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 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 and Harassment, Policy 602.32 Workplace Violence, Policy 602.21 Improper Relationships between Students and Employees, and applicable state and federal laws, including but not limited to Title VI and Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act. Allegations of sexual harassment as defined under Title IX of the Educations Amendments Act 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 and Harassment 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*

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

2.4 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:

2.4.1 Non-Consensual Sexual Activity

2.4.1.51 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.

2.4.2 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.
2.53 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.

2.4.2 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.

2.4.3 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.

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.

3.3 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 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 prior to pursuing formal resolution options.

5.2 Should an EO preliminary review indicate the allegations, if true, would constitute a policy violation, EO will proceed with applicable resolution procedures.

5.3 Should an EO preliminary review indicate that the allegations, if true, would not constitute a policy violation, EO will provide notice to the Complainant and 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.

5.5 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.
6.2 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 will notify the Parties and perform an investigation of the alleged conduct, as applicable. EO will complete the investigation in a reasonably prompt time frame (generally within 90 days). Some investigations may take longer than 90 days 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 upon receiving the notice.

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, summarize the relevant evidence and policies at issue summarizing 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.
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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 that based on the final investigative report, 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, then appeal rights are pursuant to 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.

10 Right to Amend

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