

Appalachian State University

Title IX Resolution Procedures

1. Overview and Purpose

These procedures support the Appalachian State University (the “University”) commitment to creating and maintaining an institutional environment free of Title IX Sexual Harassment. The following provides an administrative framework for reporting, investigating, adjudicating, and resolving alleged violations of Title IX Sexual 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 Office of Access & Opportunity: Equal Opportunity (“EO”) is responsible for responding to complaints of Prohibited Conduct as prescribed in University 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 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 and Academic Integrity.

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 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 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.

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

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 person 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.

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

2.12 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 Reports of Prohibited Conduct

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

3.1.2 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.

3.1.3 In conjunction with the Office of Student Conduct & Academic Integrity, the Office of Human Resources, or Academic Affairs, the University may impose an interim action on Respondents which may include the interim suspension or leave from a Respondent from an education 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.

3.1.4 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.

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

3.2 Formal Complaint Preliminary Review & Dismissal

3.2.1 A Formal Complaint may be submitted by a Complainant in writing through the 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.

3.2.2 EO will conduct a review of all Formal Complaints.

- **Mandatory Dismissal:** A Formal Complaint must be dismissed if alleged Prohibited Conduct would not constitute Title IX Sexual Harassment as defined in Policy 110 Discrimination and Harassment.
- **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.

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3.2.3 If the Formal Complaint is dismissed, written notice and the rationale for dismissal will be communicated simultaneously to the Parties. Other resolution procedures may still address allegations within a dismissed Formal Complaint.

3.2.4 Either Party may appeal the decision to dismiss a Formal Complaint as outlined in below.

3.2.5 EO may consolidate Formal Complaints when allegations of Title IX 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 Title IX Sexual Harassment arise out of the same facts or circumstances.

3.2.6 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, the date and location of the allegations, and for student Respondent potential outcomes pursuant to the Code of Student Conduct. Should additional allegations arise after the initial notification has been provided to the Parties, the University will supplement the notification to the Parties.

3.2.7 In cases when the Complainant does not wish to proceed with a Formal Complaint process, the Title IX Coordinator may still proceed with a Formal Complaint and take reasonable action in response to the reported allegations as part of the University's obligation to provide a safe, nondiscriminatory environment. When the Title IX Coordinator signs a Formal Complaint, the Title IX Coordinator is not a Complainant or otherwise a Party under these procedures.

3.3 Title IX Advisors

3.3.1 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.

3.3.2. 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.

3.3.3 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.

4. Resolution Options

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.

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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 that the facilitator has a conflict of interest or bias. The facilitator will engage with the Parties to discuss possible resolution terms.

4.1.4 A restorative resolution is not available where an employee Respondent is alleged to have engaged in Title IX Sexual Harassment directed at a student.

4.2 Administrative Resolution

4.2.1 Investigation

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.

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 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 whose participation is invited or expected, with sufficient time for the Party to prepare to participate. All Party and Witness interviews will be recorded by the University but may not be recorded by any Party, Title IX Advisor, or Witness.

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 repetitive, 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 in disciplinary action.

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 **ten (10) Days** from receipt of the draft to submit comments on the report or other relevant evidence. In cases regarding Title IX Sexual Harassment, Parties may request access to the relevant and not otherwise impermissible evidence.

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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.

4.2.2 Investigation

Notice of Hearing: 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 based on the information contained in the 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 Review: The Parties, Title IX Advisors, 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. The Parties will have a minimum of **ten (10) Days** to review the final report in preparation for the hearing.

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 Title IX Coordinator, Deputy Title IX Coordinator or 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 Title IX Advisors to cross-examine Parties and for the Hearing Officer(s) to ask questions about issues relevant to determining responsibility. 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. 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 Administrator has the discretion to determine the specific hearing format.

Witnesses: The Parties or Hearing Officer(s) may request the presence of Witnesses at the hearing. Generally, Witnesses who did not participate in the investigation may not participate in the hearing.

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.

Civility Agreements: Parties and Title IX Advisors 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.

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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.

5. Determination of Responsibility & Outcomes

5.1 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.

5.2 Following the receipt of the written determination from the Hearing Officer(s), the Executive Director or designee will refer the case to the Appropriate Administrative 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 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 and Academic Integrity or designee, who will determine outcomes in accordance with the Code of Student Conduct. Sanctions and outcomes include but are not limited to 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 EPS 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.

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5.3 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.

5.4 **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 and Response to Notice of Outcome

6.1 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.

6.2 Parties may appeal a determination of responsibility on the following grounds:

- a) procedural irregularity that affected the outcome of the matter;
- b) new evidence that was not reasonably available at the time of the determination that could affect the outcome of the matter; or,
- c) the investigator had a conflict of interest or bias either generally for or against Complainants or Respondents, or specifically for a particular individual, such that it affected the outcome of the matter.

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

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

6.5 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.

6.6 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.

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6.7 The appeal officer may:

- a) affirm the investigation findings;
- b) remand the case to the investigator based on procedural errors that affected the outcome of the investigation or new and significant material information that has become available and was not available previously to a person exercising reasonable diligence, which information could have affected the outcome of the proceeding; or
- c) remand the case to a new investigator if there was a bias that affected the outcome of the matter

7. Retaliation Prohibited

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

8. Right to Amend

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