Office of Title IX Compliance’s Procedures for Investigating Reports and Complaints of Prohibited Conduct

1. **Introduction**
   1.1. Appalachian State University has established a Discrimination and Harassment Policy (Policy 110, “Policy”) that articulates its commitment to providing a workplace and educational environment, as well as other benefits, programs, and activities, that are free from discrimination, harassment, and retaliation (“Prohibited Conduct”) on the basis of protected class status. The Policy also prohibits all forms of retaliation against any individual because of their participation in the reporting, investigation, or adjudication of alleged violations of this policy.

   1.2. The Office of Title IX Compliance (“OTC”) is charged with ensuring compliance under Title IX of the Education Amendments of 1972 (“Title IX”) and the Policy for matters involving Prohibited Conduct on the basis of gender, gender expression, gender identity, sex, and sexual orientation (Definitions found in Section 4). The Title IX Coordinator is charged in their official capacity to ensure the effective operationalization of these Procedures by OTC.

   1.3. These Procedures replace all procedures, previously in effect, pertaining to reports and complaints of Prohibited Conduct.

2. **Scope**

   These procedures apply to investigations of Prohibited Conduct facilitated by OTC.

3. **Authority**

   The University maintains its authority to assess and address Prohibited Conduct, including initiating an investigative process, when the University determines that it must address a reported concern even if the Reporting Party does not wish to proceed with a formal complaint. These situations include, but are not limited to, when the information provided causes a safety concern for the individual reporting or University community, when the University is required by law to address discrimination, and similar situations.
4. Definitions

4.1. Advocate
Student Reporting and Responding parties have the right to be accompanied by one Advocate. An “Advocate” as defined in the Student Code of Conduct is an attorney or non-attorney individual who may represent a Respondent, and in cases involving an alleged act(s) of relationship violence, sexual misconduct or sex/gender based harassment, a Complainant, at any point in the disciplinary proceedings except for a Formal Resolution involving the Student Conduct Board. The Advocate may fully participate only to the extent and in the same manner afforded to the student(s) they represent, provided that the Advocate may not provide testimony.

4.2. Gender
An individual’s socially constructed status based on the behavioral, cultural, or psychological traits typically associated with societal attribution of masculinity and femininity, typically related to one’s assigned sex at birth.

4.3. Gender Identity
The gender(s) with which an individual identifies psychologically, regardless of what gender was assigned at birth.

4.4. Gender Expression
The outward manifestation of one’s gender identity, usually expressed through appearance, behavior, or mannerisms. A person’s gender expression may or may not be the same as one’s gender identity or assigned sex at birth.

4.5. Sex
An individual’s actual or perceived status of being biologically male or female, including pregnancy. Conduct of a sexual nature is conduct based on sex as a Protected Status.

4.6. Sexual Orientation
The inclination or capacity to develop intimate emotional, spiritual, physical, and/or sexual relationships with people of the same sex or gender, a different sex or gender, or irrespective of sex or gender.

4.7. Support Individual
Student Reporting and Responding parties have the right to be accompanied by up to two support individuals. These individuals are present to provide emotional support to the student(s). The support individuals may not participate in the proceedings, address any participants, or, in the sole discretion of the individual facilitating the meeting (e.g., Conduct Review Officer, Chair), delay, disrupt, or otherwise interfere with the proceeding.

4.8. **Business Day**
Any day (Monday through Friday) on which the University is fully opened for business. Not included as business days are federal, state, and campus holidays and observances, or days on which the University's operations are officially curtailed (fully or in part) because of situations including, but not limited to, winter break closure, adverse weather conditions, and emergency events.

4.9. **Final Investigative Report**
The Final Investigative Report is the formal, comprehensive, and complete record of the Investigation of Prohibited Conduct. Upon its completion, the Final Investigative Report is provided to the appropriate decision-maker.

4.10. **Investigator**
An individual(s) designated by the Title IX Coordinator to conduct prompt, thorough, fair, and impartial investigations of alleged Prohibited Conduct. The investigator is charged with the gathering of information for formal administrative processes, including inquiries and investigations. Any investigator appointed by the University receives annual and ongoing training on issues related to Prohibited Conduct and how to conduct an investigation in a fair and impartial manner.

4.11. **Involved Parties or “Parties”**
The collective term referring to the Reporting Party(s) and Responding Party(s).

4.12. **Inquiry**
A fact-finding process to determine if a report requires further University action or response. An inquiry is performed when essential elements to decision-making processes may be limited, thereby the pursuit is necessary to identify appropriate next steps.

4.13. **Material Evidence**
Documentation relevant to a report or complaint of Prohibited Conduct that may include photographs, videos, emails, text messages, social media messages or
posts, contracts, records of meetings, tangible items, or other material or data which may help to provide additional detail. Original documents are preferred to copies and all materials should be in unaltered form.

4.14. **Notice**
Formal written communication from the Office of Title IX Compliance that provides a party with information that is essential to that party's rights and responsibilities, and that is designed to ensure that the party's due process rights are safeguarded.

4.15. **Observer**
A faculty or member who is a Reporting or Responding party may be accompanied by an “Observer” of their choice as defined in the Faculty Handbook. Unless otherwise agreed, Observers may not take part in the discussion between the faculty member and Office of Title IX Compliance staff member. Observers may not be present as an attorney. Because confidential personnel file information may be discussed, the faculty member and any observers must sign an Observer Waiver.

4.16. **Preliminary Investigative Report**
The Preliminary Investigative Report is the initial comprehensive presentation of statements, evidence, and information authored by the Investigator. The Preliminary Investigative Report will be redacted and will serve as the basis for the Final Investigative Report.

4.17. **Prohibited Conduct**
Conduct that is prohibited under Policy 110 or the Code of Student Conduct and encompasses sexual harassment, gender-based harassment, sexual violence, sexual exploitation, sexual intimidation, relationship violence, stalking, and retaliation.

4.18. **Retaliation**
Any adverse action against an individual, or an individual’s spouse, partner, or other person with a close personal relation, for making or supporting a claim of Discrimination or Harassment, opposing any Discrimination or Harassment, or participating in the reporting, investigation, or resolution of alleged violation(s) under this policy. Examples of Retaliation include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report or complaint made in good faith was not substantiated.

4.19. **Title IX Coordinator**
The Title IX Coordinator or designee will oversee the investigation and assign a fair and impartial investigator who has training and experience investigating allegations of Prohibited Conduct.

4.20 Transcript
The verbatim speech to text representation of interviews provided to Parties and Witnesses to review for accuracy during the course of an investigation.

4.21 Witness
Individuals identified as likely having information material to a Title IX Investigation, including, but not limited to, bystanders to an alleged act of Prohibited Conduct, someone with whom information or details were shared prior or following an alleged act of Prohibited Conduct, or may be deemed as relevant based upon other knowledge or information they may have and/or had access to.

5. Rights of the Parties
5.1. The Parties have the right to be treated with dignity and respect in any meeting or process associated with these Procedures.
5.2. The Parties have the right to experience a safe living, educational, and work environment.
5.3. The Parties have a right to a fundamentally fair process, including an initial presumption that no Party being investigated has committed any infraction.
5.4. The Parties have the right to a fair, equitable, and timely investigation into allegations of Prohibited Conduct.
5.5. The Parties have the right to be informed of supportive resources within the campus community, including the right to request reasonable accommodations through the Appalachian State University Office of Disability Resources, pursuant to Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.
5.6. The Parties have the right to be informed of and to request reasonable interim measures in association with these Procedures.
5.7. The Parties have the right to designate supportive individuals (Support Individuals, Advocate, or Observer) in any meeting or process associated with these Procedures.
5.8. The Parties have the right to be free from retaliation.
5.9. The Parties have the right to challenge an individual designated by the University to investigate a complaint based on a conflict of interest.
5.10. The Parties have the right to receive Notice of the investigation, a summary of allegations, requests for meetings and interviews, and related investigative developments in writing.

5.11. The Parties have the right to not have irrelevant prior sexual history discussed in association with these Procedures.

5.12. The Parties have the right to review their own transcript(s) produced in conjunction with investigative interviews.

5.13. The Parties have the right to submit names of witnesses, material evidence, and questions for consideration in the investigative process.

5.14. The Parties have the right to review and respond to the Preliminary Investigative Report prior to its formal finalization and submission.

6. **Witnesses**

6.1. Witnesses will be asked to participate in interviews and administrative processes as appropriate.

6.2. Witnesses will be provided the opportunity to review their own transcript(s) produced in conjunction with investigative interviews.

6.3. Witnesses may not be accompanied to any interview, but are encouraged to seek out support through confidential and private campus and community resources for additional assistance.

6.4. Participation is voluntary; however, a lack of participation will be noted within the Investigation Report.

7. **Support Individuals/Advocates/Observers**

7.1. In all cases, involved student Parties may choose, at their own initiative and expense, to designate up to two (2) persons who may function as support individuals and one (1) Advocate Individuals during the investigative process.

7.2. In all cases, involved faculty or staff members Parties may choose, at their own initiative and expense, to designate one (1) Observer.

7.3. A Party must provide the name and contact information of their Support Individual, Advocate, and Observer at least 24-hours prior to attending any meeting in association with these Procedures.

7.4. All Support Persons, Advocates, and Observers are required to sign documentation acknowledging and agreeing to the scope and requirements of the role in which they are functioning. Such documentation may be required at multiple points during the investigative process.
7.5. A Party must also inform the Investigator assigned to the case if they change their designated Advocate (Observer) during the process.

7.6. While the University will make reasonable efforts to accommodate the schedule of a Party's Support Persons, Advocates or Observer in scheduling meetings and proceedings, a Supportive Individual's inability to attend a meeting does not, in and of itself, constitute good cause that would necessitate a meeting or proceeding be held in abeyance and/or rescheduled.

7.7. OTC reserves the right to bar any Support Individual, Advocate or Observer from further participation in the investigation should that person delay, disrupt, or otherwise interfere with the process or procedures in place.

8. Initial Assessment

8.1. Upon receipt of a report, the Title IX Coordinator, or designee, will conduct an initial assessment to:
   (a) review the incident or behavior of concern;
   (b) assess any risk of harm to the parties, any other individuals, or the broader University community;
   (c) determine if enough information is gathered to determine a course of action.

8.2. The Title IX Coordinator, or designee, will determine appropriate and temporary means of relief through the installation of interim measures.

9. Investigation

9.1. Authority
   Refer to Section 3, above.

9.2. Preliminary Assessment of Complaint
   Upon receipt of a Complaint, the Title IX Coordinator, or designee, will assess the Complaint to determine the most appropriate means through which to address the Complaint. The Title IX Coordinator, or designee, will perform a Preliminary Review of Complaints of Prohibited Conduct to determine whether the Complaint, if substantiated, may constitute a violation of Policy. The Title IX Coordinator, or designee, reserves the right to confer with relevant campus and community administrators, as necessary. Should additional information be necessary to better assess a report of Prohibited Conduct, an Inquiry can be initiated. Should the preliminary assessment indicate the allegations of Prohibited Conduct, if true, may
constitute a violation of Policy, administrative action may be initiated, including an Investigation. Should the preliminary assessment indicate the allegations of Prohibited Conduct, if true, may not constitute a violation of Policy, the Title IX Coordinator, or designee, will administratively close the formal processing of the Complaint. The Title IX Coordinator, or designee, reserves the right to confer with or refer Complaints of Prohibited Conduct to relevant campus and community administrators, as necessary.

9.3. Due Process
The Title IX Coordinator, or designee, will ensure a fair, equitable, and timely investigative process. All Reporting and Responding Parties will be afforded the equitable opportunities to engage in the investigative process, including, but not limited to, participating in interviews, supplying material evidence, identifying witnesses, examining reports, and participating in relevant administrative processes.

9.4. Concurrent Criminal Proceedings
Upon receipt of notice of a concurrent criminal investigation, the Title IX Coordinator, or designee, will coordinate any investigative endeavors associated with these Procedures with law enforcement to inhibit interference with the timing or integrity of a criminal investigation. At the request of law enforcement or the Parties, the Title IX Coordinator, or designee, may agree to temporarily suspend the fact-finding portion of its inquiry or investigation of Prohibited Conduct until after the initial stages of a criminal investigation. The Title IX Coordinator, or designee, may still communicate with the Parties regarding their rights, procedural options, and implementation of interim protective measures to assure safety and well-being.

9.5. Concurrent University Proceedings
Because the University reserves the right to minimize resource expenditure and maximize work product should allegations of Prohibited Conduct implicate other University policies, the department charged with compliance under relevant University policy(s) may determine to institute a simultaneous investigative process. The Office of Title IX will thereby be authorized to conduct the overall investigation on behalf of the Office of Title IX Compliance, Office of Academic Affairs, Office of Human Resources, and Office of Student Conduct.

9.6. Investigative Process
Decisions about interviews and collection and evaluation of information are at the discretion of the Investigator. The Investigator may interview individuals multiple
times during the investigation. The Investigator will gather any available physical or documentary evidence, including prior statements by the parties or witnesses, any communications between the parties, email messages, social media, text messages, and other records as appropriate and available. The Investigator will audio record interviews for the purposes of transcription. This process allows for an accurate record of the conversation to be formally documented. The Investigator will supply any individual who participates in an interview the opportunity to review their transcript for accuracy and completion.

9.7. Participation by Parties and Witnesses

Should Parties elect not to participate in an investigation for which they have been provided Notice, the Office of Title IX Compliance reserves the administrative right either to close the case or to proceed absent their participation. Formal documentation regarding a lack of participation will be noted in any official written record, including investigative reports.

9.8. Relevance

The Investigator has the discretion to determine relevant evidence that shall be included in investigative reports, based upon the charges specifically under investigation.

9.9. Time Frame

Investigations of Prohibited Conduct will be completed within 60 business days, absent extenuating circumstances, of the case being referred to the Investigator. If additional time is needed, the Parties will be notified in writing of the reason for the delay and a projected timeline for completion of the investigation process.

9.10. Preliminary Investigative Report

9.10.1. Upon conclusion of the fact-gathering process, the Investigator will prepare a Preliminary Investigative Report, detailing the relevant content from the interviews conducted and evidence gathered. The Preliminary Investigative Report may include written statements, audio or video recordings, pictures, social media information, text messages, email exchanges, and other relevant information.

9.10.2. Involved Parties will be provided five (5) business days and equal opportunity to review the redacted Preliminary Investigation Report electronically, submit additional information, comments, and identify any additional witnesses or evidence for the Investigator to assess.
Involved Parties may request that additional specific questions be pursued by the Investigator before the completion of the Final Investigative Report.

9.10.3 Involved Parties will be provided written notice and additional time to examine the Preliminary Investigative Report should substantive changes be required.

9.10.4 At this point, the Investigator may continue the investigation or may conclude the investigation. The Investigator will update involved parties as appropriate during the investigative process.

9.10.5 Upon conclusion of all investigative processes, the Investigator will complete the Final Investigative Report.

9.11. Withdrawal of Complaint
The Reporting Party may request to withdraw their Complaint any time prior to the Investigator issuing the Final Investigative Report. Withdrawing the Complaint, will in most circumstances, end the University’s investigation. The University, however, reserves the right to move forward with the Complaint when circumstances require such action in order to protect the interests and safety of the University community.

10. Referral for Determination
10.1. When the Responding Party is a Student
The Investigator will remit the Final Investigative Report to the Director of Student Conduct, or designee, within 5 days of completing the Final Investigative Report.

The Director of Student Conduct, or designee, will operationalize the procedures for resolving complaints of alleged student misconduct as defined in the Code of Student Conduct.

10.2. When the Responding Party is an Employee
10.2.1. The Investigator will remit the Final Investigative Report to the Title IX Coordinator, or designee, within 5 days of completing the Final Investigative Report.
10.2.2. The Title IX Coordinator, or designee, will determine, via the preponderance of the evidence standard, if a violation of policy has occurred.

10.2.3. The Notice of Investigative Finding will be supplied to the Parties simultaneously and in writing. The Responding Party’s supervisor(s) will also receive Notice.

10.2.4.Absent extenuating circumstances, Findings by the Title IX Coordinator will normally be rendered within 10 business days. If additional time is needed, Involved Parties will be provided Notice by the Title IX Coordinator.

10.2.5. Determinations regarding sanctions and necessary corrective actions, if any, shall be made by the Responding Party’s supervisor(s), in consultation with the Title IX Coordinator, and other appropriate University administrators, subject to applicable grievance policies.

10.3. Grievance Rights for Employees

10.3.1.1. Faculty
Faculty members have grievance rights as stated in the Faculty Handbook.

10.3.1.2. EHRA Non-Faculty Employees
EHRA Non-Faculty employees have grievance rights as provided in the EHRA Non-Faculty Grievances Policy.

10.3.1.3. SHRA Employees
SHRA employees have grievance rights as provided in the University SHRA Grievance and Appeal Policy.

10.3.1.4. Student Employees
Student employees may be afforded grievance rights per their contract.
11. **Conflict of Interest**

11.1. The University does not allow conflicts of interest by those investigating or resolving incidents under the Policy and these Procedures. A conflict of interest exists when an individual’s knowledge of the matter or personal or professional relationships with the Reporting Party, Responding Party, or Witnesses would preclude the individual from being able to investigate or adjudicate the case fairly and impartially.

11.2. Involved Parties are encouraged to disclose potential conflicts of interest with an Investigator to the Title IX Coordinator.

11.3. Involved Parties are encouraged to disclose potential conflicts of interest with the Title IX Coordinator, or designee, to the Vice Provost for Faculty Affairs.

11.4. Investigators must disclose any potential conflict of interest they may have in a particular case to the Title IX Coordinator prior to participating in the University’s investigative process.

12. **Record Retention**

12.1. All investigative records are the property of the University and are maintained by the Office of Title IX Compliance in accordance with departmental and institutional record retention policies.

12.2. All educational records related to this Title IX reports, complaints, and investigations are privately maintained by OTC and shall not be released without the student’s consent, except as otherwise provided by law.

12.3. All investigative records related to Title IX endeavors are maintained by OTC. Involved Parties may request to inspect the Final Investigative Report in association with University administrative processes, including appellate proceedings. Access is provided in person and under direct supervision by OTC. Copies, photographs, or dissemination in any form of the Final Investigative Report is prohibited.

12.4. OTC follows the UNC System Record Retention schedule.

Revised 3/3/20