

Appalachian State University

Non-Title IX Sex Based Misconduct

Resolution Procedures for Student 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 provides procedures an administrative framework and oversight for reporting, investigating, adjudicating, and resolving alleged violations of Non-Title IX Sex Based Misconduct pursuant to University [Policy 110 Discrimination, Harassment, Retaliation and Sex-Based Misconduct](#), [the Jeanne Clery Disclosure of Campus Security Police, and Campus Crime Statistics Act](#), the [Code of Student Conduct](#) and its corresponding procedures, 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 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, Harassment, Retaliation and Sex-Based Misconduct. The Executive Director of Access & 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: Offices within the Division of Student Affairs.

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 Decision-Maker(s): Trained University staff or faculty members, or a trained third Party, appointed by the Executive Director of Access & Equity who addresses the charge(s) against a Respondent and makes a determination of responsibility.

2.6 Hearing: A closed meeting with the Hearing Officer, Decision-Maker(s), Parties, witnesses, and investigator to address allegations, evidence, and questioning for Decision-Maker(s) to make a determination of responsibility.

Appalachian State University

Non-Title IX Sex Based Misconduct

Resolution Procedures for Student Respondents

2.7 Hearing Officer: An individual with delegated authority to conduct Hearings in a manner designed to effectively and efficiently assist Decision-Maker(s) in making a determination of responsibility. This includes the authority to review the admissibility of any information and the questioning of Parties and witnesses.

2.8 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:

2.8.1 Harassment: Communication or conduct, including, but not limited to: verbal, physical, electronic, or written, that creates a Hostile Environment or involves a Quid Pro Quo exchange for an individual based on sex that unreasonably interferes with the individual's educational environment or participation in a University program or activity.

2.8.1A Quid Pro Quo: Conduct based on Protected Status whereby submission to or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions adversely affecting individual's education or participation in a University program or activity

2.8.1B Hostile Environment: Conduct based on Protected Status that is so severe, persistent, or pervasive that it alters the conditions of education or participation in a University program or activity, thereby creating an environment in which a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not constitute a Hostile Environment. Such conduct includes unwelcome conduct of a sexual nature and may consist of unwelcome conduct based on sex or sex stereotyping.

2.8.2 Non-Consensual Sexual Activity

2.8.2.1 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.

2.8.2.2 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.

2.8.2.3 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.

2.8.2.4 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.

Appalachian State University

Non-Title IX Sex Based Misconduct

Resolution Procedures for Student Respondents

2.8.3 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.

2.8.4 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 is in the United States.

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

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

2.11 Student: An individual who has accepted an offer of admission to the University; is currently enrolled in coursework orer has registered for coursework at the University; has a continuing relationship with the University; is auditing coursework; or is participating in an educational program sponsored by or affiliated with the University. In general, the continuing relationship ends upon conferral of a degree, termination of the relationship, or a break in enrollment of twelve (12) consecutive months after the last semester attended at the University.

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

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 addressed as appropriate, at the sole discretion of EO. Delays in reporting could impact the University’s ability to respond and 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.

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.

Appalachian State University
Non-Title IX Sex Based Misconduct
Resolution Procedures for Student Respondents

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 The University encourages the reporting of Prohibited Conduct and, per the Code of Student Conduct's Appendix A: Amnesty Policy, promotes a culture in which students actively seek help for themselves or others if/when needed. When applicable within these procedures, the Amnesty Policy will be applied to Student Complainants, Student Respondents, and Student witnesses.

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. Respondents are presumed not responsible until a determination regarding responsibility is made at the conclusion of applicable resolution procedures. If a Respondent separates from the University 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 a Student Respondent on interim suspension during these procedures.

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.

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

Appalachian State University
Non-Title IX Sex Based Misconduct
Resolution Procedures for Student Respondents

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 [US Department of Education's Office for Civil Rights](#), or other relevant agency, nor does it prevent an individual from pursuing a related civil action or criminal charge.

6. Resolution Options

In accordance with [N.C.G.S. § 116-40.11](#), Students may be represented, at their own expense, by a representative. The representative may not unreasonably delay, disrupt, or otherwise interfere with the process.

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.

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.

6.2.3 EO will request a pre-resolution meeting with each Party and will notify the Parties of 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 & Equity immediately (within three (3) days upon receiving the notice.

Appalachian State University

Non-Title IX Sex Based Misconduct

Resolution Procedures for Student Respondents

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, provide relevant questions to be utilized by the investigator, recommend witnesses, and provide testimony.

6.2.5 EO will notify the Appropriate Administrative Office and may also notify other University administrators who have a relevant need to know of the Parties with regards to the investigation.

6.2.6 EO will provide each Party the opportunity to submit proposed questions for the other Party or a witness, to the investigator. The proposed questions will be reviewed and all relevant questions will be posed to the other Party or witness. The investigator will exclude any irrelevant questions, and when excluded, the investigator will provide to the Party who submitted the question an explanation as to the decision to exclude the question as irrelevant.

Irrelevant questions include, but are not limited to those which are deemed “irrelevant” at all stages of the formal resolution process: questions about the Complainant’s sexual predisposition or prior sexual behavior, unless they are offered to prove that someone other than the Respondent committed the alleged conduct or they concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove Consent.

6.2.7 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.

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

6.2.9 Prior to the investigative report being finalized, a draft will be made available to the Parties. The draft investigative report will include written summaries of Parties and witness interviews regarding the allegations, summarize the relevant evidence and policies at issue. The draft investigative report will not include an analysis of the facts. The Parties will have **five (5) days** from receipt of the draft to submit comments on the report or other relevant evidence.

6.2.10 Following each Party’s opportunity to review the draft investigative report, the investigator will then consider the written responses, analyze the information collected during the investigation, and finalize the investigative report.

6.2.11 Evidence collected and reports made during the investigation will be preserved pursuant to the University’s applicable records retention schedule.

Appalachian State University
Non-Title IX Sex Based Misconduct
Resolution Procedures for Student Respondents

7 Hearing

Upon the conclusion of the investigation, a live hearing which is closed to the public will be conducted in order for Decision-Makers appointed by EO to make a determination of responsibility.

The Hearing is an opportunity for the Parties to address the Decision-Maker(s) about issues relevant to the determination of responsibility. The Parties and Decision-Maker(s) will be provided a copy of the finalized investigative report and evidence to review prior to the hearing.

The Hearing Officer will convene a pre-hearing meeting(s) with the Parties to generally discuss the hearing procedures outlined below and address any concerns or questions about the process.

7.1 Composition. Hearings will consist of one to three trained Decision-Maker(s), based on availability of the Decision-Maker(s) and/or the nature of the offense, the investigator, and a Hearing Officer. The Decision-Maker(s) will not have had any previous involvement with the investigation or any previous process enacted to resolve the complaint (e.g., Facilitated Resolution).

The Parties may request the presence of any witness at the hearing. The Hearing Officer may decide in advance of the hearing that certain witnesses do not need to be present if the investigative report can adequately summarize their testimony. Unless all Parties and the Hearing Officer otherwise assent to the witness's participation, witnesses identified to participate in the hearing must have been interviewed, have offered a written statement, or answered written questions posed during the investigation. The request to have a witness present for the hearing must be made to the Hearing Officer no later than **five (5) days prior** to the hearing.

7.2 Participation. Parties and witnesses are not required to participate in the hearing. If a witness or Party elects not to appear at the hearing, any information submitted to or obtained by the investigator during the investigation may still be considered by the Decision-Maker(s). The Decision-Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a Party's or witness's absence from the hearing or refusal to answer questions.

7.3 Location: Hearings may be conducted with all Parties, witnesses, and other participants virtually at the live hearing, with technology enabling participants to see and hear each other simultaneously.

7.4 Notice: No fewer than **ten (10) days** prior to the hearing, EO will send a notice which contains:

- a. A summary of the formal charges, a brief narrative 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;
- b. The time, date, and location of the hearing;
- c. A list of the Decision-Maker(s) and the Hearing Officer. Parties must notify EO immediately (**within three (3) days**) if they believe that a Decision-Maker(s) has a conflict of interest or bias.

Appalachian State University
Non-Title IX Sex Based Misconduct
Resolution Procedures for Student Respondents

7.5 Format. The Hearing Officer has the discretion to determine the specific hearing format. A typical hearing may include brief opening remarks by the Complainant and/or Respondent; questioning of the Parties, the investigator(s), and any witnesses by the Decision Maker(s); and brief concluding remarks by the Complainant and/or Respondent.

7.6 Questioning. Parties will be asked to provide a list of questions to the Hearing Officer prior to the hearing that they would like asked of the other Party at the live hearing. Proposed questions will be reviewed by the Hearing Officer who will then ask the question or a rephrased question at their discretion. Parties will not be allowed to directly cross-examine or question each other or any witnesses under any circumstances. The Parties will be afforded an opportunity to examine any evidence offered as information.

The Hearing Officer will exclude any irrelevant questions, and when excluded, the Hearing Officer will provide to the Party who submitted the question an explanation as to the decision to exclude the question as irrelevant or duplicative.

Irrelevant questions include, but are not limited to those which are deemed “irrelevant” at all stages of the formal resolution process: questions about the Complainant’s sexual predisposition or prior sexual behavior, unless they are offered to prove that someone other than the Respondent committed the alleged conduct or they concern specific incidents of the Complainant’s prior sexual behavior with respect to the Respondent and are offered to prove Consent.

7.8 Recordings of Hearing. Hearings will be recorded, excluding deliberations, and the recordings will serve as the verbatim record. The University retains the sole right to record hearings and no other recordings will be permitted.

7.9 Civility Agreement. Parties and their representatives, and any witnesses will be required to review and sign a Civility Agreement that reviews standards of behaviors and rules of decorum prior to the hearing. Individuals unable to adhere to the Civility Agreement may be removed the Hearing.

7.10 New Evidence. If the Parties and Hearing Officer do not assent to the admission of new evidence at the hearing, the Hearing Officer may delay the hearing and request the investigation to be reopened to consider that evidence.

7.11 Impact Statements. Parties may submit a written statement describing how the incident affected the individual's life, the desired outcomes they would like to see imposed, and the effect of the outcome(s) on the individual. Impact statements may be used when a determination of responsibility is made for sanctioning outcomes.

7.12 Hearing Timing and Graduating Respondents. Hearings for possible violations that occur near or after the end of an academic term and cannot 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. If the Respondent is a graduating student, a hold may be applied to the Respondent’s account to prevent transcript and diploma attainment 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.

Appalachian State University
Non-Title IX Sex Based Misconduct
Resolution Procedures for Student Respondents

8. Determination of Responsibility & Outcomes

8.1 At the conclusion of the hearing, the Hearing Officer will conclude the evidentiary portion of the hearing and the Decision-Maker(s) will begin deliberations in a closed session to determine whether or not a violation occurred. A final decision must be made within ten (10) days of the hearing. All determinations shall be made using a preponderance of the evidence standard, as defined by University Policy 110.

8.2 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 Office of Student Conduct for a determination of appropriate outcomes pursuant to the [Code of Student Conduct](#), up to and including expulsion, in order to resolve the policy violation and prevent its recurrence.

8.3 EO in conjunction with the Office of Student Conduct will notify Parties in writing of the outcome and determination of responsibility as to whether a policy violation was substantiated within five (5) days of the decision. The notice of outcome will also include any applicable rights to appeal the determination.

9 Appeals

9.1 The procedures governing the appeals for Student Respondents are contained in Article VI of the [Code of Student Conduct](#).

10 Retaliation Prohibited

10.1 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 August 15, 2023