

Appalachian State University

Title IX Resolution Procedures

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 sex-based discrimination and harassment. The following provides an administrative framework for reporting, investigating, adjudicating, and resolving alleged violations of sex-based discrimination and sex-based harassment within Education Programs or Activities pursuant to University [Policy 110 Discrimination and Harassment](#), the [Code of Student Conduct](#) and its corresponding procedures, and Title IX of the Education Amendments 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 the University officially recognizes;
- and in the United States.

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*

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

2.1 Appropriate Administrative Official: For faculty, the Senior Vice Provost of Faculty Policies, Development, and Training. For SHRA and EPS employees, the Associate Vice Chancellor of Human Resources. For students, the Office of Student Conduct within the Division of Student Affairs.

2.2 Complainant: The student or employee alleged to have been subjected to Prohibited Conduct.

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

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

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. It also includes any building owned or controlled by a student organization officially recognized by the University.

2.6 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.

2.7 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.

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

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

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

2.11 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.

2.12 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 to conduct cross-examination for the Party at the Hearing. If a party does not have a Title IX Advisor, EO will provide a Title IX Advisor of the University's choice without fee or charge for the limited purpose of conducting cross-examination on behalf of the Party at the Hearing.

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 to the extent possible, 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 or when needed. When applicable within these procedures, the Amnesty Policy will be applied to student Complainants, student Respondents, and student witnesses.

3.5 An Equal Employment Opportunity Informal Inquiry submitted by a current SHRA or former SHRA employee covered by the [UNC System SHRA Employee Grievance Policy](#), when the underlying allegation is based on protected status, will be treated as a report.

3.6 An EPS Grievance submitted by a current or former EPS employee covered by the [Policy 602.23 EPS Grievance](#), when the underlying allegation is based on protected status, will be treated as a report.

4. University Response to Reports of Prohibited Conduct

4.1 Reports of Prohibited Conduct

4.1.1 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 participating or attempting to participate in a University Education Program or Activity, EO may provide reasonably appropriate Supportive Measures, assist the Complainant in identifying external

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reporting options, and take reasonable steps to prevent the recurrence and remedy the effects of the alleged Prohibited Conduct, as appropriate.

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

4.1.3 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.

4.1.4 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, and information may be shared as necessary to investigate or address the Prohibited Conduct, fulfill legal obligations, or pursuant to University policies.

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

4.2 Formal Complaint Preliminary Review & Dismissal

4.2.1 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. At the time of filing a Formal Complaint, the Complainant must be participating in or attempting to participate in a University Education Program or Activity.

4.2.2 EO will conduct a review of all Formal Complaints.

- **Mandatory Dismissal:** A Formal Complaint must be dismissed if alleged Prohibited Conduct:
 - Would not constitute sex-based harassment or sex-based discrimination as defined in Policy 110 Discrimination and Harassment if proven;
 - Did not occur in a University Education Program or Activity;
 - Did not occur in the United States.
- **Discretionary Dismissals:** A Formal Complaint may be dismissed at any time during these procedures if:
 - The Complainant notifies EO in writing a withdrawal of the Formal Complaint or any allegations therein;
 - The Respondent is no longer enrolled or employed at the University; or
 - Specific circumstances prevent the University from gathering evidence sufficient to reach a determination regarding the allegations in the Formal Complaint.

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

4.2.4 Either Party may appeal the decision to dismiss a Formal Complaint as outlined in Section 8.

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4.2.5 EO may consolidate Formal Complaints when allegations of sex-based harassment or sex-based discrimination 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 sex-based harassment or sex-based discrimination arise out of the same facts or circumstances.

4.2.6 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 the Parties, the University will supplement the notification to the Parties.

4.3 Title IX Advisors

4.3.1 Each Party is permitted to have a Title IX Advisor of their choice, at their own expense, accompany them to EO meetings and interviews and conduct cross-examination at the Hearing. Title IX Advisor may not be an employee involved in intake, a case manager, or an individual part of the adjudication process.

4.3.2. Parties should inform EO of their selection of a Title IX Advisor. Title IX Advisors are required to sign confidentiality agreements prior to their participation in these procedures.

4.3.3 After the final investigative report is completed, if a Party has not yet secured a Title IX Advisor, EO will appoint one, without fee or charge, to a Party to conduct a cross-examination at the Hearing. If one Party has retained an attorney as their Title IX Advisor, the University is not obligated to provide an attorney as the other Party's Title IX Advisor.

5. Resolution Options

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 Discrimination & Harassment 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 educational 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 and hearing that has previously been initiated in regard to the Formal Complaint.

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

5.1.5 A restorative resolution is **not available** where an employee Respondent is alleged to have engaged in sex-based Prohibited Conduct directed at a student.

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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, Title IX Advisor, 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 for excluding 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, 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 with a draft report. The draft report will include all evidence obtained during the investigation that is directly related to the allegations, as well as testimony concerning the allegations and the relevant policies. The Parties will have **ten (10) Days** from receipt of the draft to submit comments on the report or other relevant evidence. In cases regarding sex-based harassment, Parties may request access to the relevant and not otherwise impermissible 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.

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6. Hearings

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, Title IX Advisors, 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 Title IX Advisors to cross-examine Parties and 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.

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 (or their Title IX Advisors) may each make a short opening remark summarizing their case and call upon any witnesses. The Hearing Administrator, Hearing Officer(s), and Title IX Advisors may question the Complainant, Respondent and Witnesses following each of their respective testimonies.
- The Parties (or their Title IX Advisors) 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.

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6.6 Participation: Parties and witnesses are not required to participate in the Hearing. If a Party or witness 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 the hearing.

6.8 Questioning & Relevancy. The Parties may not question each other or any witness at the hearing. Instead, the Party's Title IX Advisor must conduct cross-examination directly, orally, and in real-time. All cross-examination questions posed at the hearing are subject to a relevance determination by the Hearing Administrator as only relevant and not otherwise impermissible 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 Administrator will exclude any irrelevant questions, and when excluded, the Party will be provided an explanation as to the decision to exclude the question.

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

- 1) Information protected by a legally recognized privilege (e.g., attorney-client privilege);
- 2) Any Party's medical, psychological, and other similar records unless the Party has given voluntary, written consent; and
- 3) 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 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 when determining appropriate outcomes

7.3 Following the receipt of the written determination from the Hearing Officer(s), the Executive Director of Access & Equity or designee will refer the case to the appropriate University official for the imposition of sanctions or outcomes, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process. 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. Sanctions and outcomes include but are not limited to

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educational outcomes such as training or mandated service, written letters of concern or reprimands, or status outcomes such as suspension, expulsion, or termination of employment.

- **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 EPS 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.

7.4 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:

- No-Contact Directives;
- Reimbursement for counseling or other medical expenses related to Prohibited Conduct;
- Academic, University housing, and/or University employment modifications;
- Increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur;
- Educational programming or training for relevant persons or groups;
- 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, and identify how to prevent that Prohibited Conduct in the future (including community service and/or prevention programs related to the Prohibited Conduct); or
- Any other remedial or protective measures tailored to achieve these procedures' goals to promote a safe, nondiscriminatory environment.

8. Appeals and Response to Notice of Outcome

8.1 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.

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

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter;
- The Hearing Officer(s), 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.

8.3 If one Party files an appeal, the University will notify the other Party of the appeal.

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

8.5 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.

8.6 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.

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.

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