

Appalachian State University Discrimination and Harassment Resolution Procedures for Student Respondents

1. Overview and Purpose

These procedures seek to support Appalachian State University's (the "University") commitment to creating and maintaining an institutional environment free of discrimination and harassment within its education programs and activities. The following procedures provide an administrative framework for reporting, investigating, adjudicating, and resolving alleged violations of Prohibited Conduct pursuant to University [Policy 110 Discrimination and Harassment](#), 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, Title IX of the Education Amendments Act, the Clery Act, and the Americans with Disabilities Act.

The Office of Access & Equity: Equal Opportunity ("EO") is the designated office for oversight over 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*

**Please refer to University Policy 110 for applicable definitions of key terms.*

2.1 Advocate: An attorney or non-attorney chosen by a Party to accompany them to meetings or proceedings as a part of these procedures. The right to an Advocate in these procedures meets the right to a representative pursuant to [N.C.G.S. § 116-40.11](#). Advocates may observe and provide support and advice but may not unduly delay, disrupt, or otherwise delay EO resolution.

2.2 Appropriate Administrative Office: The Office of Student Conduct within the Division of Student Affairs.

2.3 Complainant: A student or employee alleged to have been subjected to Prohibited Conduct.

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

2.5 Hearing Officer(s): Trained University staff or faculty members or a trained third party appointed by EO to make a determination of responsibility.

2.6 Hearing Administrator: An individual with delegated authority to conduct Hearings in a manner designed to effectively and efficiently assist Hearing Officer(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.

2.7 Party/Parties: An individual or collective term used to describe the Complainant, Respondent, or both.

2.8 Prohibited Conduct: Includes discrimination, harassment, or related retaliation on the basis of protected status as defined in [Policy 110 Discrimination and Harassment](#).

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

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

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3. Reporting Prohibited Conduct

3.1 Any person may report an allegation of Prohibited Conduct. Anonymous reporting and reports from non-University affiliated individuals are 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.

3.2 All University employees are required to report alleged violations to EO as soon as possible and in no event after more than 48 hours (2 business days). Absent a recognized exception, employees 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 EO.

3.3 Reports must be submitted as soon as possible after the alleged Prohibited Conduct occurs and generally within 180 Days. Delays in reporting could impact the University's ability to respond and EO's ability to implement these procedures.

3.4 The University encourages the reporting of Prohibited Conduct and, per the Code of Student Conduct's 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 Reports of Prohibited Conduct

4.1 The Executive Director of Access & Equity or their designee will conduct a preliminary review of the reported concern and may utilize a range of response options based on the nature of the report. If the Respondent is no longer a Student, EO may provide reasonably appropriate Supportive Measures, assist the Complainant in identifying external reporting options, and take reasonable steps to prevent the recurrence and remedy the effects of the alleged Prohibited Conduct, as appropriate.

4.2 If the preliminary review indicates that the allegations, if true, would **not** constitute a policy violation, 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. When applicable, EO will provide written notice of the dismissal and appeal information to the Complainant.

4.3 If the preliminary review indicates the allegations, if true, would constitute a policy violation, EO will conduct outreach to the Complainant to offer and coordinate Supportive Measures and inform the Complainant of resolution options, if any, under these procedures. 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, which could include but are not limited to increased monitoring of certain University areas, educational opportunities, or referral.

4.4 The University may place a Student Respondent on interim suspension when it is following these procedures to address alleged policy violations.

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4.5 Information obtained by the University in response to allegations of Prohibited Conduct shall be reviewed in a manner that considers an individual's preferences for privacy with the University's legal obligations and its obligations to provide a safe and nondiscriminatory environment. Complete confidentiality cannot be guaranteed. Information may be shared as necessary to investigate or address the Prohibited Conduct, fulfill legal obligations, or pursuant to University policies

4.6 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. EO will offer and coordinate Supportive Measures for Respondents.

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

4.8 Resolution options are initiated when a Complainant makes a complaint of Prohibited Conduct that passes the preliminary review and indicates their request for the University to address the allegation(s). EO will provide written notice to the Parties, which includes a summary of the allegations, a list of all policies allegedly violated, and a description of the applicable procedures. EO will additionally notify the Appropriate Administrative Office. Upon receipt of the notice, or at any stage in the procedures, a Respondent may choose to accept responsibility for the policy violation.

4.9 If a Respondent separates or graduates from the University prior to the completion of a resolution, the University may place a disciplinary hold on the Student's account to prevent registration, transcript or diploma attainment, or graduation until the matter is fully resolved. EO will continue to take appropriate action to rectify and prevent the recurrence of any alleged Prohibited Conduct.

4.10 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.

5. Resolution Options

Parties should inform EO of their selection of an Advocate. Advocates are required to sign confidentiality agreements prior to their participation in these procedures.

5.1 Restorative Resolution

5.1.1 A restorative resolution includes the opportunity to participate in a voluntary and mutually agreed upon resolution to appropriately resolve the complaint. A restorative resolution does not result in a determination regarding a Policy 110 policy violation. The restorative resolution must be approved by the Executive Director of Access & Equity or their designee.

5.1.2 A restorative resolution is a process that is educational in nature and results in an informed voluntary agreement between the Parties and the University to resolve a complaint utilizing strategies such as

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educational outcomes, interventions, or other restorative principles to address the concern, prevent its recurrence, and/or restore the community.

5.1.3 Either Party may request a restorative resolution at any point during these procedures prior to reaching a determination regarding responsibility. Parties have the right to withdraw from the restorative resolution process or to resume an investigation that has previously been initiated.

5.1.4 EO will appoint a trained facilitator to oversee the Parties' restorative 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 terms.

5.2 Administrative Resolution

5.2.1 An administrative resolution includes an investigation and a hearing for a determination of responsibility. The purpose of the investigation is to establish whether there is sufficient evidence to substantiate a policy violation. Investigations are conducted in a timely manner. Specific timelines vary due to the complexity of allegations, the University calendar (including breaks, holidays, or other closures), the unavailability of Parties or witnesses, inclement weather, and/or other unforeseen circumstances.

5.2.2 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. During the investigation, the investigator is a neutral factfinder, collecting and analyzing relevant evidence from the Parties, witnesses, and other sources, as appropriate. 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.

5.2.3 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, Advocate, or witness.

5.2.4 Evidentiary support from Parties collected during the investigation may include interviews, reports, and additional information provided by the Parties. Investigators may exclude evidence or testimony that is repetitious, irrelevant, impermissible, or otherwise without sufficient value to the investigation.

5.2.5 EO will provide each Party the opportunity to submit to the investigator proposed questions for the other Party or a witness. 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 reason to exclude the question.

5.2.6 Evidence collected and reports made during the investigation will be preserved pursuant to the University's applicable records retention schedule. Such material is otherwise confidential under other UNC System or University policies, including investigative files housed in Human Resources, Academic Affairs,

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Office of General Counsel, or the Office of Access and Equity. Evidence and reports shall not be located in student educational records. This information, which includes Witness statements and other documentary evidence, will not be released except under court order.

5.2.7 Prior to finalizing the investigative report, Parties will be provided a draft report. The draft investigative report will include relevant evidence obtained during the investigation, as well testimony concerning the allegations and the relevant policies. The Parties will have **five (5) Days** from receipt of the draft to submit comments on the report or other relevant evidence.

5.2.8 After each Party has had the opportunity to review the draft investigative report, the investigator will consider the comments, analyze the information collected during the investigation, and finalize the investigative report, which will additionally include a recommendation of findings.

5.2.9 In incidents where the investigation substantiates a policy violation, the Respondent may accept the finding of responsibility, and the Complainant and Respondent may waive the right to a hearing.

6 Hearing

6.1 Upon the conclusion of the investigation, a live hearing, will be conducted in order for Hearing Officers appointed by EO to make a determination of responsibility. Hearings, excluding deliberations, will be audio recorded and serve as the verbatim record. The University retains the sole right to record hearings, and no other recordings will be permitted. The Parties, Advocates, and Hearing Officer(s) will be provided a copy of the finalized investigative report to review prior to the hearing.

6.2 **Notice of Hearing:** No fewer than **ten (10) Days** prior to the hearing, EO will send a notice which contains: 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; the time, date, and location of the hearing; a list of the Hearing Officer(s) and the Hearing Administrator. Parties must notify EO within **three (3) Days** if they believe that a Hearing Officer(s) has a conflict of interest or bias.

6.3 **Composition:** Hearings are closed to the public and consist of one to three trained Hearing Officer(s), (based on the availability of the Hearing Officers and/or the nature of the offense), the Parties, the Hearing Administrator, and witnesses.

6.4 **Format:** Hearings may be conducted with all participants in-person or virtually via Zoom to ensure participants can see and hear each other simultaneously. The hearing is an opportunity for the Hearing Officer(s) to ask questions about issues relevant to determining responsibility. The Hearing Administrator has the discretion to determine the specific hearing format.

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A typical hearing generally includes the following:

- The Hearing Administrator will read statements regarding the expectations for the hearing, including expectations regarding truthfulness and confidentiality and the allegations as listed in the notice, which are to be considered at the hearing.
- The investigator will present the information alleged in the formal complaint, as well as evidence gathered through the investigation process. This may be done by presenting the investigative report and relevant evidence and/or through witnesses.
- The Parties may each make a short opening remark summarizing their case and call upon any Witnesses. The Hearing Administrator and Hearing Officer(s) may question the Complainant, Respondent, and witnesses following each of their respective testimonies.
- The Parties may each make a closing remark. A closing remark is a short summary of the information previously presented and conclusions the speaker wishes the Hearing Officer(s) to draw from the information.

6.5 Witnesses: The Parties may request the presence of any witness at the hearing. The Hearing Administrator 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 Administrator 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 Administrator no later than **five (5) days prior** to the hearing.

6.6 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 Hearing Officer(s). The Hearing Officer(s) cannot draw an inference about the determination of responsibility based solely on a Party's or witness's absence from the hearing or refusal to answer questions.

6.7 Civility Agreements: All participants will be required to review and sign a Civility Agreement that establishes standards of behavior and rules of decorum prior to the hearing. Individuals unable to adhere to the Civility Agreement may be removed from the hearing.

6.8 Questioning & Relevancy: The Parties may not question each other or any witness at the hearing. Rather, the Hearing Administrator will conduct questioning directly, orally, and in real-time. The proposed questions will be reviewed, and all relevant questions will be posed to the other Party or witness by the Hearing Administrator. The Hearing Administrator will exclude any irrelevant questions, and when excluded, the Party will be provided an explanation as to the decision to exclude the question as irrelevant.

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For the purposes of a hearing under these procedures, the Hearing Administrator 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
- 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.

7. Determination of Responsibility & Outcomes

7.1 Once the Hearing Administrator concludes the evidentiary portion of the hearing, the Hearing Officer(s) will begin deliberations in a closed session to determine whether or not a policy violation occurred and make a recommendation on the outcome 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 Discrimination & Harassment.

7.2 **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

7.3 In the event a determination of responsibility is made, the Executive Director of Access and Equity or designee will share the finding with the Office of Student Conduct for a final determination of appropriate outcomes pursuant to the [Code of Student Conduct](#), in order to resolve the policy violation and prevent its recurrence. Sanctions and outcomes include but are not limited to educational outcomes such as training or mandated service or status outcomes such as written letters of concern, suspension, or expulsion.

7.4 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 outcomes in accordance with Article VII Outcomes of the Code of Student Conduct and any applicable rights to appeal the determination.

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8. Appeals

8.1 Article VI of the Code of Student Conduct governs the appeals procedures for Student Respondents.

9. Retaliation Prohibited

9.1 The University prohibits related retaliation, as defined in Policy 110.

10. Right to Amend

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

Amended August 15, 2023

Amended August 12, 2024