is guilty of rape in the third degree when:
  - a) He or she engages in sexual intercourse with another person who is incapable of consent because he or she is an individual with an intellectual disability;
  - b) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than sixteen (16) years old;

- c) Being twenty-one (21) years old or more, he or she engages in sexual intercourse with another person less than eighteen (18) years old and for whom he or she provides a foster family home as defined in [KRS 600.020](#);
- d) Being a person in a position of authority or position of special trust, as defined in [KRS 532.045](#), he or she engages in sexual intercourse with a minor under eighteen (18) years old with whom he or she comes into contact as a result of that position; or
- e) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in [KRS 520.010](#), or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual intercourse.

2) Rape in the third degree is a Class D felony.

#### **KRS 510.040 Rape in the first degree**

1) A person is guilty of rape in the first degree when:

- a) He engages in sexual intercourse with another person by forcible compulsion; or
- b) He engages in sexual intercourse with another person who is incapable of consent because he:
  - 1. Is physically helpless; or
  - 2. Is less than twelve (12) years old.

2) Rape in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

#### **KRS 510.070 Sodomy**

1) A person is guilty of sodomy in the first degree when:

- a) He engages in deviate sexual intercourse with another person by forcible compulsion; or
- b) He engages in deviate sexual intercourse with another person who is incapable of consent because he:
  - 1. Is physically helpless; or
  - 2. Is less than twelve (12) years old.

2) Sodomy in the first degree is a Class B felony unless the victim is under twelve (12) years old or receives a serious physical injury in which case it is a Class A felony.

### **KRS 510.110 Sexual abuse in the first degree**

- 1) A person is guilty of sexual abuse in the first degree when:
  - a) He or she subjects another person to sexual contact by forcible compulsion; or
  - b) He or she subjects another person to sexual contact who is incapable of consent because he or she:
    1. Is physically helpless;
    2. Is less than twelve (12) years old; or
    3. Is mentally incapacitated; or
  - c) Being twenty-one (21) years old or more, he or she:
    1. Subjects another person who is less than sixteen (16) years old to sexual contact;
    2. Engages in masturbation in the presence of another person who is less than sixteen (16) years old and knows or has reason to know the other person is present; or
    3. Engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate; or
  - d) Being a person in a position of authority or position of special trust, as defined in KRS 532.045, he or she, regardless of his or her age, subjects a minor who is less than eighteen (18) years old, with whom he or she comes into contact as a result of that position, to sexual contact or engages in masturbation in the presence of the minor and knows or has reason to know the minor is present or engages in masturbation while using the Internet, telephone, or other electronic communication device while communicating with a minor who the person knows is less than sixteen (16) years old, and the minor can see or hear the person masturbate.

### **KRS 510.120 Sexual abuse in the second degree**

- 1) A person is guilty of sexual abuse in the second degree when:
  - a) He or she subjects another person to sexual contact who is incapable of consent because he or she is an individual with an intellectual disability;
  - b) He or she is at least eighteen (18) years old but less than twenty-one (21) years old and subjects another person who is less than sixteen (16) years old to sexual contact; or
  - c) Being a jailer, or an employee, contractor, vendor, or volunteer of the Department of Corrections, Department of Juvenile Justice, or a detention facility as defined in KRS 520.010, or of an entity under contract with either department or a detention facility for the custody, supervision, evaluation, or treatment of offenders, he or she subjects a person who is at least eighteen

(18) years old and who he or she knows is incarcerated, supervised, evaluated, or treated by the Department of Corrections, Department of Juvenile Justice, detention facility, or contracting entity, to sexual contact.

- 2) In any prosecution under subsection (1)(b) of this section, it is a defense that:
  - a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
  - b) The other person was at least fourteen (14) years old; and
  - c) The actor was less than five (5) years older than the other person.

### **KRS 510.130 Sexual abuse in the third degree**

- 1) A person is guilty of sexual abuse in the third degree when he or she subjects another person to sexual contact without the latter's consent.
- 2) In any prosecution under this section, it is a defense that:
  - a) The other person's lack of consent was due solely to incapacity to consent by reason of being less than sixteen (16) years old; and
  - b) The other person was at least fourteen (14) years old; and
  - c) The actor was less than eighteen (18) years old.

### **KRS 530.020 Incest**

- 1) A person is guilty of incest when he or she has sexual intercourse or deviate sexual intercourse, as defined in [KRS 510.010](#), with a person whom he or she knows to be an ancestor, descendant, uncle, aunt, brother, or sister. The relationships referred to herein include blood relationships of either the whole or half blood without regard to legitimacy, relationship of parent and child by adoption, relationship of stepparent and stepchild, and relationship of step-grandparent and step-grandchild.
  - a) Incest is a Class C felony if the act is committed by consenting adults.
  - b) Incest is a Class B felony if committed:
    1. By forcible compulsion as defined in [KRS 510.010\(2\)](#); or
    2. On a victim who is:
      - a. Less than eighteen (18) years of age; or
      - b. Incapable of consent because he or she is physically helpless or mentally incapacitated.
  - c) Incest is a Class A felony if:
    1. Committed to a victim less than twelve (12) years of age; or
    2. The victim receives serious physical injury.

## **Stalking**

In Kentucky, stalking means an intentional "course of conduct" towards a "specific person" that does not serve a legitimate purpose, seriously alarms, annoys,

intimidates or harasses that person, and causes a reasonable person to suffer substantial mental distress.

- a) Course of conduct is defined as 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 communicating to or about, a person, or interferes with a person's property.
- b) Substantial emotional distress is defined as 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 victim.

### **KRS 456.010 Definitions for chapter (effective January 1, 2016)**

"Stalking" refers to conduct prohibited as stalking under [KRS 508.140](#) or [KRS 508.150](#);

### **KRS 508.130 Definitions for KRS 508.130 to 508.150**

As used in KRS 508.130 to 508.150, unless the context requires otherwise:

- 1) To "stalk" means to engage in an intentional course of conduct:
  - 1. Directed at a specific person or persons;
  - 2. Which seriously alarms, annoys, intimidates, or harasses the person or persons; and
  - 3. Which serves no legitimate purpose.

The course of conduct shall be that which would cause a reasonable person to suffer substantial mental distress.

- 2) "Course of conduct" means a pattern of conduct composed of two (2) or more acts, evidencing a continuity of purpose. One (1) or more of these acts may include the use of any equipment, instrument, machine, or other device by which communication or information is transmitted, including computers, the Internet or other electronic network, cameras or other recording devices, telephones or other personal communications devices, scanners or other copying devices, and any device that enables the use of a transmitting device. Constitutionally protected activity is not included within the meaning of "course of conduct." If the defendant claims that he was engaged in constitutionally protected activity, the court shall determine the validity of that claim as a matter of law and, if found valid, shall exclude that activity from evidence.
- 3) "Protective order" means:
  - a) An emergency protective order or domestic violence order issued under KRS 403.715 to 403.785;

- b) A foreign protective order, as defined in KRS 403.7521(1);
- c) An order issued under KRS 431.064;
- d) A restraining order issued in accordance with KRS 508.155; and
- e) Any condition of a bond, conditional release, probation, parole, or pretrial diversion order designed to protect the victim from the offender.

### **KRS 508.140 Stalking in the first degree**

- 1) A person is guilty of stalking in the first degree,
  - a) When he intentionally:
    - 1. Stalks another person; and
    - 2. Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
      - a. Sexual contact as defined in KRS 510.010;
      - b. Serious physical injury; or
      - c. Death; and
  - b) 1. A protective order has been issued by the court to protect the same victim or victims and the defendant has been served with the summons or order or has been given actual notice; or
  - 2. A criminal complaint is currently pending with a court, law enforcement agency, or prosecutor by the same victim or victims and the defendant has been served with a summons or warrant or has been given actual notice; or
  - 3. The defendant has been convicted of or pled guilty within the previous five (5) years to a felony or to a Class A misdemeanor against the same victim or victims; or
  - 4. The act or acts were committed while the defendant had a deadly weapon on or about his person.

### **KRS 508.150 Stalking in the second degree**

- 1) A person is guilty of stalking in the second degree when he intentionally:
  - a) Stalks another person; and
  - b) Makes an explicit or implicit threat with the intent to place that person in reasonable fear of:
    - 1. Sexual contact as defined in KRS 510.010;
    - 2. Physical injury; or
    - 3. Death.

## Consent

### KRS 510.020 Lack of consent

- 1) Whether or not specifically stated, it is an element of every offense defined in this chapter that the sexual act was committed without consent of the victim.
- 2) Lack of consent results from:
  - a) Forcible compulsion;
  - b) Incapacity to consent; or
  - c) If the offense charged is sexual abuse, any circumstances in addition to forcible compulsion or incapacity to consent in which the victim does not expressly or impliedly acquiesce in the actor's conduct.
- 3) A person is deemed incapable of consent when he or she is:
  - a) Less than sixteen (16) years old;
  - b) An individual with an intellectual disability or an individual that suffers from a mental illness;
  - c) Mentally incapacitated;
  - d) Physically helpless; or
  - e) Under the care or custody of a state or local agency pursuant to court order and the actor is employed by or working on behalf of the state or local agency.
- 4) The provisions of subsection (3)(e) of this section shall not apply to persons who are lawfully married to each other and no court order is in effect prohibiting contact between the Parties.