

SEX-BASED MISCONDUCT GRIEVANCE PROCEDURES

Table of Contents

1 Introduction	3
2 Scope	3
3 Definitions	3
4 Prohibited Conduct	5
5 Procedure Overview	9
6 Confidentiality and Amnesty	9
7 Reporting	11
8 Formal Complaints and Notices Generally	12
9 Evaluation of a Formal Complaint	15
10 Presumption of Responsibility, Timelines, and Advisors	17
11 Resolution Options Outside of a Formal Investigation and Hearing	18
12 Formal Grievance Process and Investigation	21
13 Hearings: Composition and Notice	25
14 Hearings: Pre-Hearing	27
15 Hearings: Processes and Procedures	29
16 Hearings: Decision and Notice of Outcome	31
17 Sanctions	32
19 Appeals	35
20 Implementation of Procedures	36
21 Academic Freedom	36
22 Contact Information for Questions and Concerns	36
23 Authority and Additional References	37
24 Original Effective Date	38
APPENDICES: INFORMATION RELATED TO SEX-BASED MISCONDUCT PROCEDURES (subject to revision)	39

<i>Appendix A: NON-EXHAUSTIVE LIST OF SUPPORT RESOURCES AND SUPPORTIVE MEASURES POTENTIALLY AVAILABLE FOR COMPLAINANTS AND/OR RESPONDENTS</i>	<i>40</i>
<i>Appendix B: ROLES AND EXPECTATIONS FOR PARTY ADVISORS</i>	<i>44</i>
<i>Appendix C: ROLES AND EXPECTATIONS FOR WITNESSES</i>	<i>47</i>

SEX-BASED MISCONDUCT PROCEDURES

1 Introduction

The purpose of these procedures is to support Appalachian State University's ("Appalachian" or the "University") commitment to providing an institutional environment free of Sex-Based Misconduct, as well as to provide an administrative framework and oversight for reporting, investigating, adjudicating, and resolving violations of **Appalachian Policy 112 – Sex-Based Misconduct**.

Appalachian utilizes these procedures to determine whether or not **Appalachian Policy 112 – Sex-Based Misconduct** has been violated. If it is determined through these procedures that Sex-Based Misconduct has occurred, Appalachian will promptly implement effective remedies designed to ensure that Appalachian is not deliberately indifferent to Sex-Based Misconduct, Sexual Harassment, or Retaliation, nor their potential recurrence or effects.

At the discretion of the Title IX Coordinator and in consultation with the Office of General Counsel, Appalachian reserves the right to contract with external Investigator(s), adjudicator(s), or assessor(s) of sanctions whenever Appalachian either lacks capacity or is too conflicted to ensure timely, impartial processes as discussed throughout these procedures.

2 Scope

These procedures apply to all members of the Appalachian community, including students, faculty, staff, visitors, volunteers, and others who participate in programs, activities, or conduct business on behalf of Appalachian that occur in locations, events, or circumstances where Appalachian exercises substantial control over both the Respondent and the context in which the alleged Sex-Based Misconduct occurs.

These procedures address prohibited conduct that occurs either: (a) on property owned or controlled by Appalachian; (b) off Appalachian property in any building owned or controlled by a student organization that is officially recognized by Appalachian; or (c) on property owned or controlled by non-Appalachian entities or individuals that has an adverse or detrimental effect on Appalachian and its employees, employment applicants, students, visitors or volunteers.

3 Definitions

- **Advisor** – A person chosen by a Party, or appointed by Appalachian to: (a) accompany the Party to meetings related to the grievance process (b) advise the Party on the process; and (c) conduct cross-examinations, on behalf of the Party, of another Party or witness at a hearing.
- **Business Day** – Any day that Appalachian is in normal operation from Monday through Friday, excluding holidays.
- **Clery Act** - The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f).
- **Complainant** – Any person who has alleged to be the victim of conduct that could constitute Sex-Based Misconduct or Retaliation.

- **Confidential Resources** – As defined in Appalachian Policy 110 – Discrimination and Harassment, irrespective of their designation as a Campus Security Authority pursuant to the Clery Act.
 - **Decision-Maker(s)** – Individuals who have decision-making and sanctioning authority within Appalachian’s Formal Grievance Process, as expressed in these procedures.
 - **Education Program or Activity** – Locations, events, or circumstances where Appalachian exercises substantial control over both the Respondent and the context in which the alleged Sex-Based Misconduct occurs.
 - **Finding** - A conclusion based upon a preponderance of the evidence that the conduct did or did not occur as alleged (as in a “finding of fact”).
 - **Formal Complaint** – A document submitted by a Complainant or signed by the Title IX Coordinator requesting Appalachian to investigate an allegation involving: (a) Sex-Based Misconduct against a Respondent, or (b) Retaliation against an individual who is engaging in protected activities under Appalachian Policy 112 – Sex-Based Misconduct or these procedures.
 - **Formal Grievance Process** – The Formal Grievance Process refers to the entire span of actions and procedures commencing with Appalachian’s initial receipt of a Formal Complaint of alleged Prohibited Conduct through final resolution and appeals. This process incorporates, as needed and determined by the Title IX Coordinator and as addressed in these procedures, the initial review of complaints, assessments of needs for assistance or supportive measures, options for informal resolutions, initiation and completion of formal investigations, adjudication, sanctioning, and appeals.
 - **Grievance Process Pool** – A pool that includes Investigators, Decision Makers, Hearing Officers, Appeal Officers, and Advisors who may perform any or all of these roles (though not at the same time or with respect to the same case).
- Hearing Panel** – Individuals who have decision-making authority within Appalachian’s Formal Grievance Process for determinations of responsibility, as expressed in these procedures.
- **Hearing Panel Chair** (“Hearing Chair”) – An individual that renders decisions on admissibility and relevance of evidence and ensures the Formal Grievance Process is followed, as expressed in these procedures.
 - **Investigator** – An individual charged by the Title IX Coordinator with gathering testimonial and documentary evidence about an alleged violation of Sex-Based Misconduct and compiling the information into an investigation report.
 - **Mandatory Reporter** – Employees of Appalachian who are responsible for sharing knowledge, notice, or reports of Sex-Based Misconduct and Retaliation with the Title IX Coordinator, as identified in Appalachian Policy 110 - Discrimination and Harassment. A Mandatory Reporter may also be referred to as a “Responsible Employee.”

- **Notice** – When an employee, student, or third Party has informed the Title IX Coordinator or other Official with Authority of an alleged occurrence of Sex-Based Misconduct or Retaliation.
- **Official with Authority (OWA)** – An employee of Appalachian explicitly vested with the responsibility to implement corrective measures including interim or supportive measures for allegations of Sex-Based Misconduct or Retaliation on behalf of Appalachian.
- **Party or Parties** – A reference to a Complainant(s) and Respondent(s), either separately or collectively.
- **Remedies** – Post-finding actions directed to the Complainant or the community as mechanisms to address safety, prevent recurrence of Sex-Based Misconduct, or restore access to Appalachian’s educational program.
- **Respondent** – Any individual who has been reported to be the perpetrator of conduct that could constitute Sex-Based Misconduct or Retaliation.
- **Resolution** – The result of an informal or Formal Grievance Process.
- **Sanction** – A consequence imposed by Appalachian on a Respondent(s) who is found to have committed Prohibited Conduct.
- **Sex** – As referenced in these procedures encompasses sex, gender, gender expression, gender identity, and sexual orientation, as defined by federal and state law and UNC system policies.
- **Sex-Based Misconduct** – Any conduct that involves the Sexual Harassment or Sex-Based Discrimination of an individual based on their gender, gender expression, gender identity, sex (including pregnancy) or sexual orientation, including instances involving Sexual Assault, Dating Violence, Domestic Violence, or Stalking.
- **Title IX** - The federal civil rights legislation first enacted in 1972 and codified at 20 U.S. Code §§ 1681-1688, and accompanying Federal Regulations at 34 CFR § 106.
- **Title IX Coordinator** – Appalachian’s Director of Title IX Compliance who oversees all implementation of **Appalachian Policy 112 – Sex-Based Misconduct** and these procedures.
- **Title IX Team** – A team comprised of the Title IX Coordinator, Title IX Deputy Coordinators, Investigators, Title IX Staff, Title IX Liaisons, and any member of the Grievance Process Pool.

4 Prohibited Conduct

All members of the Appalachian community are prohibited from engaging in Sex-Based Misconduct and Retaliation (collectively referred to in these procedures as, “Prohibited Conduct”). The following conduct identifies categories of Prohibited Conduct:

A. Sexual Harassment, includes:

1. Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's Education Program or Activity; or

2. Quid Pro Quo Sexual Harassment, defined as, an employee of the University conditioning the provision of an aid, benefit, or service of Appalachian on an individual's participation in unwelcome sexual conduct; or

3. Sexual Assault, defined as, any sexual act directed against another person, without the consent of the Complainant, including instances where the Complainant is incapable of giving consent. Sexual Assault includes,

a. the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant; or

b. the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the Complainant; or

c. sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law; or

d. sexual intercourse with a person who is under the statutory age of consent.

4. Dating Violence, defined as, violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the Complainant. The existence of such a relationship shall be determined based on a consideration of the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse. Dating violence does not include acts covered under the definition of Domestic Violence; or

5. Domestic Violence, defined as, any violence that may constitute felony or misdemeanor crime of violence committed: (a) by a current or former spouse or intimate partner of the Complainant, (b) by a person with whom the Complainant shares a child in common, (c) by a person who is cohabitating with or has cohabitated with the Complainant as a spouse or intimate partner, (d) by a person similarly situated to a spouse of the Complainant under the domestic or family violence laws of North Carolina, or (e) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.

6. Stalking, defined as, engaging in a "course of conduct" directed at a specific person that would cause a reasonable person to fear for the person's safety or the safety of others; or "suffer substantial emotional distress." Under this section, "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 communicates to or about a person, or interferes with a person's property; and "substantial emotional distress" is defined as a significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling; or

7. Exploitation, defined as, taking non-consensual or abusive sexual advantage of another for an individual's own advantage or benefit, or to advantage or benefit anyone other than the individual being exploited. Examples include, but are not limited to, invading sexual privacy;

creating, using, or sharing a photograph, video, or audio recording of a sexual nature without consent; viewing or downloading child pornography; prostituting another individual; allowing a third Party to observe sexual activity without consent of the partner(s) (e.g., letting individuals hide in closet to watch consensual sexual activity); engaging in voyeurism, peeping, or indecent exposure; knowingly transmitting sexually transmitted infections or other communicable diseases without the knowledge of the partner(s); and exposing one's breasts, buttocks, groin, or genitals in non-consensual circumstances or inducing another to expose their breasts, buttocks, groin, or genitals.

B. Sex-Based Discrimination, includes:

Conduct based on an individual's sex that is an unlawful or otherwise prohibited preference for, or detrimental treatment of, one individual compared to other individuals. The conduct must be sufficiently serious to unreasonably interfere with or limit:

- a. an employee or employment applicant's access to employment, terms, conditions or benefits of employment (e.g., hiring, advancement, assignment, etc.);
- b. a student or admission applicant's ability to participate in, access or benefit from University programs, services, or activities (e.g., admission, academic standing, grades, assignments, campus housing, etc.); or
- c. a volunteer or visitor's ability to participate in, access or benefit from or deliver University's programs or services.

C. Retaliation, includes:

Any adverse action against an individual, or an individual's spouse, partner, or other person with a close personal relation, for: (a) making or supporting a claim of Sex-Based Misconduct, (b) opposing any Sex-Based Misconduct, (c) participating in the reporting, investigation, or resolution of alleged violation(s) under this policy, or (d) otherwise engaging in a protected activity under these procedures or other associated University policies. Examples of Retaliation include intimidation, threats, Coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report or complaint made in good faith was not substantiated.

Acts of alleged Retaliation should be reported immediately to the Title IX Coordinator and will be promptly investigated. Appalachian will take all appropriate and available steps to protect individuals who fear that they may be or have been subjected to Retaliation.

The exercise of rights protected under the First Amendment does not constitute, of and by itself, Retaliation.

D. Related Terms. As used in Section 4, the following definitions and understandings apply:

- **Force.** The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion that is intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. Consent is not demonstrated by the absence of resistance. While resistance is not required or necessary, it is a clear demonstration of non-consent.

- **Coercion.** Unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear by words or actions that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- **Consent.** For consent to be present, it must be knowing and voluntary, with clear permission, by word or action, to engage in sexual activity.
 - Individuals may experience the same interaction in different ways. Therefore, it is the responsibility of each person to determine that the other has consented before engaging in the activity.
 - If clear consent is not provided before engaging in the activity, consent may be ratified by word or action at some point during the interaction, 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, that sexual activity must cease.
 - Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). A current or previous intimate relationship is not sufficient to constitute consent.
 - Proof of consent or non-consent is not a burden placed on either Party involved in an incident. Instead, the burden remains on Appalachian 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.
 - Consent in relationships must also be considered in context. When Parties consent to BDSM (a combined acronym referring to bondage/discipline, domination/submission, 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, so Appalachian’s evaluation of communication in kink situations shall be guided by reasonableness, rather than strict adherence to a policy that assumes non-kink relationships as a default.
- **Incapacitation.** A person cannot consent if they are unable to understand what is happening or is disoriented, helpless, asleep, or unconscious, for any reason, including by alcohol or other drugs. As stated above, a Respondent violates **Appalachian Policy 112 – Sex-Based Misconduct** if they engage in sexual activity with someone incapable of giving consent.

- Incapacitation occurs when someone cannot make rational, reasonable decisions because they cannot give knowing/informed consent (e.g., to understand the “who, what, when, where, why, or how” of their sexual interaction).
- Incapacitation is determined through consideration of all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- These procedures also cover a person whose incapacity results from a temporary or permanent physical or mental health condition, intellectual disability, involuntary physical restraint, and/or the consumption of incapacitating drugs.
- **Defense to a Charge of Sexual Assault with an Incapacitated Party.** It is a defense to a sexual assault policy violation that the Respondent neither knew nor should have known the Complainant to be physically or mentally incapacitated. “Should have known” is an objective reasonable person standard that assumes that a reasonable person is both sober and exercising sound judgment.

5 Procedure Overview

Appalachian will respond to all Notices or Formal Complaints of any violation of Prohibited Conduct that is received by the Title IX Coordinator or any other Official with Authority.

The procedures referenced below apply to all allegations of Prohibited Conduct involving students, employees (including but not limited to faculty, EHRA, SHRA, and student employees), and others acting on behalf of Appalachian. These procedures apply to students, who are otherwise subject to the terms of the Code of Student Conduct, and employment policies (including the Faculty Handbook) applicable to SHRA, Faculty, and EHRA non-faculty employees

These procedures may be used to address collateral misconduct occurring in conjunction with reported Sex-Based Misconduct (e.g., vandalism, physical abuse of another) or arising in the course of a subsequent investigation at the discretion of the administrative official with the authority over the Respondent. All other allegations of misconduct unrelated to incidents covered by these procedures will be addressed through procedures described in the Student Code of Conduct, Faculty Handbook, and any other UNC System, Office of State Human Resources, or University policies.

6 Confidentiality and Amnesty

A. Privacy and Confidentiality

Information obtained by Appalachian in response to allegations of Prohibited Conduct will be reviewed in a manner that balances an individual’s preferences for privacy with the University’s legal obligations, as well as the University’s obligations to provide a safe and nondiscriminatory environment. Complete confidentiality cannot be guaranteed, and information may be shared with others when necessary to investigate or address the Prohibited Conduct, to prevent its recurrence, or to fulfill legal obligations.

Resolution proceedings are private. All persons present at any time during the resolution process are expected to maintain the privacy of the proceedings. Although there is an expectation of privacy around

what Investigators share with Parties during interviews, the Parties have the discretion to share their own knowledge and evidence with others if they so choose, except for information the Parties agree not to disclose related to any informal resolution, discussed below. Appalachian encourages Parties to discuss any sharing of information with their Advisors before doing so.

Employees who are Confidential Resources and who receive reports within the scope of their confidential roles must timely submit anonymous statistical information for reporting purposes pursuant to **Appalachian Policy 301.4 – Clery Act Compliance Policy**, unless they believe it would be harmful to their client or patient.¹

B. Amnesty for Parties and Witnesses

The Appalachian community encourages the reporting of misconduct by Complainants and witnesses. Sometimes, Complainants or witnesses are hesitant to report to Appalachian officials or participate in the Formal Grievance Process because they fear that they may be in violation of certain policies or laws, such as underage drinking or use of illicit drugs at the time of the incident. Respondents may hesitate to be forthcoming during the process for the same reasons. However, it is in the best interests of the Appalachian community that Complainants choose to report misconduct to Appalachian officials, that witnesses come forward to share what they know, and that all Parties be forthcoming during the process. Amnesty may be granted, at Appalachian’s discretion, for University policy violations (typically, minor policy violations) for all individuals who report Prohibited Conduct matters addressed in these procedures. Granting amnesty will be reviewed on a case-by-case basis by reviewing the totality of the circumstances. The decision not to offer amnesty will not be based on Sex, but on the fact that collateral misconduct may be addressed for all individuals.

To receive amnesty, an individual must agree to the recommended action plan, which may include participation in educational programming. Failure to complete the action plan may result in revocation of amnesty. The rationale for amnesty – the incentive to report Prohibited Conduct – is rarely applicable to Respondent with respect to a Complainant. Amnesty provides an opportunity for an intervention that will not result in the violations becoming part of an individual’s disciplinary record or history, and will remain confidential subject to federal and state law.

The decision to grant amnesty will be made by the administrative official with authority over the involved Parties in consultation with the Title IX Coordinator.

Amnesty may apply to circumstances, such as:

- when individuals seek assistance on their own behalf from a University official or emergency personnel; or
- when individuals seek assistance from a University official or emergency personnel on the behalf of another student and remains on the scene to provide support (as well as to the student who received assistance).

Amnesty does not apply in the following circumstances:

- when conducting Prohibited Conduct referenced in these procedures; or
- illicit drug distribution.

¹ More information is available in Appendix A: Non-Exhaustive List of Support Resources and Supportive Measures Potentially Available for Complainants and/or Respondents.

Amnesty granted does not prevent independent action from law enforcement agencies, including the Appalachian Police Department. It does not prevent an individual who has enforcement obligations under federal, state, or local law to report an alleged violation, file a charge, or take other action related to the possible criminal prosecution.

7 Reporting

A. Mandatory Reporting

All employees designated as a Mandatory Title IX Responsible Employees under **Appalachian Policy 110 – Discrimination and Harassment** are Mandatory Reporters and must promptly share with the Title IX Coordinator any information they receive that may indicate the occurrence of Sex-Based Misconduct or Retaliation made to or witnessed by them.

Upon receiving any information that may indicate the occurrence of Prohibited Conduct based on Sex, the following employees are required to report the information to the Office of Title IX Compliance as promptly as possible, within approximately (72) hours: Faculty, Athletics Department staff, Office of Human Resources Staff, University Housing Staff, and other University staff with supervisory responsibility.

Employees, in the following University departments, are considered Confidential Resources and are exempt from mandatory reporting: Counseling for Faculty and Staff, Counseling and Psychological Services, ComPsych (or a similar service provider), Psychology Clinic, Student Legal Clinic, Student Health Services, and University Ombuds.

Limited Exceptions

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees unless the Complainant clearly indicates that they desire a report to be made or seek a specific response from Appalachian. Supportive measures may be offered as the result of such disclosures without formal Appalachian action.

Failure to Report

Failure of a Mandatory Reporter, to report an incident of Prohibited Conduct may result in disciplinary action for failure to comply.

B. Anonymous Complainants

A Complainant may report allegations of Sex-Based Misconduct anonymously by contacting the Office of Title IX Compliance or completing the web form found on Appalachian’s Title IX website [<https://titleix.appstate.edu>].

A Mandatory Reporter is not permitted to withhold a Complainant’s identity. They must share all information they received about the identity of the Parties, location, and allegations. A Mandatory Reporter can consult with the Title IX Coordinator before revealing personally identifiable information about the Complainant. Further, the Mandatory Reporter cannot remain anonymous themselves.

If a Complainant is requesting anonymity the Title IX Coordinator will honor their request to the extent they are able after assessing any health and safety issues impacting the campus community.

C. Counterclaims

Appalachian is obligated to ensure that the grievance process is not abused for retaliatory purposes. Appalachian permits the filing of counterclaims, but uses an initial assessment to assess whether the allegations in the counterclaim are made in good faith. Counterclaims determined to have been reported in good faith will be processed using the Formal Grievance Process addressed in these procedures. Investigation of such claims may take place after a resolution of the underlying initial allegation, in which case a delay may occur. Counterclaims may also be resolved through the same investigation as the underlying allegation, at the discretion of the Title IX Coordinator. When counterclaims are not made in good faith, they will be considered retaliatory and may reviewed and investigated pursuant to University policies.

D. False Accusations and Bad-Faith Participation

Deliberately false or malicious accusations by any Party or witness providing information under these procedures is a serious offense and will be subject to appropriate disciplinary action. This includes knowingly providing false evidence, tampering with or destroying evidence, or deliberately misleading an official conducting the investigation. This does not encompass allegations that are made in good faith but are ultimately shown to be erroneous or do not result in a determination of a policy violation.

E. Clery Reporting Obligations

Under the Clery Act, when Appalachian receives reports for Sexual Assault, Domestic Violence, Dating Violence, or Stalking, the University is responsible for issuing timely warnings for incidents reported that pose a serious or continuing threat of bodily harm or danger to members of the campus community.

Appalachian will ensure that a Complainant's name and other identifying information is not disclosed, while still providing enough information for community members to make safety decisions in light of the potential danger.

Appalachian maintains a Clery Compliance Coordinator who can be accessed through the Clery Act Compliance website [<https://policy.appstate.edu/clery-act-support>]. See **Appalachian Policy 301.4 – Clery Act Compliance Policy** for additional details and access to the Annual Campus Security and Fire Safety Report.

8 Formal Complaints and Notices Generally

Upon receipt of a Formal Complaint or Notice of an alleged violation of Prohibited Conduct to the Title IX Coordinator, the Title IX Coordinator shall initiate a prompt assessment to determine appropriate next steps. The Title IX Coordinator will work in collaboration with appropriate representative(s) of the administrative office that governs any Respondent (e.g., the Office of Student Conduct, the Office of Academic Affairs, the Office of Human Resources).

A. Initial Assessment

The Title IX Coordinator shall be initially responsible for:

- ensuring that each Notice or Formal Complaint is responded to promptly;
- identifying if a Complainant wishes to file a Formal Complaint;

- contacting the Complainant and determining whether a Campus Safety Assessment, as discussed below, is warranted;
- discussing the availability of supportive measures with the Complainant, and coordinate the Complainant's access to such support; and
- inquire what, if any, remedial measures the Complainant might desire, and subsequently assess for action, as appropriate.²

B. Supportive Measures

The Title IX Coordinator or designee will reach out to students and employees who fall under the scope of these procedures and may have experienced Prohibited Conduct. Individuals will be offered resources, options for reporting, and supportive measures.

Supportive Measures are non-disciplinary and non-punitive individualized services offered as appropriate, as reasonably available without fee or charge, to the Complainant or the Respondent. Supportive measures may be offered before or after the filing of a Formal Complaint, as well as when no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University's Education Program or Activity without unreasonably burdening the other Party. Additionally, supportive measures include measures designed to protect the safety of all Parties and the University's educational environment.

Examples of supportive measures may include: counseling; extensions of deadlines or other course-related adjustments; modifications of work or class schedules; school escort services; mutual restrictions on contact between the Parties; changes in work or housing locations; leaves of absence; increased security and monitoring of certain areas of the Academy; and other similar measures. Supportive measures may include referrals to both confidential and private resources.

The University will maintain as confidential any supportive measures provided to the Complainant or Respondent to the extent that maintaining such confidentiality would not impair the ability of the institution to provide supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

Supportive measures will be offered to individuals involved in reports of Sex-Based Misconduct whether or not they file a Formal Complaint.

C. Emergency Removal / Administrative Leave

Campus Safety Assessment.

In many cases, the Title IX Coordinator may determine that a Campus Safety Assessment involving a Respondent should be conducted by the Campus Safety Assessment Team (the "Team") as part of the initial assessment. The Team is a group comprised of Appalachian employees established by the University to assess both immediate and potential threats to the Appalachian community, including those that could potentially impact the workplace, residences, and educational mission. This Team shall include the Director of Title IX Compliance and representation from the Appalachian Police Department, Academic Affairs, Student Affairs, Human Resources, Counseling for Faculty & Staff, the Office of Disability Resources, and Counseling and Psychological Services. The Title IX Coordinator will strive to

² More information is available in Appendix A: Non-Exhaustive List of Support Resources and Supportive Measures Potentially Available for Complainants and/or Respondents.

have representatives from the aforementioned departments, but has the discretion to make an assessment without a representative from every department.

In reviewing reports of Sex-Based Misconduct, this Team shall assess the need and utility of implementing interim actions to maintain a safe and non-discriminatory environment for the Appalachian community. This Team extends and does not displace the work of the Campus Safety Assessment Team referenced in **Appalachian Policy 602.32 - Workplace Violence**.

A Campus Safety Assessment is not an evaluation for an involuntary behavioral health hospitalization, nor is it a psychological or mental health assessment. Rather, a Campus Safety Assessment 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. A Campus Safety Assessment is designed to assist in the following critical and/or required determinations:

- Whether emergency removal of a Respondent based on an immediate threat to physical health/safety is warranted;
 - Whether the Title IX Coordinator should pursue/sign a formal complaint absent a willing/able Complainant;
 - Whether a related Title IX investigation should encompass an incident and/or pattern and/or climate;
 - Whether predatory conduct is potentially involved;
 - Whether grooming behaviors are potentially involved;
 - Whether it is reasonable to resolve the Formal Complaint through informal processes and what modality might be most successful;
 - Whether to permit a voluntary withdrawal or resignation by a Respondent in place of an investigation;
 - Whether to impose transcript or employment notation or to communicate with other places of study or employment regarding the Respondent;
 - Whether particular sanctions or remedies would be appropriate should the Respondent ultimately be found responsible for violating Appalachian Policy 110 – Discrimination and Harassment; or
 - Whether a Clery Act Timely Warning/No Trespass order is needed.
1. **Emergency Removal for students** may include but is not limited to; interim suspension from campus, including all property owned or controlled by the University. Students may appeal this decision (see section E below).
 2. **Administrative Leave for Employees** is consistent with the Faculty Handbook, University, UNC System, and OSHR policies, administrative leave can be imposed on an employee (SHRA, EHRA, Faculty) at any time after Notice has been given of an alleged act(s) of Prohibited Conduct. The decision to place an employee on administrative leave is not appealable.

D. Refusal of Respondent to Comply with Emergency Removal / Administrative Leave.

A Respondents refusal to cooperate with the Emergency Removal / Administrative Leave may result in disciplinary action for failure to comply.

E. Appeal of Emergency Removal (students)

A student Respondent will be provided an opportunity to appeal any decisions for Emergency Removal in writing to the Title IX Coordinator or designee within five (5) business days of notice of the Emergency Removal. The Title IX Coordinator will appoint an appellate officer to review the appeal. The appellate officer will be someone that was not involved in the decision to implement the Emergency Removal.

F. Employees placed on Administrative Leave

Employees placed on administrative leave do not have a right to appeal that decision.

G. Filing a Formal Complaint

The Title IX Coordinator or designee is responsible for receiving Formal Complaints from a Complainant, as well as informing the Complainant of all rights available to them, including the right to an Advisor.

Complainant Chooses to File a Formal Complaint

If the Title IX Coordinator or designee identify that the Complainant wishes to file a Formal Complaint, then the Title IX Coordinator or designee will assist the Complainant to file a Formal Complaint with the Office of Title IX Compliance and will help ensure that the Formal Complaint is correctly completed. The Title IX Coordinator will also explain Title IX procedures and options that may include an informal resolution, if appropriate.

Complainant Does Not Choose to File a Formal Complaint

If the Title IX Coordinator or designee determines that the Complainant does not wish to file a Formal Complaint, then the Title IX Coordinator or designee will inform the Complainant that the Complainant may choose to file a Formal Complaint at a later time. Additionally, the Title IX Coordinator will inform the Complainant that, should circumstances show that there is a compelling threat to campus safety or health that is related to the Formal Complaint, then the Title IX Coordinator may elect to proceed with a formal Title IX investigation.

9 Evaluation of a Formal Complaint

A. Determination to Dismiss a Formal Complaint.

A decision by the Title IX Coordinator to dismiss a formal complaint before instituting a Formal Grievance Process is appealable by any Party under the procedures for appeal below. The decision not to dismiss is also appealable by any Party claiming that dismissal is required or appropriate. A Complainant who decides to withdraw a formal complaint may later request to reinstate it or refile it. Upon any dismissal, Appalachian will promptly send written notice of the dismissal and the rationale for doing so simultaneously to the Parties.

B. Title IX Mandatory Dismissal of a Formal Complaint

Appalachian must dismiss a Formal Complaint, if at any time before or during the investigation or hearing, it is determined that:

1. the conduct alleged in the formal complaint would not constitute Prohibited Conduct as defined within these procedures, even if proven; or
2. the conduct did not occur in an Educational Program or Activity; or
3. the conduct did not occur against a person in the United States; or
4. at the time of filing a formal complaint, a Complainant was not participating in or attempting to participate in the Education Program or Activity.

However, if a formal complaint is required to be dismissed under Title IX it may still be investigated and adjudicated under **Appalachian Policy 112 – Sex-Based Misconduct** and these procedures because the conduct may be prohibited at Appalachian regardless of whether it is dismissed under Title IX.

C. Discretionary Dismissal

Appalachian, at the sole discretion of the Title IX Coordinator, or designee, may dismiss a Formal Complaint, 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; or
2. the Respondent is no longer enrolled in or employed by Appalachian, as applicable; or
3. specific circumstances prevent Appalachian from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

D. Rights Reserved to Appalachian

Dismissing a Formal Complaint under Title IX is solely a procedural requirement under Title IX and does not limit Appalachian's authority to address a complaint with an appropriate process or remedy consistent with this procedure.

E. Determination to Proceed with a Formal Complaint

There are only two circumstances where a Formal Complaint will proceed to a formal Title IX resolution process:

- 1. Formal Complaint Filed by a Complainant.** A Complainant may submit a Formal Complaint to the Title IX Coordinator alleging Prohibited Conduct against a Respondent. Upon receipt of a Formal Complaint, the Title IX Coordinator or designee will review all supportive measures and resolution options with the Complainant and their Advisor, and determine if an investigation is the most appropriate means to address the complaint. The Title IX Coordinator will assign an Investigator to investigate the allegation(s) if there are no procedural grounds for dismissal or an informal resolution.

2. Formal Complaint Signed by the Title IX Coordinator. The Title IX Coordinator has the discretion over whether the Academy will proceed with a formal review when the Complainant does not wish to file a Formal Complaint. In deciding, the Title IX Coordinator will evaluate the situation in light of the duty to ensure the safety of the University and to comply with federal and state law, and may sign a Formal Complaint to initiate the grievance process upon completion of an appropriate safety assessment made by the Title IX Coordinator or designee. The University's ability to remedy and respond to Notice may be limited if the Complainant does not want the University to proceed with the Formal Grievance Process.

The safety assessment will be based on the results of a campus safety assessment that shows a compelling risk to health or safety that requires the University to pursue a Formal Grievance process to protect the University community. A compelling risk to health or safety may result from evidence of patterns of misconduct, predatory conduct, threats, abuse of campus community members, use of weapons, or violence. Furthermore, the Title IX Coordinator will consider the effects on the availability of evidence and the University's ability to pursue a Formal Grievance Process fairly and effectively, if the Complainant chooses not to participate in the Title IX resolution process.

The Complainant retains all rights and status as a Complainant irrespective of their level of participation. Typically, when the Complainant chooses not to participate, the Advisor may be appointed as proxy for the Complainant throughout the process, acting to ensure and protect the rights of the Complainant, though the Advisor will not be able to provide evidence or testimony.

10 Presumption of Responsibility, Timelines, and Advisors

A. Presumption of Non-Responsibility of Respondent

For purposes of these procedures, the Respondent is presumed to be not responsible for any of the allegations in the formal complaint.

B. Training, Impartiality, and Neutrality of the Title IX Team

The Formal Grievance Process relies on the Title IX Team to carry out the Title IX resolution process. The names of members of the Title IX Team will be published annually in these procedures. They will also be listed in the Annual Title IX Report published by the Office of Title IX Compliance and on the Office of Title IX Compliance website at <https://titleix.appstate.edu>.

Members of the Title IX Team receive annual training that includes but is not limited to:

- How to conduct impartial and unbiased investigations and hearings;
- How to assess credibility, weigh evidence, and make determinations of fact; and
- How to ensure due process rights are afforded to all Parties.

Any individual materially involved in the administration of the resolution process (including the Title IX Coordinator, any Investigator, and any Decision-maker) may neither have nor demonstrate 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) to ensure 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 a conflict is identified, another Investigator(s) will be assigned and the impact of the bias or conflict, will be remedied. If the source of the conflict of interest or bias is the Title IX Coordinator, concerns should be raised with the appropriate administrative officer(s).

C. Timeliness of Resolution

Appalachian will make a good faith effort to complete the Formal Grievance Process within ninety (90) business days, including appeal, which can be extended as necessary for appropriate cause by the Title IX Coordinator. The Title IX Coordinator will provide notice with rationale for any extensions or delays to the Parties as appropriate, as well as an estimate of the additional time needed to complete the process.

D. Advisors

Each Party may have an Advisor of their choice present with them for all meetings, interviews, and hearings within the resolution process, should they so choose. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is eligible and available. An Advisor may be a friend, mentor, family member, attorney, or any other individual a Party chooses to advise, support, or consult with them throughout the resolution process. The Parties may choose Advisors from inside or outside of the Appalachian community. Parties also have the right to choose not to have an Advisor in the initial stages of the resolution process, up until the point of a live hearing where an Advisor is mandatory.³

1. Option for Provision of Advisors by Title IX Coordinator. The Title IX Coordinator will provide Parties with the option to choose an Advisor from an available University pool. All Advisors in this pool have been trained by the University and will be familiar with Appalachian's resolution process.

2. Potential Conflicts. Choosing an Advisor who is also a witness may create the potential for bias and a conflict-of-interest. These potential biases or conflicts will be reviewed by the Decision-Maker(s).

11 Resolution Options Outside of a Formal Investigation and Hearing

A. Informal Resolutions

The Title IX Coordinator may facilitate an informal resolution between the Parties after a Formal Complaint has been filed. A Respondent who wishes to initiate an informal resolution after a Formal Complaint has been filed should contact the Title IX Coordinator.

³ More information is available in Appendix B: Roles and Expectations of Advisors.

Before implementing an informal resolution process, Appalachian will provide the Parties with written notice of the reported misconduct and any sanctions or measures that may result from participating in such a process, including information regarding any records that will be maintained or shared by Appalachian. Appalachian 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.

Any Party participating in an informal resolution can stop the process at any time and begin or resume the Formal Grievance Process. Additionally, an informal resolution may be entered at any time before a determination of responsibility has been made by the University.

When an informal resolution is accomplished, the appropriate sanction or responsive actions will be promptly implemented to effectively stop the Prohibited Conduct, prevent its recurrence, and remedy the effects of the discriminatory conduct, both on the Complainant and the community.

B. Respondent Acceptance of Full Responsibility

The Respondent may accept responsibility for all or part of the alleged policy violations at any point during the resolution process. If the Respondent indicates an intent to accept responsibility for all of the alleged misconduct, the Formal Grievance Process will be paused, and the Title IX Coordinator will determine whether informal resolution can be used.

If informal resolution is applicable, the Title IX Coordinator will determine whether all Parties and Appalachian can agree on responsibility, sanctions, and/or remedies. Upon agreement of the Parties, the Title IX Coordinator or designee, in collaboration with the appropriate administrative official(s), will implement a Finding that the Respondent is in violation of Prohibited Conduct and the agreed-upon sanctions or remedies.

This result of an informal resolution is not subject to appeal once all Parties indicate their written assent to all agreed-upon terms of the resolution. When the Parties cannot agree on all terms of resolution, the Formal Grievance Process will resume at the same point where it was paused.

C. Complainant Satisfaction with Sufficiency of Supportive Measures.

The Title IX Coordinator or designee may resolve a Formal Complaint with an informal resolution by providing supportive measures to remedy the complaint, if the supportive measures offered to the Complainant are both fully satisfactory to the Complainant and are sufficient to remedy the reported allegations.

D. Withdrawal or Resignation of Respondent (Students)

Should a student decide to not participate in the Resolution Process, the process proceeds absent their participation to a reasonable resolution. Should a student Respondent permanently withdraw from Appalachian, the Resolution Process or investigation may continue providing the Parties with an opportunity to participate in the process. The Title IX Coordinator will determine if the case will be referred to a Hearing Panel at the conclusion of the investigation.

However, Appalachian 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 Prohibited Conduct. The student who withdraws or leaves while the process is pending may not return to Appalachian without completing the Formal Grievance Process. If the student that withdraws refused to complete the Formal Grievance Process, Admissions will be notified that they cannot be readmitted until the student completes the Formal Grievance Process. They may also be barred from Appalachian's property and/or events for failing to complete the Formal Grievance Process.

If the student Respondent only withdraws or takes a leave for a limited time (e.g., one semester or term), during the Formal Grievance Process, the resolution process may continue remotely. If the Formal Grievance Process is completed while the Respondent is no longer at the University, the Respondent may only return to the University after the completion of any sanction(s) that were imposed.

E. Withdrawal or Resignation of Respondent (Employees)

If an employee resigns during a pending allegation of Prohibited Conduct, then the resolution process or investigation will continue providing the Parties with an opportunity to participate in the process. The Title IX Coordinator will determine if the case will be referred to a Hearing Panel at the conclusion of the investigation.

Appalachian will continue to address and remedy any systemic issues, variables that contributed to the alleged violation(s), and any ongoing effects of the alleged prohibited conduct.

The employee who resigns with unresolved allegations pending may not be eligible for rehire with Appalachian and the records retained by the Title IX Coordinator and the Office of Human Resources may reflect that status. All Appalachian responses to future inquiries regarding employment references should be referred to the Office of Human Resources.

F. Alternative Dispute Resolution Mechanisms

Alternate dispute resolution is an informal mechanism, including mediation, by which the Parties reach a mutually agreed-upon resolution of an allegation. All Parties must consent to the use of an alternate dispute resolution mechanism.

The Title IX Coordinator may look to the following factors to assess whether alternate dispute resolution is appropriate, or which form of alternate dispute resolution may be most successful for the Parties:

- The Parties' amenability to alternate dispute resolution;
- Likelihood of potential resolution, considering any power dynamics between the Parties;
- The Parties' motivation to participate;
- Civility of the Parties;
- Results of any Campus Safety Assessment or any ongoing risk analysis;
- The disciplinary history of the Parties;
- The skill of the alternate dispute resolution facilitator with this type of allegation;
- Formal complaint complexity;
- Emotional investment, rationality, and/or capability of the Parties;
- Goals of the Parties;
- Adequate resources to invest in alternate dispute resolution (time, staff, etc.).

The ultimate determination of whether alternate dispute resolution is available or successful is to be made at the sole discretion of the Title IX Coordinator. The Title IX Coordinator maintains records of any resolution that is reached, and failure to abide by the resolution agreement may result in appropriate

responsive/disciplinary actions. Results of formal complaints resolved by informal resolution or alternate dispute resolution are not appealable.

12 Formal Grievance Process and Investigation

A. Initiation

A Formal Grievance Process will commence when either:(1) a Complainant files a Formal Complaint with the Director of Title IX Compliance; OR (2) The Director of Title IX Compliance signs a Formal Complaint, as previously discussed in these procedures.

B. Investigation

All formal investigations of Formal Complaints will be handled by the Office of Title IX Compliance in accordance with these procedures. Due process shall be ensured for all Parties and the investigation will be conducted by trained, impartial, and neutral investigators working under the presumption that the Respondent is not responsible for the alleged Prohibited Conduct. The investigation will ultimately result in an investigative report that all Parties may review before the investigative report is finalized and sent forward for adjudication.

The University strives to ensure that all investigations are thorough, reliable, impartial, prompt, and fair. Investigations involve the process of conducting interviews with all relevant Parties and witnesses; obtaining available, relevant evidence; and identifying sources of expert information, as necessary.

All Parties shall have a full and fair opportunity, throughout the investigative process, to suggest witnesses and questions, to provide evidence and expert witnesses, and to fully review and respond to all evidence on the record.

C. Notice of Investigation and Allegation(s)

The Title IX Coordinator or designee will provide written notice of the investigation and allegations (the “NOIA”) to the Respondent upon commencement of the Formal Grievance Process. This notice facilitates the Respondent’s ability to prepare for the interview and to identify and choose an Advisor to accompany them. The NOIA is also provided to the Complainant, who is to be given advance notice of when the NOIA will be delivered to the Respondent.

Notice will be made in writing and may be delivered by one or more of the following methods: in person, mailed to the local or permanent address(es) of the Parties as indicated in official Appalachian records, or emailed to the Parties’ University-issued email address or other designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered. Amendments and updates to the NOIA may be made as the investigation progresses and more information becomes available regarding the addition or dismissal of various charges.

The NOIA will include:

- A meaningful summary of all allegations;
- The identity of the involved Parties (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 Appalachian 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 provided an opportunity to inspect and review all related or relevant evidence obtained during the review and comment period;
- A statement about Appalachian's policy on retaliation;
- Information about the privacy of the process;
- Information on the need for each Party to have an Advisor of their choosing and suggestions for ways to identify an Advisor;
- A statement informing the Parties that Appalachian's Policy prohibits knowingly making false statements, including knowingly submitting false information during the resolution process;
- Referral to the Office of Disability Resources to request accommodations on the basis of disability during the Grievance Process;
- A link to Appalachian's VAWA Brochure, Resource Guide for Sex-Based Misconduct at Appalachian State University;
- 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 related to the allegations.

D. Appointment of Investigator(s)

Once the decision to commence a formal investigation is made, the Title IX Coordinator shall appoint the investigator(s) to conduct the investigation, usually within three (3) business days of determining that an investigation should proceed.

E. Investigation Process

The Office of Title IX Compliance will make a good faith effort to complete investigations as promptly as circumstances permit. Investigations are to be pursued expeditiously, and all interviews and collection of evidence normally should occur within sixty (60) business days but may on occasion take longer based on the cooperation of the involved Parties and witnesses. The Office of Title IX Compliance will communicate regularly with the Parties to update them on the progress and timing of the investigation.

F. Delays in the Investigation Process

Some investigations may take weeks or even months, depending on the nature, extent, and complexity of the allegations, availability of witnesses, police involvement, and other factors beyond the control of the University and the Parties.

Appalachian may undertake a short delay in its investigation (several business 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 absence of Parties or witnesses, the need for language assistance, and coordination of accommodations on the basis of disability.

Appalachian will communicate in writing the anticipated duration of the delay and reason to the Parties and provide the Parties with status updates if necessary. Appalachian will promptly resume its investigation and Resolution Process as soon as feasible. During such a delay, Appalachian will implement supportive measures as deemed appropriate.

G. Collection and Preservation of Evidence

Investigators will typically engage in the following steps, though not necessarily in the order outlined here:⁴

- Assist the Title IX Coordinator with conducting a prompt initial assessment to determine if the allegations indicate a potential policy violation;
- Provide Parties with information regarding available supportive measures;
- Identify all policies implicated by the alleged misconduct and notify the Complainant and Respondent of all of the specific policies implicated;
- Commence a thorough, reliable, and impartial investigation by identifying issues and developing a strategic investigation plan, including a witness list, evidence list, intended investigation timeframe, and order of interviews for all witnesses and the Parties;
- Maintain and preserve all evidence collected throughout the investigation;
- Interview Parties (with Advisors present as desired) and witnesses in a neutral, unbiased manner, informed by annual training for the investigators;
- Provide each interviewed Party and witness an opportunity to review and verify the Investigator's summary notes or transcript of the relevant evidence/testimony from their respective interviews and meetings;
- Make good faith efforts to notify the Parties of any meeting or interview involving the other Party, in advance when possible;
- When participation of a Party is expected, provide that Party with written notice of the date, time, and location of the meeting, as well as the expected participants and purpose;

⁴ More information regarding witnesses (as opposed to Parties) is available in Appendix C: Roles and Expectations for Witnesses.

- Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- Allow each Party the opportunity to suggest witnesses and questions they wish the Investigator(s) to ask the other Party and witnesses, and document in the report which questions were asked, with a rationale for any changes or omissions;
- Complete the investigation promptly and without unreasonable deviation from the intended timeline;
- Provide regular status updates to the Parties throughout the investigation; and
- Before the conclusion of the investigation, provide the Parties and their respective Advisors (if so desired by the Parties) a draft report with the evidence, including witnesses and documents, that will be used in constructing the investigative report for review to allow both Parties an opportunity to respond to the evidence prior to the conclusion of the investigation.

H. Production and Dissemination of an Investigative Report

Before the conclusion of the investigation, the investigator(s) shall:

- Construct a comprehensive draft investigative report fully summarizing the investigation, all relevant Party and witness interviews, and all relevant evidence collected, and rendering no recommendations or conclusions regarding responsibility in the formal complaint being investigated;
- Provide the Parties and their respective Advisors (if so desired by the Parties) a secured 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 related to the reported misconduct, including any evidence upon which Appalachian does not intend to rely in reaching a determination, for a review and comment period of ten (10) business days so that each Party may meaningfully respond to the evidence. The Parties may elect to waive the full ten (10) business days. Each copy of the materials shared will be watermarked on each page with the role of the person receiving it (e.g., Complainant, Respondent, Complainant's Advisor, Respondent's Advisor);
- Respond to submitted responses and comments of the Parties pertaining to their review of the investigative report;
- Share any responses and comments of the Parties pertaining to the draft investigative report with other Parties for additional responses, as appropriate;
- Incorporate relevant statements presented by the Parties' written responses into the final investigation report, including any additional relevant evidence, make any necessary revisions, and finalize the report. The Investigator(s) should document all rationales for any changes made after the review and comment period;
- Share the report with the Title IX Coordinator for their review and feedback;
- Share the final report with all Parties and their Advisors through secure electronic transmission or hard copy at least ten (10) business days prior to a hearing; and
- Provide the Parties with a file of any related evidence that was not included in the report.

I. Forwarding of Investigative Report to Hearing Panel

At the conclusion of an investigation by the Office of Title IX Compliance of a Formal Complaint under these procedures and if an informal resolution has not been conducted, the final investigative report will be made available to both Parties and will be forwarded for use in a live hearing before a Hearing Panel.

13 Hearings: Composition and Notice

A. Adjudication and Standard of Proof

The Formal Grievance Process involves an objective evaluation of all relevant evidence obtained, including evidence that supports that the Respondent engaged in a policy violation and evidence that 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. The Respondent is presumed to not be responsible for allegations. Formal rules of evidence and procedure of civil and criminal courts do not apply.

The standard of proof used to determine the level of evidence needed to reach a determination in an administrative or adjudicative process that an individual is responsible for any alleged violation(s) will be the preponderance of the evidence (i.e., that it is more likely than not that the individual engaged in Prohibited Conduct). This determination must be based solely on the information presented, which may include, but is not limited to pertinent records (e.g., Formal Complaints, police reports, investigation reports), exhibits (e.g., photographs, audio/video information, electronic communications including social media), and written or oral statements.

B. Hearing Timing and Graduating Respondents

Hearings for possible violations that occur near or after the end of an academic term and are unable to be resolved before the end of the term will typically be held immediately after the end of the term or during the summer, as needed, to meet the resolution process timeline addressed in these procedures.

If the Respondent is a graduating student, a hold may be placed on a diploma or official transcripts until the matter is fully resolved (including any appeal). A student pending the resolution of an alleged violation of Prohibited Conduct is not in good standing to graduate.

C. Composition of Live Hearing Panels

Each Hearing Panel will consist of one to three, trained hearing officer(s). The number of hearing officers will be determined based on availability of the hearing officer(s) and/or the nature of the offense. The nature of the offense is based on whether the alleged prohibited conduct may result in a sanction of a suspension or greater. Prohibited conduct that may result in suspension or greater are but not limited to; sexual assault, dating or domestic violence resulting in injury requiring medical attention, or stalking involving threats of violence.

Hearing officers may not be involved in any facet of the Formal Complaint prior to the hearing, and must not have conflict of interest or perceived conflict of interest with any Party or witness. Training for all Hearing Panel members will be the responsibility of the Office of Title IX Compliance.

Determination of the appropriate Hearing Panel to hear the Formal Complaint will be made by the Director of Title IX Compliance or designee. The Hearing Panel adjudicating the Formal Complaint, including the designation of the Hearing Panel's chairperson, depends upon the administrative office that governs the Respondent(s):

- For a student Respondent, the allegations, absent exceptional circumstances, will be heard by a Hearing Panel chaired by a representative from the Office of Student Affairs or designee;
- For a faculty Respondent, the allegations, absent exceptional circumstances, will be heard by a Hearing Panel chaired by a member of the Appalachian faculty or designee;
- For a staff Respondent, the allegations will, absent exceptional circumstances, be heard by a Hearing Panel chaired by a representative of the Office of Human Resources or designee; and
- For all other Respondents, including, but not limited to alumni/ae, volunteers, or others engaged in carrying out Appalachian programs and events, the Director of Title IX Compliance will determine the appropriate Hearing Panel to refer the formal complaint to for adjudication.

D. Notice of Live Hearing

No fewer than ten (10) business days prior to the hearing, the Title IX Coordinator or designee will send notice of the hearing to the Parties. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The notice will contain:

- A description of the alleged violation(s), a list of all policies allegedly violated, a description of the applicable procedures, and a statement of the potential sanctions/responsive actions that could result;
- The time, date, and location of the hearing and a reminder that attendance is mandatory, superseding all other campus activities;
- Any technology that will be used to facilitate the hearing;
- Information about the option for the live hearing to occur with the Parties located in separate rooms using technology that enables the Decision-maker(s) and Parties to see and hear a Party or witness answering questions. Such a request must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing;
- A list of all those who will attend the hearing, along with an invitation to object to any Decision-maker based on demonstrated bias. This must be raised with the Title IX Coordinator at least five (5) business days prior to the hearing;
- Information on how the hearing will be recorded and on access to the recording for the Parties after the hearing;
- A statement that if any Party or witness does not appear at the scheduled hearing, the hearing may be held in their absence, and the Party's or witness's testimony and any statements given prior to the hearing will not be considered by the Decision-Maker(s), and that for compelling reasons, the Hearing Chair may reschedule the hearing;

- Notification that the Parties may have the assistance of an Advisor of their choosing at the hearing and will be required to have one present for any questions they may desire to ask. The Party must notify the Title IX Coordinator if they do not have an Advisor, and Appalachian will appoint one. Each Party must have an Advisor present without exception;
- A copy of all the materials provided to the Decision-Maker(s) about the matter, unless they have been provided already;
- An invitation to each Party to submit to the Hearing Chair an impact statement pre-hearing that the Decision-Maker will review during any sanction determination;
- Referral to the Office of Disability Resources to request accommodations on the basis of disability. A minimum of ten (10) business days prior to the hearing is recommended; and
- Whether or not Parties may bring mobile phones or devices into the hearing.

E. Alternative Hearing Participation Options

If a Party or Parties prefer not to attend or cannot attend the hearing in person, the Party should request alternative arrangements from the Title IX Coordinator or the Hearing Chair at least five (5) business days prior to the hearing.

The Title IX Coordinator or the Hearing Chair can arrange to use technology to allow remote testimony without compromising the fairness of the hearing. Remote options may also be needed for witnesses who cannot appear in person. Any witness who cannot attend in person should let the Title IX Coordinator or the Hearing Chair know at least five (5) business days prior to the hearing so that appropriate arrangements can be made.

F. Joint Hearings

In hearings involving more than one Respondent or in which two (2) or more Complainants have accused 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 violation of Prohibited Conduct.

G. Hearing Rights and Requirements

The Hearing Panel will conduct a live hearing, either in person or virtually, on the Formal Complaint for the purpose of determining responsibility, as detailed under Title IX.

Questioning of Parties and Witnesses shall be permitted at these hearings and must be done by Party Advisors, as detailed under Title IX. See section 10 of these Procedures for further details of the Advisor's role and responsibilities.

14 Hearings: Pre-Hearing

A. Pre-Hearing Preparation

The Hearing Chair or hearing facilitator after any necessary consultation with the Parties, Investigator(s) and/or Title IX Coordinator, will provide the names of persons who will be participating in the hearing, all pertinent documentary evidence, and the final investigation report to the Parties at least ten (10) business days prior to the hearing.

Any witness scheduled to participate in the hearing must have been first interviewed by the Investigator(s) or have proffered a written statement or answered written questions unless all Parties and the Chair assent to the witness's participation in the hearing. The same holds for any evidence that is first offered at the hearing. If the Parties and Chair do not assent to the admission of evidence newly offered at the hearing, the Chair may delay the hearing and instruct that the investigation needs to be re-opened to consider that evidence.

The Parties will be given a list of the names of the Decision-Maker(s) at least ten (10) business days in advance of the hearing. This list will include alternate Decision-Maker(s) in case any originally selected Decision-Maker(s) are unavailable on the day of a hearing. All objections to any Decision-Maker must be raised in writing, detailing the rationale for the objection, and must be submitted to the Title IX Coordinator as soon as possible and no later than five (5) business day prior to the hearing. Decision-Makers will only be removed if the Title IX Coordinator concludes that their bias or conflict of interest precludes an impartial hearing of the allegation(s).

The Title IX Coordinator will give the Decision-Maker(s) a list of the names of all Parties, witnesses, and Advisors at least ten (10) business days in advance of the hearing. Any Decision-Maker who cannot make an objective determination must recuse themselves from the proceedings when notified of the identity of the Parties, witnesses, and Advisors in advance of the hearing. If a Decision-Maker is unsure of whether bias or any conflict of interest exists, they must raise the concern to the Title IX Coordinator as soon as possible.

If a Decision-Maker(s) that was originally assigned to the hearing becomes unexpectedly unavailable, the Title IX Coordinator or designee will attempt to find a replacement Decision-Maker(s) from a list of available alternate Decision-Maker(s) that were also reviewed by both Parties and deemed by the Title IX Coordinator to be able to serve impartially.

B. Pre-Hearing Meeting

The Chair may convene a pre-hearing meeting(s) with the Parties or their Advisors to invite them to submit the questions or discuss evidence they (the Parties and/or their Advisors) wish to ask or discuss at the hearing so that the Hearing Chair can rule on their relevance ahead of time to avoid any improper evidentiary introduction in the hearing or 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 based on any new information or testimony offered at the hearing. The Hearing Chair must document and share with each Party their rationale for any exclusion or inclusion at a pre-hearing meeting.

The Hearing Chair, with the full agreement of the 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 investigation report or during the hearing.

The pre-hearing meeting(s) will be recorded or transcribed. The Parties will receive either a transcript or recording of the pre-hearing meeting(s) prior to the Hearing.

15 Hearings: Processes and Procedures

A. Hearing Process and Procedures

At the hearing, the Hearing Panel or Decision-Maker(s) have the authority to hear and make determinations on all allegations of Prohibited Conduct, and may also hear and make determinations on any additional alleged University policy violations that have occurred in concert with the Prohibited Conduct.

Participants at the hearing will include the Hearing Chair, any additional Hearing Panelists, the hearing facilitator, as expressed below, the Investigator(s) who conducted the investigation, the Parties, Advisors to the Parties, any called witnesses, the Title IX Coordinator, individuals providing approved accommodations, and any other University administrators identified by the Title IX Coordinator that may need to be present at the hearing.

The Hearing Chair or Decision-Maker(s) will answer all questions of procedure. Anyone appearing at the hearing to provide information will respond to questions on their own behalf.

The Hearing Chair will allow witnesses who have relevant information to appear at a portion of the hearing to respond to specific questions from the Decision-Maker(s) and the Parties and will then be excused.

B. The Order of the Hearing – Introductions and Explanation of Procedure

1. The Hearing Chair is responsible for introducing the participants and explaining the hearing procedures. This may include a final opportunity for challenge or recusal of the Decision-maker(s) based on bias or any conflict of interest. The Hearing Chair will rule on any such challenge unless the Hearing Chair is the individual who is the subject of the challenge, in which case the Title IX Coordinator will review and decide the challenge.
2. The Hearing Chair or hearing facilitator will then conduct the hearing according to the hearing script and will assist with technological and process logistics.
3. The Investigator(s) will then present a summary of the final investigation report, including items that are contested and those that are not, and will be subject to questioning by the Decision-maker(s) and the Parties (through their Advisors). The Investigator(s) may be present during the entire hearing process, but not during deliberations.
4. Neither the Parties nor the Decision-maker(s) should ask the Investigator(s) their opinions on credibility, recommended findings, or determinations, and the Investigators, Advisors, and Parties will refrain from discussion of or questions about these assessments. If such information is introduced, the Hearing Chair will direct that it be disregarded.
5. The order of witnesses and the process for conducting the hearing will be determined by the Hearing Chair or Decision-Maker(s).
 - All questions may only be conducted by an Advisor and are subject to a relevance determination by the Hearing Chair or Decision-Maker, as applicable. The Advisor, who will remain seated during questioning, will pose the proposed question orally, electronically, or in writing [orally is the default, but other means of submission may be

permitted by the Hearing Chair or Decision-Maker(s) upon request if agreed to by all Parties and the Hearing Chair or Decision-Maker(s)], the proceeding will pause to allow the Hearing Chair or Decision-Maker(s) to consider it and communicate the determination orally. The Hearing Chair or Decision-Maker(s) will determine whether the question will be permitted, disallowed, or rephrased.

- The Hearing Chair or Decision-Maker(s) may invite explanations or persuasive statements regarding relevance by the Advisors if the Hearing Chair or Decision-Maker(s) so chooses. The Hearing Chair or Decision-Maker(s) will then state their decision on the question for the record and advise the Party/witness to whom the question was directed, accordingly. The Hearing Chair or Decision-Maker(s) will explain any decision to exclude a question as not relevant or to reframe it for relevance.
- The Hearing Chair or Decision-Maker(s) will limit or disallow questions on the basis that they are irrelevant, unduly repetitious (and thus irrelevant), or abusive. The Hearing Chair or Decision-Maker(s) has the final say on all questions and determinations of relevance. The Hearing Chair or Decision-Maker(s) may consult with legal counsel on any questions of admissibility. The Hearing Chair or Decision-Maker(s) may ask Advisors to frame why a question is or is not relevant from their perspective but will not entertain argument from the Advisors on relevance once the Hearing Chair or Decision-Maker(s) has ruled on a question.
- If the Parties raise an issue of bias or conflict of interest of an Investigator, Hearing Panel or Decision-Maker at the hearing, the Hearing Chair or Decision-Maker(s) may elect to address those issues, consult with legal counsel, refer them the Title IX Coordinator, or preserve them for appeal. If bias is not in issue at the hearing, the Hearing Chair or Decision-Maker(s) should not permit irrelevant questions that probe for bias.

C. Refusal to Submit to Cross-Examination and Inferences

If a Party or witness chooses not to submit to cross-examination at the hearing, either because they do not attend the meeting, or they attend but refuse to participate in questioning, then the Decision-Maker(s) may not rely on any statement made by the Party or witness (including those contained in the investigation report) in reaching a determination of responsibility. Evidence provided that is something other than a statement by the Party or witness may be considered.

The Decision-Maker(s) may not draw any inference about the determination regarding responsibility based solely on a Party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions.

If charges of policy violations other than Prohibited Conduct, as defined under these procedures, are considered at the same hearing, then the Decision-Maker(s) may: (a) consider all evidence it deems relevant, (b) rely on any relevant statement as long as the opportunity for cross-examination is afforded to all Parties through their Advisors, and (c) draw reasonable inferences from any decision by any Party or witness not to participate or respond to questions.

If a Party's Advisor of choice refuses to comply with Appalachian's established rules of decorum for the hearing, Appalachian may stop the hearing, ask the Advisor to leave the hearing and advise the Party to select a different Advisor. The Party may be permitted at least five (5) business days to find another Advisor to allow their new Advisor to review the investigation report and prepare for the hearing before

proceeding with the hearing. If the Party is unable to find a new Advisor within the specified time period, Appalachian reserves the right to assign the Party an Appalachian-provided Advisor. If an Appalachian-provided Advisor refuses to comply with the rules of decorum, Appalachian may provide that Party with a different Appalachian Advisor to conduct cross-examination on behalf of that Party.

D. Recording Hearings

Appalachian will create an audio, audiovisual recording, or transcript, of any live hearing (but not deliberations) and make it available to the Parties for inspection and review. The Parties may not record the proceedings and no other recordings will be permitted.

The Decision-Maker(s), the Parties, their Advisors, and appropriate administrators of Appalachian will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without permission from the Title IX Coordinator.

16 Hearings: Decision and Notice of Outcome

A. Decision and Issuance of Findings to the Parties

The Decision-Maker(s) or Hearing Panel, as applicable, will deliberate at the conclusion of a hearing and make a determination regarding responsibility for each matter of Prohibited Conduct alleged against the Respondent. The Decision-Maker(s) or Hearing Panel will then consult with the appropriate administrative authority to determine an appropriate sanction(s). Once a decision is made on sanction, the Parties will receive a Notice of Outcome that includes the decision on responsibility and if a sanction was imposed as addressed below.

B. Notice of Outcome

The Decision-Maker(s) will work with the Title IX Coordinator to prepare a written Notice of Outcome. The Title IX Coordinator or designee will then share the notice, including the final determination, rationale for the determination on each allegation raised, and any applicable sanction(s) with the Parties and their Advisors within ten (10) business days of receiving the Decision-maker(s)' deliberation statement.

The Notice of Outcome will be shared with the Parties simultaneously. Notification may be delivered by one or more of the following methods: in person, mailed to the local or permanent address of the Parties as indicated in official Appalachian records, or emailed to the Parties' University-issued email address or other designated accounts. Once mailed, emailed, and/or received in-person, notice will be presumptively delivered.

The Notice of Outcome will articulate any specific policies reported to have been violated, including the relevant policy section(s), and will contain a description of the procedural steps taken by Appalachian from the receipt of the misconduct report to the determination, including any notifications to the Parties, interviews with Parties and witnesses, site visits, methods used to obtain evidence, and hearings held.

To the extent Appalachian is permitted to share such information under state or federal law, the Notice of Outcome will specify the finding on each alleged policy violation; the findings of fact that support the determination; conclusions regarding the application of the relevant policy to the facts at issue; a statement of, and rationale for, the result of each allegation; any sanctions issued; and any remedies

provided to the Complainant designed to ensure access to Appalachian's Educational Program or Activity. Remedies will not be shared with the Respondent, unless the remedy directly relates to the Respondent.

The Notice of Outcome will also include information on when the results are considered by Appalachian to be final, any changes that occur before finalization, and the relevant procedures and bases for any available appeal options.

Before the Notice of Outcome is provided to the Parties, the Notice of Outcome may be reviewed by Appalachian's Office of General Counsel, at its discretion.

C. Assignment of No Responsibility to Respondent

In the event that a Respondent is not found responsible for any allegation, the Hearing Panel shall dismiss the Formal Complaint in its entirety.

D. Assignment of Full or Partial Responsibility to Respondent

In the event that the Hearing Panel finds the Respondent responsible for any of the allegations in the Formal Complaint, the Hearing Panel will then confer with the appropriate administrative officers to determine specific sanctions, in accord with Section 17, below.

Any sanctions will subsequently be incorporated into the Decision-Maker's Notice of Outcome that will be issued simultaneously to the Parties in a timely fashion. The Hearing Panel's or Decision-Maker(s) decision either to dismiss the Formal Complaint or to find responsibility and allocate sanctions is subject to appellate processes.

17 Sanctions

A. Sanctions for Parties Found Responsible

If the Decision-Maker(s) find the Respondent responsible for any of the allegations in the Formal Complaint, the Hearing Panel will, before issuing its Notice of Outcome to the Parties, consult with the administrative officers listed below, who in turn, will determine specific sanctions.

B. Referral for Sanctions

The Decision-Makers listed below must consult with the Decision-Maker(s) before providing a written decision on sanction(s) and written rationale(s) for inclusion in the Decision-Maker(s) Notice of Outcome.

1. Student Respondent. For a student Respondent, a finding of responsibility will be shared with a representative from the Office of Student Affairs or designee for sanctioning.

2. Faculty Respondent. For a Faculty Respondent, a finding of responsibility will be shared with the Provost or designee for sanctioning.

3. SHRA or EHRA Non-Faculty Respondent. For SHRA or EHRA Non-Faculty Respondents, a finding of responsibility will be shared with the Director of the Office of Human Resources or designee for sanctioning.

C. Factors to Be Assessed in Sanctioning

In assessing any sanction in light of a Hearing Panel's Finding of responsibility, the Decision-Maker shall, at minimum, consider the following, to reach a just and appropriate resolution for each case:

- The nature and violence of the conduct at issue as well as the degree of any damage, injury, or harm resulting from it;
- The impact of the conduct on the Complainant or other relevant Parties;
- The impact or implications of the conduct on Appalachian and the campus community;
- Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at Appalachian or elsewhere (if known), including criminal convictions;
- Whether the Respondent has accepted responsibility for the conduct;
- Maintenance of a safe and respectful educational and employment environment;
- Information provided in an impact statement;
- Protection of the University community;
- Any other mitigating, aggravating, or compelling circumstances relevant to the misconduct including, but not limited to a Respondent's demonstration of insight about their behavior, present demeanor, and attitude; and
- The professional judgement of the Decision-Maker(s).

18 Range of Sanctions

A. Sanctions for Students

The range of sanctions for Prohibited Conduct by a student Respondent may include, alone or in combination, any of the following:

- Letter of Concern.
- Disciplinary Warning.
- Disciplinary Probation.
- Suspension.
- Expulsion.
- Community Service with a non-profit agency.
- Restitution for loss, damage, or actual expenses incurred as a result of the student's behavior.
- Participation in educational programming, which may include online programs, counseling, evaluation and compliance with any recommendations, reflection pieces, or other activities.

- Program service fee for on-campus alcohol and other drug education.
- Change in current University Housing assignment.
- Loss of University Housing privileges.
- Random drug testing at the student's expense.
- Restriction from representing the University in any official function or leadership position (e.g., varsity athletics, student leadership position, cheerleader, senator or officer in Student Government Association, elected office in any recognized student organization).
- Ban for a definite or indefinite period of time from all or a portion of any University premises or University-sponsored activity.
- Restriction of contact with, or proximity to, other specified members of the University community.
- Any other sanction determined appropriate by a Conduct Review Officer or Board.

B. Sanctions for Faculty, SHRA, and EHRA Non-Faculty Employees

The range of sanctions for Prohibited Conduct by an employee (faculty or staff) Respondent may include, alone or in combination, those listed below. This list is not exhaustive. Other sanctions may be imposed instead of, or in addition to, those specified in these procedures. Each incident will be reviewed on an individual basis. University policies prohibit a broad range of behaviors, all of which are serious in nature. Depending on the specifics of the incident, more or less severe sanctions may be imposed.

- Letter of reprimand/Written Warning: Notice, in writing, that continuation or repetition of Prohibited Conduct may be cause for additional disciplinary action. Such letter will be placed in the employees personnel file.
- Educational Requirements: Completion of training, projects, programs, or requirements designed to help the responsible Party manage behavior and understand why it was inappropriate (including any appropriate and relevant community service opportunities or professional development).
- Enhanced Supervision, Observation or Review: More frequent and/or more in-depth supervision or formal review of performance or conduct relevant to the violation.
- Formal Performance Improvement Plan (Not applicable for faculty).
- Restitution: Repayment to the University and/or an affected Party for damages resulting from the policy violation.
- Removal from administrative role: Removal from current administrative role (e.g., program director, assistant/associate dean, etc.) accompanied by loss of associated stipend.
- Assignment to a New Supervisor (Not applicable for faculty).
- Transfer and/or Reassignment of Duties (Not applicable for faculty).
- Restriction of Professional Development Resources (Not applicable for faculty).
- Decrease in pay or denial of pay increase: Decrease in pay for a specified period of time, or denial of scheduled pay increase.

- Denial of Promotion (Not applicable for faculty).
- Demotion in rank: Reduction in faculty rank, accompanied by associated pay decrease. Upon a specified period of time, request for promotion in rank may be considered.
- Suspension without pay: Exclusion from University premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the employee's personnel file. Conditions for return to work may be specified in the suspension notice.
- Discharge: Permanent termination of employment status and exclusion from University premises, privileges, and activities. This action will be permanently recorded in the employee's personnel file.

C. Failure to Comply with Sanctions and/or Interim and Long-term Remedies 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-maker(s). 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 Appalachian and may be noted on a student's official transcript or employee's personnel file. A suspension will only be lifted when compliance is achieved to the satisfaction of the Title IX Coordinator or appropriate administrative official.

19 Appeals

A. Appeal of Finding of Responsibility

Appeals must be written and submitted to the Title IX Coordinator or designee within five (5) business days of receiving the Hearing Panel's Notice of Outcome. Appeals must include a rationale and any supporting evidence for any of the grounds for appeals listed below.

B. Grounds for Appeals

The Complainant and/or the Respondent may appeal the Decision-Maker(s) Finding of responsibility or decision to dismiss the Formal Complaint on any of these three bases: (1) 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; and (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 individual Complainant or Respondent that affected the outcome of the matter.

C. Decision Regarding Appeals of Responsibility

Appeals will be reviewed by a trained appellate officer or appeals panel assigned by the Title IX Coordinator or designee.

D. Appeal of Sanctions Assessed

Appeals of University decisions regarding sanctions will be addressed in the procedures provided by each administrative office that was responsible for the determination of the sanction(s). Each administrative office will author and publish procedures to resolve appeals of sanctions in cases of Prohibited Conduct. However, any supportive measures shall remain in place.

20 Implementation of Procedures

In accordance with Title IX, Appalachian's Director of Title IX Compliance serves as Appalachian's Title IX Coordinator and oversees all implementation of these procedures pursuant to **Appalachian Policy 112 – Sex-Based Misconduct**. The Director of Title IX Compliance is responsible for the creation and implementation of procedures, and by extension the Office of Title IX, to address Sex-Based Misconduct and Retaliation. All members of the Title IX Team are evaluated and trained to ensure they are not biased for or against any Party in a specific case, or for or against Complainants or Respondents. The Title IX Coordinator manages the Office of Title IX Compliance and acts with independence and authority free from bias and conflicts of interest. The Title IX Coordinator oversees all resolutions under these procedures.

21 Academic Freedom

As permitted by federal and state law, Appalachian supports and encourages full freedom of inquiry, discourse, teaching, research, and publication. Such opportunities are afforded in pursuit of knowledge and learning without fear of sanction unless the manner of expression is found through the administration of these Procedures to substantially impair the rights of others.

22 Contact Information for Questions and Concerns

A. Any questions regarding Title IX may be referred internally to the Title IX Coordinator; or externally to the U.S. Department of Education's Office of Civil Rights, or the U.S. Equal Opportunity Commission

Title IX Coordinator and Office of Title IX Compliance

Director Title IX Compliance
Office of Title IX Compliance
123 I.G. Greer Hall | P.O. Box 32053
Appalachian State University
Boone, NC 28608
828.262.2144
Email: titleix@appstate.edu
Website: titleix.appstate.edu

U.S. Department of Education's Office for Civil Rights

Office for Civil Rights (OCR)
U.S. Department of Education
400 Maryland Avenue, SW
Washington, D.C. 20202-1100

Customer Service Hotline #: (800) 421-3481
Facsimile: (202) 453-6012
Email: OCR@ed.gov
TDD#: (877) 521-2172
Web: <http://www.ed.gov/ocr>

U.S. Equal Employment Opportunity Commission

131 M Street, NE
Washington, DC 20507
Phone: 202-663-4900
Email: info@eeoc.gov
Web: <http://www.eeoc.gov>

B. Additional Contact Information for Appalachian Administrative Offices
Office of Academic Affairs
(828-262-2070)

Office of Human Resources
(828-262-3186)

Office of Student Conduct
(828-262-2704)

23 Authority and Additional References

[U.S. Dept. of Education Title IX Rules and Regulations, May 19, 2020](#)

[Code of Student Conduct](#)

[Equal Opportunity](#)

[EHRA Non-Faculty Grievances](#)

[Faculty Handbook](#)

Appalachian Policy 110 Discrimination and Harassment

[SHRA Grievance and Appeal Policy 601.6](#)

Appalachian Policy 301.4 Clery Act Compliance

Appalachian Policy 915 E-Mail as Official Means of Communication

Appalachian Policy 602.23 EHRA Non-Faculty Grievances

[The UNC Policy Manual, Chapter 100.1, The Code, Section 103](#)

North Carolina Office of State Human Resources - Unlawful Workplace Harassment

The UNC Policy Manual, Chapter 100.1, *The Code*, Section 103

The UNC Policy 1300.8 Policy on Free Speech and Free Expression Within the University of North Carolina System

Title II, Civil Rights Act of 1964, as amended (42 U.S.C. 2000a, *et seq.*)

Title IV, the Violence Against Women Act, Violence Crime Control and Law Enforcement Act of 1994

Title VII, Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, *et seq.*) Rehabilitation Act of 1973, as amended (29 U.S.C. 701 *et seq.*)

Title IX of the Education Amendments of 1972

Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990

Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301, *et seq.*)

Pregnancy Discrimination Act of 1978 (95 U.S.C. 555, *et seq.*)

24 Original Effective Date

8-14-2020

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APPENDICES: INFORMATION RELATED TO SEX-BASED MISCONDUCT PROCEDURES (subject to revision)

Note: These Appendices will be posted on the Office of Title IX Compliance website, titleix.appstate.edu, and updated regularly as needed.

Appendix A: NON-EXHAUSTIVE LIST OF SUPPORT RESOURCES AND SUPPORTIVE MEASURES POTENTIALLY AVAILABLE FOR COMPLAINANTS AND/OR RESPONDENTS

Appendix B: ROLES AND EXPECTATIONS FOR PARTY ADVISORS

Appendix C: ROLES AND EXPECTATIONS FOR WITNESSES

Appendix A: NON-EXHAUSTIVE LIST OF SUPPORT RESOURCES AND SUPPORTIVE MEASURES POTENTIALLY AVAILABLE FOR COMPLAINANTS AND/OR RESPONDENTS

The following lists of Resources for Complainants and Respondents will be maintained and updated as needed.

CONFIDENTIAL RESOURCES

1. On-Campus Confidential Resources for Complainants Who Do Not Wish to File a Formal Complaint or Have the Details of Their Concerns Reported

- a. Counseling & Psychological Services
Miles Annas Building | 828.262.3180 | counseling.appstate.edu
- b. Student Health Services
Miles Annas Building | 828.262.3100 | healthservices.appstate.edu
- c. Student Legal Clinic
324 Plemmons Student Union | 828.262.8284 | legalclinic.appstate.edu
- d. University Ombuds
I.G. Greer #236A | 828.262.2559 | ombuds.appstate.edu
- e. Counseling for Faculty and Staff
400 University Hall | 828.262.4951 | ihhs.appstate.edu
- f. Licensed professional counselors and licensed athletic trainers when working within the specific scope of their role as a licensed professional.

2. Off-Campus Confidential Resources for Complainants Who Do Not Wish to File a Formal Complaint or Have the Details of Their Concerns Reported

- a. OASIS (Opposing Abuse with Services, Information, and Shelter)
24-hour crisis line: 828.262.5035 | oasisinc.org
- b. Watauga Medical Center
336 Deerfield Rd | 828.262.4100 | apprhs.org/wataugamedical
- c. Legal Aid of NC
171 Grand Blvd | 828.335.4890 | legalaidnc.org
- d. North Carolina Coalition Against Sexual Assault
811 Spring Forest Rd, Suite 100, Raleigh | 919.871.1015 | nccasa.org
- e. North Carolina Coalition Against Domestic Violence

f. Local Clergy / Chaplains

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

SUPPORTIVE MEASURES AND RESOURCES

Supportive measures may include the following, alone or in combination, along with any other measures deemed necessary by the appropriate University personnel:

Specific University Actions

Academic modification

Employment modification

Residence modification

Safety planning

Parking modification

Facilitation of a coaching conversation

Facilitation of mediation or other alternative dispute mechanisms

No-Contact Directive

Assistance with connecting with the appropriate resources for obtaining a Protective Order

Referrals Coordinated with the Following Resources, Both On- and Off-Campus*

Academic Assistance (Advising/Registrar)

287 Rivers Street | 828.262.2050 | registrar.appstate.edu

Law Enforcement

a. Appalachian Police Department

461 River St | 828.262.2150 | police.appstate.edu

b. Watauga County Sheriff's Office

184 Hodges Gap Rd | 828.264.3761 | wataugacounty.org

c. Boone Police Department

1500 Blowing Rock Rd | 828.268.6900 | townofboone.net

Counseling and Psychological Services

Miles Annas Building | 828.262.3180 | counseling.appstate.edu

Faculty Notification

324 Plemmons Student Union | 828.262.8284 | casemanagement.appstate.edu

Faculty & Staff Counseling

400 University Hall | 828.262.4951 | ihhs.appstate.edu

MS Shook Student Medical Center

Miles Annas Building | 828.262.3100 | healthservices.appstate.edu

National Hotlines

- a. North Carolina Coalition Against Sexual Assault

811 Spring Forest Rd, Suite 100, Raleigh | 919.871.1015 | nccasa.org

- b. North Carolina Coalition Against Domestic Violence

3710 University Dr., Suite 140, Durham | 919.956.9124 | nccadv.org

OASIS, Inc.

24-hour crisis line: 828.262.5035 | oasisinc.org

Office of the Dean of Students

324 Plemmons Student Union | 828.262.8284 | casemanagement.appstate.edu

Office of Disability Resources

Suite 112 Anne Belk Hall | 828.262.3056 | odr.appstate.edu

Office of Human Resources (Including opportunities for Mediation for employees)

330 University Hall | 828.262.3187 | hr.appstate.edu

Office of the Ombuds

I.G. Greer #236A | 828.262.2559 | ombuds.appstate.edu

Office of the Provost

438 Academy St, Suite 207 | 828.262.2070 | academicaffairs.appstate.edu

Office of Title IX Compliance

123 I.G. Greer | 828.262.2144 | titleix.appstate.edu

Student Legal Clinic

171 Grand Blvd | 828.335.4890 | legalaidnc.org

Wellness and Prevention Services

Miles Annas SS, 614 Howard St | 828.262.3148 | wellness.appstate.edu

Watauga Medical Center

336 Deerfield Rd | 828.262.4100 | apprhs.org/wataugamedical

*Note that not all of the resources listed here are confidential. Please ask if you are requiring confidential services or note specifically those listed in this document, specifically noted as Confidential Resources.

Appendix B: ROLES AND EXPECTATIONS FOR PARTY ADVISORS

Advisor's Role in Meetings and Interviews

The Parties may be accompanied by their Advisor in all meetings and interviews at which the Party is entitled to be present, including intake and interviews. Advisors should help the Parties prepare for each meeting and are expected to advise ethically, with integrity, and in good faith.

Appalachian cannot guarantee equality of Advisors, meaning that if one Party selects an Advisor who is an attorney, but the other Party does not or cannot afford an attorney, Appalachian is not obligated to provide an attorney.

Where applicable under state law or Appalachian policy, Advisors or attorneys are permitted to fully represent their advisees or clients in resolution proceedings, including all meetings, interviews, and hearings. Although Appalachian prefers to hear from Parties directly, in these cases, Parties are entitled to have evidence provided by their chosen representatives.

Advisors in Hearings/Appalachian-Appointed Advisor

Under the U.S. Department of Education regulations regarding Title IX, a form of indirect questioning is required during the hearing, and 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, Appalachian will appoint a trained Advisor for the limited purpose of conducting any questioning of the other Party and witnesses.

A Party may reject this appointment and choose their own Advisor, but they may not proceed without an Advisor. If the Party's Advisor will not conduct questioning, Appalachian will appoint an Advisor who will do so thoroughly, regardless of the participation or non-participation of the advised Party in the hearing itself. Extensive questioning of the Parties and witnesses will also be conducted by the Decision-maker(s) during the hearing.

Pre-Interview Meetings

Advisors may request to meet with the administrative officials conducting interviews/meetings in advance of these interviews or meetings. This pre-meeting allows Advisors to clarify and understand their role and Appalachian's policies and procedures.

Advisor Violations of Appalachian Policy and Procedures

All Advisors are subject to the same Appalachian policies and procedures, whether they are attorneys or not. Advisors are expected to advise their advisees without disrupting proceedings. Advisors should not address Appalachian officials in a meeting or interview unless invited to (e.g., asking procedural questions). The Advisor may not make a presentation or represent their advisee during any

meeting or proceeding and may not speak on behalf of the advisee to the Investigator(s) or other Decision-maker(s) except during a hearing proceeding, during cross-examination.

An Advisor may be present during interviews of Parties; however, they are not permitted to speak or ask questions during interviews. Parties are required to respond for themselves and responses provided by an Advisor will not be considered by the Investigator or Decision Maker. The Title IX Coordinator will provide guidance before interviews to assist Advisors with the appropriate processes to consult with their advisee during interviews.

Any Advisor who oversteps their role as defined by these procedures may be warned. If the Advisor continues to disrupt or otherwise fails to respect the limits of the Advisor role, the meeting will be ended, or other appropriate measures implemented. Subsequently, the Title IX Coordinator will determine how to address the Advisor's non-compliance and future role.

Sharing Information with the Advisor

Appalachian expects that the Parties may wish to have Appalachian share documentation and evidence related to the allegations with their Advisors. Parties may share this information directly with their Advisor or other individuals if they wish. Doing so may help the Parties participate more meaningfully in the resolution process.

Appalachian also provides a consent form that authorizes Appalachian to share such information directly with their Advisor. The Parties must either complete and submit this form to the Title IX Coordinator or provide similar documentation demonstrating consent to a release of information to the Advisor before Appalachian is able to share records with an Advisor.

If a Party requests that all communication be made through their attorney Advisor, Appalachian will/will not comply with that request at the discretion of the Title IX Coordinator.

Privacy of Records Shared with Advisor

Advisors are expected to maintain the privacy of the records shared with them. These records may not be shared with third Parties, disclosed publicly, or used for purposes not explicitly authorized by Appalachian. Appalachian may seek to restrict the role of any Advisor who does not respect the sensitive nature of the process or who fails to abide by Appalachian's privacy expectations.

Expectations of an Advisor

Efforts will be made to accommodate an Advisors schedule for their attendance in meetings. However, an Advisor's inability to attend a meeting does not require Appalachian to reschedule a meeting or proceeding after reasonable efforts have been made to accommodate the Advisor's schedule. Appalachian may also make reasonable provisions to allow an Advisor who cannot attend

in person to attend a meeting by telephone, video conferencing, or other similar technologies as may be convenient and available.

Expectations of the Parties with Respect to Advisors

A Party may elect to change Advisors during the process and is not obligated to use the same Advisor throughout. The Parties are expected to inform the Investigator(s) of the identity of their Advisor at least five (5) business days before the date of their first meeting with Investigators (or as soon as possible if a more expeditious meeting is necessary or desired).

The Parties are expected to provide timely notice to the Title IX Coordinator if they change Advisors at any time. It is assumed that if a Party changes Advisors, consent to share information with the previous Advisor is terminated, and a release for the new Advisor must be secured. Parties are expected to inform the Title IX Coordinator of the identity of their hearing Advisor at least five (5) business days before the hearing.

Assistance in Securing an Advisor

For representation, Respondents may wish to contact organizations such as:

- FACE (<http://www.facecampusequality.org>)
- SAVE (<http://www.saveservices.org>).

Complainants may wish to contact organizations such as:

- The Victim Rights Law Center (<http://www.victimrights.org>),
- The National Center for Victims of Crime (<http://www.victimsofcrime.org>), which maintains the Crime Victim's Bar Association.
- The Time's Up Legal Defense Fund: <https://nwlc.org/times-up-legal-defense-fund/>

Appendix C: ROLES AND EXPECTATIONS FOR WITNESSES

- Witnesses (as distinguished from the Parties) who are employees of Appalachian are expected to cooperate with and participate in Appalachian's investigation and resolution process. Failure of such witnesses to cooperate with or participate in the investigation or resolution process constitutes a violation of policy and may warrant discipline.
- Although in-person interviews for Parties and all potential witnesses are ideal, circumstances (e.g., study abroad, summer break) may require individuals to be interviewed remotely. Skype, Zoom, FaceTime, WebEx, or similar technologies may be used for interviews if the Investigator(s) determine that timeliness or efficiency dictates a need for remote interviewing. Appalachian will take appropriate steps to reasonably ensure the security/privacy of remote interviews.
- Though not preferred, if deemed appropriate by the Investigator(s), witnesses may also provide written statements in lieu of interviews or choose to respond to written questions. If a witness submits a written statement but does not intend to be or is not present for questioning at a hearing, their written statement may not be used as evidence.