

Appalachian State University

Non-Title IX Sex Based Misconduct Procedures for Employee & Third-Party Respondents

1. Overview and Purpose

These procedures seek to support the Appalachian State University (the “University”) commitment to creating and maintaining an institutional environment free of discrimination and harassment. The following procedures provides an administrative framework and oversight for reporting, investigating, adjudicating, and resolving alleged violations of Prohibited Conduct based on Protected Status and Workplace Violence pursuant to University [Policy 110 Discrimination, Harassment, Retaliation and Sex-Based Misconduct](#), [Policy 602.32 Workplace Violence](#), [Policy 602.21 Improper Relationships between Students and Employees](#), [the Jeanne Clery Disclosure of Campus Security Police](#), and applicable state and federal laws, including but not limited to Title VI and Title VII of the Civil Rights Act and the Americans with Disabilities Act. Allegations of sexual harassment as defined under Title IX of the Education Amendments shall be addressed by utilizing the Title IX Resolution Procedures.

The University treats Complainants and Respondents equitably throughout the procedures outlined below.

The Office of Access & Equity: Equal Opportunity (“EO”) is responsible for responding to complaints of Prohibited Conduct as defined in University Policy 110 Discrimination, Harassment, Retaliation and Sex-Based Misconduct, Policy 602.21 Improper Relationships between Students and Employees, and Policy 602.32 Workplace Violence. The Executive Director of Access and Equity serves as the University’s ADA/504 Coordinator, Equal Employment Officer, and Title IX Coordinator.

2. Definitions*

**In the event of conflict between definitions described in the Appalachian State University Policy Manual and the definitions described herein, the University Policy Manual definitions shall control.*

2.1 Appropriate Administrative Office: For Faculty, the Senior Vice Provost for Faculty Policies & Development. For SHRA and EHRA Non-Faculty employees, the Associate Vice Chancellor for Human Resources.

2.2 Complainant: The person alleged to be the victim of alleged conduct violating University policy.

2.3 Consent: Clear, knowing, voluntary permission, through words or action for another individual to do something that affects the individual giving Consent. Consent is based on choice and must be informed, freely and actively given, and mutually understandable, indicating a willingness to participate in mutually agreed upon activity.

2.4 Day: A business day when the University is in normal operation.

2.5 Prohibited Conduct: Conduct which includes Sex Based Misconduct that is not regulated by Title IX of the Education Amendments Acts due to the location or nature of the incident including:

2.5 Non-Consensual Sexual Activity

2.5.1 Sexual Contact: Any intentional (not incidental or accidental) sexual touching, however slight, with any object or body part, performed by a person upon another such person, without Consent. Non-Consensual Sexual Contact includes intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and making another touch you or themselves with or on any of these body parts without Consent.

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2.5.2 Sexual Intercourse: Any penetration, however slight, with any object or body part, performed by a person upon another person, without Consent. Non-Consensual Sexual Intercourse includes vaginal penetration by a penis, object, tongue, or finger, anal penetration by a penis, object, tongue, or finger, and any contact, no matter how slight, between the mouth of one person and the genitalia of another person without their Consent.

2.5.3 Sexual Exhibitionism: engaging in a sexual activity or exposing one's intimate parts (including genitals, groin, female breast [other than when breastfeeding a child], mouth, or buttocks) in the presence of others without their Consent.

2.5.4 Sexual Exploitation: Occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and when that behavior does not otherwise constitute one of the other forms of Prohibited Conduct offenses.

2.6 Intimate Partner Violence: Any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, or other intimate relationship. Intimate partner violence includes "dating violence" and "domestic violence," as defined by the Violence Against Women's Act.

2.7 Stalking: Engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others or (ii) suffer substantial emotional distress which does not occur on University grounds or other property owned or controlled by the University or occurs outside of the United States.

2.8 Party/Parties: An individual or collective term used to describe either the Complainant and Respondent or both.

2.9 Respondent: The person alleged to have engaged in Prohibited Conduct.

2.10 Supportive Measures: Non-disciplinary, non-punitive individualized supports offered as appropriate and reasonably available intended to preserve or restore equal access.

2.11 Third-Party: Individuals who either participate in University programs or activities, or conduct business on behalf of the University including but not limited to contractors, vendors, visitors, or guests.

3. Reporting Prohibited Conduct

3.1 Any person may report an allegation of Prohibited Conduct. All University employees are expected to report alleged violations to EO and may be subject to disciplinary action for failing to report. Reports may be made by completing the [Access & Equity: Equal Opportunity Report Form](#) or by phone, in-person, or mail directly to the EO office.

3.2 Reports of Prohibited Conduct must be submitted within 180 days of the alleged Prohibited Conduct. Reports submitted after 180 days of the alleged incident will be reviewed and may be addressed as appropriate, at the sole discretion of EO. Delays in reporting could result in the University's ability to respond and impact EO's ability to implement these procedures. If the Respondent is no longer a student or employee, EO may provide reasonably appropriate supportive measures, assist complainants in identifying external reporting options and take reasonable steps to prevent its recurrence and remedy its effects, as appropriate.

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3.3 All employees are responsible for promptly reporting any information which may indicate the occurrence of Prohibited Conduct (discrimination, harassment, retaliation) as defined in Policy 110 Discrimination and Harassment based on protected status (age, color, disability, gender, gender expression, gender identity, genetic information, national origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, or veteran status to EO.

3.4 Anonymous reporting is permitted, however, EO's ability to respond or take further action may be impacted by the level of available information regarding the incident or individuals involved. EO values trust and works diligently to respect privacy. However, anonymity is unable to be guaranteed. Through the resolution of concerns, EO maintains privacy to the fullest extent possible but may need to partner with other areas such as Academic Affairs, Human Resources, or Student Affairs.

3.5 An Equal Employment Opportunity Informal Inquiry submitted by a current SHRA or former SHRA employee covered by the [State Human Resources Act's Grievance Policy](#) will be treated as a report.

4. University Response to Prohibited Conduct

4.1 The Executive Director of Access & Equity or their designee will conduct an initial review of reported Prohibited Conduct and may utilize a range of response options based on the nature of the report. Such response options include, but are not limited to: University resources and supportive measures to parties, increased monitoring of certain University areas, or educational opportunities.

4.2 The University will ensure equitable treatment of Complainants and Respondents throughout the process. Respondents are presumed not responsible until a determination regarding responsibility is made at the conclusion of applicable resolution procedures. If a Respondent separates from University employment prior to the completion of a resolution, the University may discontinue the process but continue to take appropriate action to rectify and prevent the recurrence of any alleged Prohibited Conduct.

4.3 The University may place an Employee Respondent on administrative or investigatory leave while responding to a report as described above.

5. Preliminary Review

5.1 EO will conduct a preliminary review of all requests for formal resolution options.

5.2 Should an EO preliminary review indicate the allegations, if true, constitute a policy violation, EO will provide written notice the Parties. This includes a summary of the formal charges, a brief narrative of the alleged violation(s), a list of all policies allegedly violated, and a description of the applicable procedures. At this time, EO will also request a pre-resolution meeting with each Party.

5.3 Should an EO preliminary review indicate that the allegations, if true, would **not** constitute a policy violation, EO will provide written notice of the dismissal to the Complainant. EO may consult with the Appropriate Administrative Office to determine, what, if any, additional actions may need to be taken to address allegations of inappropriate conduct.

5.4 All Preliminary Review determinations shall be made at the sole discretion of EO.

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5.5 EO strives to resolve cases of alleged Prohibited Conduct through these procedures in a timely manner (generally within 90 days).

5.6 Reporting to EO pursuant to this procedure does not preclude an individual from filing an external charge of Prohibited Conduct directly with the [Equal Employment Opportunity Commission](#), [the US Department of Education's Office for Civil Rights](#), the [North Carolina Office of Administrative Hearings-Civil Rights Division](#), or other relevant agency, nor does it prevent an individual from pursuing a related civil action or criminal charge.

6. Resolution Options

6.1 Facilitated Resolution

6.1.1 A facilitated resolution includes the opportunity to participate in a voluntary and mutually agreed upon resolution to appropriately resolve the complaint. The facilitated resolution must be approved by the Executive Director of Access and Equity or their designee.

A facilitated resolution is **not available** where an Employee or Third-Party is alleged to have engaged in Prohibited Conduct directed at a Student.

6.1.2 A facilitated resolution is a process resulting in an informed voluntary agreement between the Parties and the University to resolve a Complaint utilizing strategies such as educational interventions or other restorative principles to address the concern, prevent its recurrence, and/or restore the community. The facilitated resolution process allows the parties an opportunity to resolve the issue and is intended to be educational in nature.

6.1.3 EO will appoint a trained facilitator to oversee the Parties' facilitated resolution. Either Party should notify EO immediately if they believe that the facilitator has a conflict of interest or bias. The facilitator will meet with the Parties to discuss possible resolution options and to ascertain each Party's perspective regarding responsibility and outcomes.

6.2 Administrative Resolution

6.2.1 An administrative resolution includes an investigation and a determination of responsibility. The purpose of the investigation is to establish whether there is sufficient evidence to indicate a policy violation which would justify further administrative review and potential remedial action.

6.2.2 If the Preliminary Review indicates that a potential policy violation has occurred, EO, or an EO appointed trained third party, will perform an investigation of the alleged conduct. EO will complete the investigation in a reasonably prompt time frame. Some investigations may take longer due to the complexity of allegations, issues, the University calendar (including breaks, holidays, or other closures), the unavailability of Parties or witnesses, inclement weather, and/or other unforeseen circumstances. The time frame to complete formal processing of an Equal Employment Opportunity Informal Inquiry will be pursuant to the SHRA Employee Grievance Policy.

6.2.3 EO will notify the Parties as to the Equal Opportunity Associate assigned to complete the investigation. In the event either Party believes the assigned investigator has a conflict of interest or bias such that the investigator could not complete a fair investigation, the Party must notify the Executive Director of Access and Equity immediately (within three (3) days upon receiving the notice).

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6.2.4 The Respondent will be notified of the alleged conduct and will have an opportunity to respond to the allegations, provide exculpatory evidence, and provide witness testimony.

6.2.5 EO will notify the Appropriate Administrative Office and may also notify the supervisor(s) of the Parties with regards to the investigation.

6.2.6 EO will provide written notice of the date, time, location, participants, and purpose of any investigative interview or meeting to a Party whose participation is invited or expected, with sufficient time for the Party to prepare to participate. All Party and witness interviews will be audio recorded by the University but may not be recorded by any Party or witness.

6.2.7 Evidence collected during the investigation may include interviews, reports, and additional information provided by the Parties. EO may refuse to consider evidence submitted which is repetitious, irrelevant, or otherwise without sufficient value to the investigation.

6.2.8 Evidence collected, and reports made during the investigation will be preserved pursuant to the University's applicable records retention schedule. Such records are not part of an employee's personnel file.

7 Determinations

7.1 At the conclusion of the investigation, a finalized investigative report will be provided to the Appropriate Administrative Office. The finalized investigative report will include written summaries of Party and witness interviews regarding the allegations, summaries of relevant evidence and policies that relate to the main points of the investigation, and an analysis of whether or not a policy violation was substantiated. All determinations shall be made using a preponderance of the evidence standard, as defined by University Policy 110.

7.2 The Appropriate Administrative Office will notify Parties in writing of the outcome of the investigation, a determination as to whether a policy violation was substantiated, and as applicable, any sanctions or other disciplinary action that will be taken.

8 Appeals

8.1 In the event a determination is made that no policy violation was substantiated, the determination is final and there are no appeal options pursuant to these procedures.

8.2 In the event that the Respondent is found responsible for a policy violation and corrective action is taken, appeal rights will be dictated by applicable grievance procedures outlined in the [SHRA Grievance and Appeals](#), [EHRA Non-Faculty Grievances](#), and the [Faculty Handbook](#).

9 Corrective Action

9.1 In the event a policy violation is substantiated, the Executive Director of Access and Equity or designee will share a finding of responsibility with the Appropriate University Official and others as needed (i.e. Supervisors, Office of General Counsel, Office of Human Resources, or Academic Affairs) to discuss and determine corrective action, including potential disciplinary action, up to and including termination, in order to resolve the policy violation and prevent its recurrence.

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10 Retaliation Prohibited

3.1 Any adverse action against an individual, or an individual's spouse, partner, or other person with a close personal relation to the individual, for: making or supporting a claim of Prohibited Conduct, (b) opposing any Prohibited Conduct, participating in the reporting, investigation, or resolution of alleged violation(s), or otherwise engaging in a protected activity under associated University policies. Examples of Retaliation include, but are not limited to, 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.

11 Right to Amend

11.1 The Executive Director of Access and Equity reserves the right to amend these procedures as may be necessary at any time.

Adopted July 14, 2023
Amended August 15, 2023