

# Appalachian State University

## Title IX Resolution Procedures

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### 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 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](#), the 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 of 1964 and the Americans with Disabilities Act. The Title IX Resolution procedures are applicable to Students, Employees, and Third-Parties when the conduct occurs:

- on University grounds or other property owned or controlled by the University; or
- in the context of a University employment or education program or activity, including, but not limited to, locations, internships, placements, events, or circumstances over which the University has substantial control over both the Respondent and the context in which the conduct occurs; or
- in any building owned or controlled by a Student organization that is officially recognized by the University; and in the United States.

Allegations of Non-Title IX Sex Based Misconduct are addressed by the Non-Title IX Sex Based Misconduct 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 prescribed in University Policy 110 (“Policy 110”). 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 Complainant:** An individual alleged to be the victim of alleged conduct violating University policy.

**2.2 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.

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

**2.4 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.

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**2.5 Education Program or Activity:** Includes locations, events, or circumstances over which the University exercises substantial control over both the Respondent and the context in which the Prohibited Conduct occurred, and also includes any building owned or controlled by a Student organization that is officially recognized by the University.

**2.6 Employee:** As defined in Policy 110, Individuals employed by the University including but not limited to Employees full or part time who are SHRA, EHRA-NF, Faculty, Student Employees, and Postdoctoral fellows.

**2.7 Formal Complaint:** A document filed and signed by the Complainant or the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that the University initiate an informal or formal resolution process.

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

**2.9 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.

**2.10 Prohibited Conduct:** sex-based misconduct regulated by Title IX of the Education Amendments which involves the sexual harassment or sex-based discrimination of an individual including instances involving quid pro quo harassment, sexual assault, dating violence, domestic violence, or sex-based stalking that occurred in the United States and in the University's Education Program or Activity.

**2.10.1 Sexual Harassment:** as defined by 34 CFR 106.30, means conduct on the basis of sex that satisfies one or more of the following:

1. An Employee of the recipient conditioning the provision of an aid, benefit, or service of the recipient on an individual's participation in unwelcome sexual conduct;
2. 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 recipient's education program or activity; or
3. Sexual assault as defined in the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act," specifically 20 U.S.C. 1092(f)(6)(A)(v)), dating violence as defined in Violence Against Women Act ("VAWA," specifically 34 U.S.C. 12291(a)(10)), domestic violence as defined in VAWA (34 U.S.C. 12291(a)(8)), stalking as defined in VAWA (34 U.S.C. 12291(a)(30)) (for ease of reference the definitions as they appear in those laws are provided below), or other sexual misconduct defined below.
  - a. Sexual assault means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation including:
    - i. **Rape** defined as the carnal knowledge of a person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;

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- ii. **Sodomy**, defined as oral or anal sexual intercourse with another person, without the consent of the person, including instances where the person is incapable of giving consent because of age or because of temporary or permanent mental or physical incapacity;
  - iii. **Sexual Assault With An Object**, defined as the use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, without the consent of the person, including instances where the person is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;
  - iv. **Fondling**, defined as the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the person, including instances where the victim is incapable of giving consent because of his/her youth or because of age or because of temporary or permanent mental or physical incapacity;
  - v. **Incest**, defined as nonforcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law;
  - vi. **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent in the State of North Carolina, which is 16 years old.
- b. **Dating Violence** is conduct defined as violence on the basis of sex committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; type of relationship; and 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.
- c. **Domestic Violence** Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitation with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family laws of the jurisdiction;
- d. **Stalking**, as addressed by Title IX, is conduct on the basis of sex defined as 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. Allegations of Stalking are only processed under the Title IX Resolution Procedures if based on sex. Non-sex based Stalking is addressed by other resolution procedures.

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

**2.12 Student:** As defined in Policy 110, an individual who has accepted an offer of admission to the University; is currently enrolled in coursework or has registered for coursework at the University; has a continuing

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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.

**2.13 Supportive Measures:** Non-disciplinary, non-punitive individualized supports offered as appropriate and reasonably available intended to preserve or restore equal access which are offered without fee or charge to the Complainant or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the Education Program or Activity without unreasonably burdening the other Party and include measures designed to protect the safety of all Parties or the educational environment or to deter Sexual Harassment. Supportive Measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, restrictions on contact between the Parties (no contact orders), changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures

**2.14 Title IX Advisor:** A person chosen by a Party or appointed by EO to accompany Parties through these procedures, to advise on the process, and conduct cross-examination for the Party at the Hearing.

**2.15 Title IX Mandatory Reporter:** Faculty, Athletics Staff, Office of Human Resources Staff, University Housing Staff, and any University staff with supervisory responsibility.

### **3. Reporting Title IX Sex Based Misconduct**

3.1 Any person may report an allegation of Title IX Sex Based Misconduct. 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 Title IX Sex Based Misconduct must be submitted as soon as possible after the alleged Prohibited Conduct occurs. Title IX Mandatory Reporters are required to report alleged violations to EO no later than 72 hours of receipt of information and may be subject to disciplinary action for failing to report. 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 of the University, 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 Anonymous reporting is an option but the ability of EO 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.

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3.4 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.

3.5 Reports of discrimination or harassment on the basis of sex or of a sexual nature that do not meet the definition of Title IX Sexual Harassment may be addressed by other applicable [resolution procedures](#).

### 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. EO will promptly contact the Complainant to:

- Assess the Complainant's safety and well-being;
- Discuss the availability of supportive measures;
- Provide written information regarding the Complainant's rights and resolution options for filing a Formal Complaint;
- Seek to determine if the Complainant wishes to notify law enforcement, wishes to be assisted in notifying law enforcement, or does not wish to notify law enforcement;
- Inform the Complainant that the University will share information only on a need-to-know basis and will strive to protect the Complainant's privacy, including the omission of the Complainant's identifying information in publicly available records, to the extent permissible by law.

4.2 In conjunction with the Office of Student Conduct, the Office of Human Resources, or Academic Affairs, the University may remove a Respondent from an Educational Program or Activity while engaged in these procedures on an emergency basis following an individualized safety and risk analysis and determination that an immediate threat to the physical health and safety of others exists.

### 5. Formal Complaint Preliminary Review & Dismissal

5.1 A Formal Complaint may be submitted by a Complainant in writing through the Access & Equity: EO Title IX Formal Complaint Request form or in hard copy if signed.

5.2 EO will conduct a preliminary review of all Formal Complaints.

1. **Mandatory Dismissal:** A Formal Complaint must be dismissed if alleged Prohibited Conduct:
  - a. Would not constitute Sexual Harassment as defined in these procedures if proved;
  - b. Did not occur in a University Education Program or Activity;
  - c. Did not occur in the United States.
2. **Discretionary Dismissals:** A Formal Complaint may be dismissed at any time during these procedures if:
  - a. The Complainant notifies EO in writing that they would like to withdrawal the Formal Complaint or any allegations therein;
  - b. The Respondent is no longer enrolled or employed at the University; or
  - c. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the allegations in the Formal Complaint.

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5.3 If the Formal Complaint is dismissed under these procedures, written notice and the rationale for dismissal will be communicated simultaneously to the Parties. Allegations within a Formal Complaint that has been dismissed may still be addressed by other [resolution procedures](#).

5.4 Either Party may appeal the decision to dismiss a Formal Complaint as outlined in Section 10.

5.5 EO may consolidate Formal Complaints as to allegations of Sexual Harassment against more than one Respondent, or by more than one Complainant against one or more Respondents, or by one Party against the other Party, where the allegations of Sexual Harassment arise out of the same facts or circumstances.

5.6 EO strived to resolve cases of Prohibited Conduct through these procedures in a timely manner (generally within 120 days). Parties will be provided written notification throughout these procedures.

## 6. Notice of Formal Complaint

6.1 Upon receipt of a Formal Complaint, EO will send the Parties written notice which includes: the Title IX Resolution Procedures; the allegations including information known at the time about the identities of the Parties involved, the alleged Prohibited Conduct, and the date and location of the allegations. Should additional allegations arise after the initial notification has been provided to Parties, the University will supplement the notification to the Parties.

## 7. Resolution Options

7.1 Any individual involved in the administration of resolution options may neither have nor demonstrate a conflict of interest or bias for or against Complainants or Respondents generally or for or against an individual Complainant or Respondent.

1. **Facilitated Resolution:** An informal resolution which includes a variety of informal options for resolving Formal Complaints. Facilitated Resolutions are **not available** for an Employee Respondent who is alleged to have engaged in Title IX Prohibited Conduct directed at a Student.
2. **Administrative Resolution:** A resolution which involves an investigation, Hearing, remedy, and sanction, if applicable.

### 7.2 Title IX Advisors

7.2.1 Each Party is permitted to have a Title IX Advisor of their choice, at their own expense, accompany them for all meetings, interviews, and Hearings within these procedures. The Parties may select whomever they wish to serve as their Advisor as long as the Advisor is not an Employee involved in intake, a case manager, or an individual part of the adjudication process. EO may also appoint an Advisor, without fee or charge, to any Party if the Party chooses. If one Party has retained an attorney as their Advisor, the University is not obligated to provide an attorney as the other Party's Advisor.

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7.2.2 For Hearings, Parties are required to have a Title IX Advisor present to conduct cross-examination of Parties and witnesses. If a Party does not have an Advisor present at the Hearing, EO will appoint an Advisor.

7.2.3 A Title IX Advisor will be required to complete specific paperwork regarding these procedures and the parameters of Student or Employee confidentiality before serving as an Advisor. If an Advisor interferes with the procedures, EO may remove them from the role.

## 8. Facilitated Resolution

8.1 A facilitated resolution includes the opportunity to participate in a voluntary and mutually agreed upon resolution to appropriately resolve the complaint. 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 any issues and is intended to be educational in nature.

8.2 Either Party may request a facilitated resolution at any point during these procedures, prior to reaching a determination regarding responsibility. Parties have the right to withdraw from the informal resolution process, or to resume an investigation and Hearing that has previously been initiated in regards to the Formal Complaint. The Facilitated Resolution must be approved by the Executive Director of Access and Equity or their designee.

8.3 EO will appoint a trained facilitator to oversee the Parties' facilitated resolution. A Party must 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.

8.4 A Facilitated Resolution is **not available** where an Employee Respondent is alleged to have engaged in Prohibited Conduct directed at a Student.

## 9. Administrative Resolution

### 9.1. Overview

9.1.1 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.

9.1.2 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,

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the Party must notify the Executive Director of Access & Equity immediately (within three (3) days) upon receiving the notice.

9.1.3 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.

## 9.2 Administrative Resolution/Investigation

**9.2.1 Investigation.** If the Preliminary Review indicates that a potential policy violation has occurred, EO, or an EO appointed trained third party, will investigate the alleged conduct. An investigator is a neutral fact-finder. A Party must notify the Executive Director of Access & Equity immediately if they believe that the appointed investigator has a conflict of interest or bias.

The Executive Director of Access & Equity or designee in consultation with the appropriate University official overseeing the implementation of other relevant policies, may request that the Investigator simultaneously investigate violations of other University policies.

Throughout the investigation process, the investigator will:

- a. Maintain the burden of gathering evidence sufficient to reach a determination regarding responsibility;
- b. Provide an equal opportunity for the Parties to present witnesses, including fact and expert witnesses, and other evidence;
- c. Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- d. Permit the Parties to discuss the allegations under investigation without restriction;
- e. Provide an equal opportunity for the Parties to be accompanied by a Title IX Advisor to interviews and any related meeting.
- f. Audio record all investigative interviews of the Parties and witnesses (interviews may not be recorded by the Parties, their Title IX Advisors, or witnesses);
- g. Provide all Parties an equal opportunity to inspect and review all evidence obtained as part of the investigation that is relevant and/or directly related to the allegation(s).

The investigator shall not access, consider, disclose or otherwise utilize a Party's records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional, unless given voluntary, written consent to do so by the Party;

**9.2.2 Timeframe of Investigation.** 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. EO will communicate regularly with the Parties to update them on the progress and timing of the investigation.

**9.2.3 Investigative Report.** Before completing an investigative report, the Parties and their Advisors will receive an electronic draft investigative report, including a file of all relevant and/or directly related



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evidence obtained as part of the investigation. Parties will have ten (10) days to submit a written response to the draft. The investigator will then consider the written responses and finalize the investigative report.

The final report will be issued 10 days prior to any scheduled Hearing and sent to each party and the party's advisor, for their review and written response. In addition, the Parties will be asked to provide a list of questions they would like asked of the other Party at the live Hearing to the Hearing Officer.

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

### 9.3 Hearings

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 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.

**9.3.1 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, 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 Hearing Officer is delegated the 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.

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 agree to the witness' participation, witnesses identified to participate in the Hearing must have been interviewed, 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 **three (3) days prior** to the Hearing.

**9.3.2 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) may

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not draw an inference regarding responsibility based solely on a Party's or witness' absence from the Hearing or refusal to answer questions.

**9.3.3 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.

**9.3.4 Notice:** No fewer than **ten (10) days** prior to the Hearing, the EO will send 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 3 days**) if they believe that a Decision-Maker(s) has a conflict of interest or bias.

**9.3.5 Participation.** Parties and witnesses are not required to participate in the Hearing. If Parties or witnesses elect not to participate in the Hearing, any information submitted to or obtained during the investigation may still be considered by the Decision-Maker(s). Decision Maker(s) cannot draw an inference about the determination of responsibility solely based on nonparticipation.

**9.3.6 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.

**9.3.7 Questioning & Relevancy.** The Parties may not question each other or any witness at the Hearing. Instead, cross-examination must be conducted directly, orally, and in real-time by the Party's Advisor.

All cross-examination questions posed at the Hearing are subject to a relevance determination by the Hearing Officer as only relevant questions are permitted at the Hearing. The proposed questions will be reviewed and all relevant questions will be posed to the other Party or witness. 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.

For the purposes of a Hearing under these procedures, the Hearing Officer will exclude questions as irrelevant should they request information regarding:

- 1) The investigator's opinions on credibility, recommended findings, or determinations of responsibility;
- 2) Incidents not directly related to the possible violation, unless they evidence a pattern;
- 3) Details that are not supportive of any material fact concerning the allegations;
- 4) Information protected by a legally recognized privilege (e.g., attorney-client privilege);
- 5) Any Party's medical, psychological, and other similar records unless the Party has given voluntary, written consent; and

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- 6) The Complainant's sexual predisposition or prior sexual behavior, unless such questions are offered (i) to prove that someone other than the Respondent committed the conduct alleged, or (ii) if the questions concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

Following a relevancy determination, Advisors, on behalf of their Parties, may object to a Hearing Officer's rationale. An Advisor will be given the opportunity to explain their objection to the Hearing Officer. The Hearing Officer may then, after private consultation with either other Decision-Maker(s) and/or the Office of General Counsel, maintain or modify their original relevancy determination. The Hearing Officer's determination is then final, and the Hearing will proceed.

**9.3.8 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.

**9.3.9 Civility Agreement.** Parties, Title IX Advisors, 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 from the Hearing.

**9.3.10 New Evidence.** If the Parties and Hearing Officer do not agree 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.

**9.3.11 Impact Statements.** Parties may submit a written statement describing how the incident affected their life, the desired outcomes they would like to see imposed, and the effect of the outcome(s) on the Parties. If a determination of responsibility is made, impact statements may be used by the Office of Student Conduct when determining appropriate outcomes.

## 9.4 Determination

9.4.1 The Decision-Maker(s) will deliberate and make a determination regarding responsibility for each instance of alleged Prohibited Conduct against the Respondent using the preponderance of evidence standard, as defined by University Policy 110.

The Decision-Maker(s) may make one of the following determinations of responsibility :

- a. **Not Responsible:** If a Respondent is found not to be responsible for any allegation, the Decision-Maker(s) shall write a Notice of Outcome with a finding of "Not Responsible" for the policy violation(s).
- b. **Responsible.** If the Decision-Maker(s) find the Respondent responsible for any of the allegations in the Formal Complaint, EO will refer the case to the appropriate University official who will determine specific sanctions or outcomes.

**9.4.2 Notice of Outcome.** 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

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\_ whether or not a violation occurred. A final decision must be made within ten (10) days of the hearing.

## 10. Outcomes

### 10.1. Sanctions

The University may impose one or more sanctions or outcomes on the Respondent when a determination of responsibility is made and/or provide remedies to the Complainant designed to restore or preserve equal access to its Education Program or Activity. Sanctions and outcomes include but are not limited to required

training, written reprimands, and suspension, expulsion, or termination of employment.

Following the receipt of the written determination from the Decision-Maker(s), the Executive Director of Access & Equity or designee will refer the case to the appropriate University official for the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process. The Decision-Maker(s) and the Executive Director of Access & Equity or designee may consult with the administrative offices listed below to determine specific sanctions/outcomes:

- **Student Respondent.** For a Student Respondent, a finding of responsibility will be shared with a representative from the Office of Student Conduct or designee, who will determine outcomes in accordance with the Code of Student Conduct.
- **Faculty Respondent.** For a Faculty Respondent, a finding of responsibility will be shared with the Office of Academic Affairs or designee, who will determine sanctions.
- **SHRA or EHRA Non-Faculty Respondent.** For SHRA or EHRA Non-Faculty Respondents, a finding of responsibility will be shared with the Associate Vice Chancellor of Human Resources or designee, who will determine sanctions.
- **For Third-Party Respondents**, including Third Parties engaged in carrying out a University Education Program or Activity a finding of responsibility will be shared with the appropriate office as determined by the Executive Director of Access & Equity.

### 10.2. Remedies

10.2.1 In addition to sanctions, specific remedies may be necessary to restore or preserve the Complainant's equal access to the University's Education Program or Activity. Remedies, unless they directly affect the Respondent, will not be disclosed to the Respondent. Remedies may include Supportive Measures and other remedies that burden the Respondent, including but not limited to:

1. No-Contact Directives;
2. Reimbursement for counseling or other medical expenses related to Prohibited Conduct;
3. Academic, University housing, and/or University employment modifications;
4. Increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur;
5. Educational programming or training for relevant persons or groups;
6. Restorative remedies to encourage a Respondent to develop insight about the Prohibited Conduct, learn about the impact of that Prohibited Conduct on the Complainant and the Appalachian community,

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and identify how to prevent that Prohibited Conduct in the future (including community service and/or prevention programs related to the Prohibited Conduct); or

7. Any other remedial or protective measures that are tailored to achieve the goals of these procedures to promote a safe, nondiscriminatory environment.

### **11. Appeals and Response to Notice of Outcome**

11.1 An appeal is an objective, independent review designed primarily to detect any significant errors in the investigation or outcome of a Formal Complaint, including the dismissal of a Formal Complaint.

11.2 Parties may appeal a dismissal or determination of responsibility on the following grounds:

1. Procedural irregularity that affected the outcome of the matter;
2. New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter;
3. The Decision-Makers, investigator, or Title IX Coordinator had a conflict of interest or bias either generally for complainants or respondents, or specifically for a particular individual, such that it affected the outcome of the matter.

11.3 If one Party files an appeal, the University will provide notice of the appeal to the other Party.

11.4 Parties will be given an opportunity to submit a written statement against (“Appeal”) or in support (“Response”) of the final determination.

11.5 Appeals and responses must be submitted within five (5) days of receiving the issuance of a dismissal of a Formal Complaint or the Notice of Outcome from a Formal Resolution.

11.6 The appellate officer will issue a written decision describing the result of the appeal and the rationale for the result. The written decision will be provided simultaneously to all Parties.

### **12. Record Retention**

12.1 The University shall retain all records relating to a report of Prohibited Conduct for eight (8) years after the date the report was received and in accordance with the [University's Record Retention and Disposition Schedule](#). Any record in which the sanction is reflected as Suspension or Expulsion is maintained indefinitely. Appalachian has the right to maintain any record in excess of the minimum period.

### **13. Retaliation Prohibited**

13.1 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.

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Retaliation may be found even when an underlying report or complaint made in good faith was not substantiated.

### **14. Right to Amend**

13.1 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