

# Appalachian State University

## Discrimination and Harassment

### Resolution Procedures for Student Respondents

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## 1. Overview and Purpose

These procedures support Appalachian State University's (the "University") commitment to creating and maintaining an institutional environment free of discrimination and harassment. 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](#) ("Policy 110"), the [Code of Student Conduct](#) and its corresponding procedures, and applicable state and federal laws, including but not limited to Title VI, the Violence Against Women Act, and the Americans with Disabilities Act ("ADA"). When applicable within these procedures, the Amnesty Policy will be applied to Complainants, Respondents, and Witnesses.

The Office of Access & Opportunity: Equal Opportunity ("EO") is the designated office for oversight over Policy 110. The Executive Director of Access & Opportunity ("Executive Director") 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](#).

**2.2 Complainant:** A 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 full-time University staff or faculty members or a trained third party appointed by EO to attend a hearing and make a determination of responsibility.

**2.5 Hearing Administrator:** An individual with delegated authority to conduct hearings in an effective and efficient manner.

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

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

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

**2.9 Witness:** An individual who has direct experience with, or knowledge of, events, issues, or circumstances related to the incident. A Witness may not serve in any other role throughout the process.

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**3. University Response to Reports of Prohibited Conduct**

3.1 The Executive Director 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. EO may consult with appropriate University officials and campus units to gather additional information to complete the preliminary review and to coordinate an appropriate response and resolution process. If the Respondent is no longer a student, EO may provide appropriate resources, 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.

3.2 If the preliminary review indicates that the allegations, if true, would not constitute a Policy 110 violation, EO may consult with the Office of Student Conduct & Academic Integrity to determine what, if any, additional actions may need to be taken to address allegations of inappropriate conduct. When applicable, EO will provide resource referrals to the Complainant. EO may also consult with the University officials to determine what, if any, additional actions may need to be taken to address, taken in response to the report, which could include, but are not limited to, increased monitoring of certain University areas, educational opportunities, or referral.

3.3 If the preliminary review indicates the allegations, if true, would constitute a Policy 110 violation, EO will conduct outreach to the Complainant to offer resources and inform the Complainant of resolution options, if any, under these procedures.

3.4 Based on the seriousness of the alleged violation(s), the University, pursuant to the Code of Student Conduct, may impose an interim action on the Respondent. Such actions may include, but are not limited to, interim suspension or removal from a University program or activity.

3.5 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.

3.6 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 the applicable resolution procedures. EO will offer resources for Respondents.

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

3.8 Resolution processes are initiated when a report of Prohibited Conduct passes the preliminary review and either the Complainant indicates their request for the University to address the allegation(s) or the University has determined to proceed in order to effectively resolve the allegation and prevent future recurrence.

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3.9 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 Office of Student Conduct & Academic Integrity. Upon receipt of the notice, or at any stage in the procedures, a Respondent may choose to accept responsibility.

3.11 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. Resolution Types**

Parties may choose to have an Advocate through the resolution process and should inform EO of their selection of an Advocate. Advocates are required to sign confidentiality agreements prior to their participation in these procedures. An Advocate may observe and provide support and advice but may not unduly delay or otherwise disrupt the process.

### **4.1 Restorative Resolution**

4.1.1 A restorative resolution is a process that is educational and results in an informed, voluntary, and mutual agreement between the Parties and the University to resolve a reported violation utilizing strategies such as educational outcomes, interventions, or other restorative principles to address the concern, prevent its recurrence, and/or restore the community. A restorative resolution does not result in a determination regarding a Policy 110 policy violation and is not part of a student's disciplinary record. The Executive Director or their designee must approve the restorative resolution agreement.

4.1.2 Either Party may request a restorative resolution at any point during these procedures prior to either a Respondent accepting responsibility or EO providing the final report. Parties have the right to withdraw from the restorative resolution process or to resume an investigation that has previously been initiated.

4.1.3 EO will appoint a trained facilitator, who is not the investigator, to oversee the Parties' restorative resolution. Either Party should notify EO immediately if they believe the facilitator has a conflict of interest or bias. The facilitator will engage with the Parties to discuss possible resolution terms.

### **4.2 Administrative Resolution**

An administrative resolution includes an investigation followed by a hearing that results in a determination of responsibility. EO's Compliance Coordinator will serve as a process advisor and resource for Parties and witnesses for questions about these procedures.

#### **4.2.1 Investigation**

**Timeline:** 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

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of allegations, the University calendar (including breaks, holidays, or other closures), the unavailability of Parties or witnesses, inclement weather, and/or other unforeseen circumstances.

**Investigator:** An EO-appointed investigator or 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 immediately if they believe that the appointed investigator has a conflict of interest or bias.

**Notice:** EO will provide written notice of the date, time, location, participants, and purpose of any investigative interview or meeting to a Party or Witness whose participation is invited or expected, with sufficient time for the Party or Witness to prepare to participate. All Party and Witness interviews will be recorded by the University but shall not be recorded by any Party, Advocate, or Witness. Respondents who do not engage in these procedures to address alleged violations will be subject to the actions outlined in the Code of Student Conduct.

**Evidence:** Evidentiary support collected during the investigation may include physical or documentary evidence such as interviews, reports, photographs, text messages, emails provided by the Parties and Witnesses, and University records. Investigators may exclude evidence or statements that are repetitious, irrelevant, impermissible, or otherwise without sufficient value to the investigation. Documentary evidence is collected via a secure online platform shared by EO. Parties and Witnesses are expected to give truthful statements. Providing untruthful statements may result a violation of the Code of Student Conduct.

**Relevance & Credibility:** The investigator will determine relevant and permissible evidence during the investigation to be used in the final report. If the investigator considers credibility, such credibility determinations may not be based on a person's status as a Complainant, Respondent, or Witness.

**Draft Review:** Prior to finalizing the investigative report, Parties will be provided a download-restricted electronic version of the draft report or may request to review a hard copy within EO. Draft reports shall not be photographed or copied; however, notes on the content may be taken. The Parties will have **five (5) Days** from receipt of the draft to submit comments on the report or other relevant evidence. This is the final opportunity for the parties to identify additional information or Witnesses for the investigator(s) to consider.

**Final Report:** 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. In the final investigative report, the investigator will evaluate evidence using the preponderance of evidence standard and make a recommendation of findings accompanied by a rationale.

**Recommended Finding of Responsible:** In incidents where the investigator recommends a finding of responsible, the Respondent may accept responsibility and voluntarily waive their right to a hearing pursuant to the Code of Student Conduct. If the Respondent accepts the informal resolution, they waive their right to a Formal Resolution and, if applicable, accept responsibility for the violation(s) and the outcome(s) imposed.

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#### 4.2.2 Hearing

**Notice of Hearing:** Upon concluding the investigation, a live hearing, will be conducted for Hearing Officer(s) to make a determination of responsibility based on the information contained in the final investigative report. No fewer than **ten (10) Days** prior to the hearing, EO will send a notice which includes: the time, date, and location of the hearing; a list of the Hearing Officer(s), the Hearing Administrator, and any additional applicable participants. Parties must notify EO within **two (2) Days of the notice of hearing** if they believe that a Hearing Officer(s) has a conflict of interest or bias.

**Final Report:** The Parties, Advocates, and Hearing Officer(s) will be provided a download-restricted electronic version of the finalized investigative report or a hard copy within the office, upon request, to review prior to the hearing. Finalized reports may not be photographed or copied; however, notes on the content may be taken.

**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, Witnesses and if applicable other participants such as the Executive Director or designee or a technology support individual

**Format:** Hearings may be conducted with all participants in-person or virtually 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. Hearings, excluding deliberations, will be recorded and serve as the verbatim record. The University retains the sole right to record hearings; no other recordings will be permitted.

**Hearing Administrator & Officer(s):** The Hearing Administrator and Hearing Officer(s) ensure a fundamentally fair process, protect the rights of the Parties, and ensure that participants are treated with respect. Both have the authority to review the admissibility of any information and the questioning of Parties and Witnesses.

**Civility Agreements:** Parties and Advocates 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 will be removed from the hearing.

**Witnesses:** The Parties or Hearing Officer(s) may request the presence of any Witness at the hearing. The Hearing Officers may decide in advance of the hearing that certain Witnesses do not need to be present if the investigative report can adequately summarize their statement or if Witness information was not relevant and included in the final report. Generally, Witnesses who did not participate in the investigation may not participate in the hearing.

**Participation:** Parties 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.

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**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. Parties may propose questions which will be reviewed, and the Hearing Administrator or Hearing Officer(s) will pose all relevant questions to the other Party or Witness.

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

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

In general, questions related to Parties' prior sexual history are not relevant except in the specific circumstances such as: the Complainant's sexual predisposition or prior sexual behavior unless such questions are offered to prove that someone other than the Respondent committed the conduct alleged; or if the questions concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent; or the Complainant's or Respondent's prior sexual history with any other individual may be relevant under very limited circumstances to prove intent, motive, absence of mistake, or to explain an injury or physical finding.

## 5. Determination of Responsibility & Outcomes

**Determination of Responsibility** Once the Hearing Administrator concludes the evidentiary portion of a 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(s). Information regarding any prior disciplinary history may not be introduced or considered in deliberations regarding findings of responsibility. All determinations shall be made using a preponderance of the evidence standard, as defined by University Policy 110 Discrimination & Harassment and the Code of Student Conduct.

**Outcomes** In the event of a finding of responsible, either from a hearing or acceptance of responsibility and waiver of a hearing, the Executive Director or designee will share the finding and recommended outcomes with the Office of Student Conduct and Academic Integrity for a final determination of appropriate outcomes pursuant [Code of Student Conduct](#), to resolve the policy violation and prevent its recurrence. Sanctions and outcomes include, but are not limited to, educational outcomes such as training, mandated service, or status outcomes such as written letters of concern, suspension, or expulsion.

**Impact Statements.** Respondents 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. In cases that involve a crime of violence as defined in the Code of Student Conduct or sexual/sex-based misconduct, the Complainant may also provide an Impact Statement. If a determination of responsible is made,

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impact statements may be used by the Office of Student Conduct & Academic Integrity when determining outcomes.

**Outcome Notification:** EO, in conjunction with the Office of Student Conduct and Academic Integrity, will notify the Respondent in writing of the outcome and determination of responsibility as to whether a policy violation was substantiated within **ten (10) days** of the hearing. The Respondent's notice of outcome will also include outcomes in accordance with the Code of Student Conduct and any applicable rights to appeal the determination. The Complainant will be informed of any Respondent outcomes in cases involving crimes of violence as defined in the Code of Student Conduct or sexual/sex-based misconduct.

**Record Retention:** 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 Opportunity. 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.

## **6. Appeals**

The Code of Student Conduct governs the appeals procedures.

## **7. Retaliation Prohibited**

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

## **8. Right to Amend**

The Executive Director reserves the right to amend these procedures as necessary at any time.