

# Title IX and Sex/Gender-Based Misconduct Procedures

## Table of Contents

|                                                           |           |
|-----------------------------------------------------------|-----------|
| <b>I. Introduction</b>                                    | <b>3</b>  |
| <b>II. Scope</b>                                          | <b>3</b>  |
| <b>III. Definitions</b>                                   | <b>4</b>  |
| <b>IV. Prohibited Conduct</b>                             | <b>5</b>  |
| A. Title IX Prohibited Conduct                            | 6         |
| B. Sex/Gender-Based Prohibited Conduct                    | 8         |
| C. Retaliation                                            | 12        |
| D. Related Terms                                          | 12        |
| <b>V. Privacy and Confidentiality</b>                     | <b>13</b> |
| <b>VI. Reporting Obligations</b>                          | <b>14</b> |
| <b>VII. Referral and Reporting Options</b>                | <b>15</b> |
| <b>VIII. Procedures for Addressing Prohibited Conduct</b> | <b>17</b> |
| <b>IX. Initial Assessment and Supportive Measures</b>     | <b>18</b> |
| A. Initial Assessment                                     | 18        |
| B. Supportive Measures                                    | 18        |
| C. Campus Safety Assessment                               | 19        |
| <b>X. Formal Complaint</b>                                | <b>21</b> |
| A. Initiating a Formal Complaint                          | 21        |
| B. Dismissal                                              | 21        |
| <b>XI. Notice of Formal Complaint</b>                     | <b>22</b> |
| <b>XII. Resolution Options</b>                            | <b>23</b> |
| A. Advisors                                               | 23        |
| B. Withdrawal or Resignation                              | 24        |
| <b>XIII. Informal Resolution</b>                          | <b>24</b> |
| <b>XIV. Formal Resolution</b>                             | <b>26</b> |
| A. Investigations                                         | 26        |
| B. Hearings                                               | 27        |
| (1) Pre-Hearing                                           | 28        |

|                                                           |           |
|-----------------------------------------------------------|-----------|
| (2) Hearing                                               | 29        |
| (3) Determination                                         | 31        |
| <b>XV. Sanctions and Remedies</b>                         | <b>32</b> |
| A. Sanctions                                              | 32        |
| (1) Range of Sanctions                                    | 33        |
| B. Remedies                                               | 36        |
| <b>XVI. Appeals and Response to Notice of Outcome</b>     | <b>37</b> |
| <b>XVII. Record Retention</b>                             | <b>39</b> |
| <b>XVIII. Preservation of Rights</b>                      | <b>39</b> |
| <b>XIX. Training</b>                                      | <b>39</b> |
| <b>XX. Contact Information for Questions and Concerns</b> | <b>39</b> |
| <b>XXI. Review and Revision</b>                           | <b>40</b> |

## I. Introduction

The Office of Title IX Compliance supports Appalachian State University's ("Appalachian" or the "University") mission of scholarship through the promotion of equity, access, and civil rights throughout the campus community, fostering an environment free of discrimination and harassment on the basis of sex, gender, gender expression, gender identity, sexual orientation, and pregnancy.

[Appalachian Policy 112- Title IX and Sex/Gender-Based Misconduct](#) ("Policy 112") prohibits such behaviors that violate Title IX of the Education Amendments of 1972 ("Title IX") and other forms of sex/gender-based misconduct (collectively "Prohibited Conduct"). Appalachian also has certain obligations under the Violence Against Women Reauthorization Act of 2013 ("VAWA") and the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act ("Clery Act") when addressing specific behaviors that may violate Policy 112.

The purpose of the Title IX and Sex/Gender-Based Misconduct Procedures ("Procedures") is to support Appalachian's commitment to providing an institutional environment free of sex and gender-based misconduct, as well as to provide an administrative framework and oversight for reporting, investigating, adjudicating, and resolving alleged violations of Policy 112. Appalachian treats Complainants and Respondents equitably throughout the procedures outlined below.

The Title IX Coordinator is responsible for overseeing institutional compliance with Title IX, VAWA, and other federal and state laws and mandates. The Title IX Coordinator can be reached as follows:

Title IX Coordinator/Director of Title IX Compliance  
123 I.G. Greer Hall  
ASU Box 32053  
(828) 262-2144  
[titleix@appstate.edu](mailto:titleix@appstate.edu)

## II. Scope

These procedures apply to all Appalachian community members including:

- a. **Students**, as defined in the [Code of Student Conduct](#) as any individual who, at the time of the incident, has accepted an offer of admission to the University; is taking courses at the University, either full-time or part-time, pursuing undergraduate, graduate, or professional studies; is auditing a class; or has any other continuing relationship with the University. This includes, but is not limited to, new students at Orientation, individuals not currently enrolled but who are still seeking a degree from Appalachian State University, non-degree seeking students, individuals who have completed coursework but are awaiting conferral of a degree, and any other individual enrolled in a course offered by Appalachian State University. For the purposes of this Code, an individual who allegedly provided false information or omitted information on an application and has participated in courses at the University shall be considered a student.

- b. **University employees**, as defined as, but not limited to all full-time and part-time faculty, staff, student employees, temporary employees, and post-doctoral fellows.
- c. **Third parties**, as defined as, but not limited to contractors, vendors, visitors, applicants, guests, or other third parties.

These procedures address Prohibited Conduct that occurs:

- a. in an education program or activity controlled by Appalachian;
- b. on property owned or controlled by Appalachian;
- c. in any building owned or controlled by a student organization that is officially recognized by Appalachian; or
- d. on property owned or controlled by non-Appalachian entities or individuals that has an adverse or detrimental effect on Appalachian, its employees, students, or third parties.

### III. Definitions

1. **Advisor:** A person chosen by a party or appointed by Appalachian to accompany the party to meetings related to these procedures, to advise the party on the process, and to conduct cross-examination for the party at a hearing.
2. **Appellate Officer:** An individual with authority to decide appeals following a decision of responsibility and/or sanctions.
3. **Complainant:** An individual alleged to be the victim of Prohibited Conduct.
4. **Day:** A business day when Appalachian is in normal operation.
5. **Decision-Maker:** An individual present at a hearing to evaluate all relevant evidence and reach a determination regarding responsibility.
6. **Directly Related Evidence:** Evidence that is connected to the formal complaint but is neither inculpatory (tending to prove a violation) nor exculpatory (tending to disprove a violation). Compare to Relevant Evidence, below.
7. **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, and also includes any building owned or controlled by a student organization that is officially recognized by Appalachian State University.
8. **Formal Complaint:** A document filed and signed by the Complainant or the Title IX Coordinator alleging Prohibited Conduct against a Respondent and requesting that Appalachian initiate an informal or formal resolution process.

9. **Hearing Officer:** In addition to being a Decision-Maker, this individual renders decisions on admissibility and relevance of evidence at a hearing. The Hearing Officer also ensures that a hearing proceeds in accordance with these procedures.
10. **Investigator:** A neutral fact-finder tasked with gathering testimonial and documentary evidence about the allegation(s) and compiling the information into an investigative report.
11. **Preponderance of the Evidence:** A determination based on facts that are more likely true than not. Where the evidence reflects a greater than 50% chance that the allegations are true, the preponderance of evidence standard results in a finding that the Respondent is responsible.
12. **Relevant Evidence:** Evidence that tends to prove (inculpatory) or disprove (exculpatory) an issue in the formal complaint.
13. **Respondent:** An individual reported to be the alleged perpetrator of Prohibited Conduct.
14. **Sex:** Encompasses sex, gender, gender expression, gender identity, sexual orientation, and pregnancy as defined by federal and state law and UNC system policies.
15. **Sex/Gender-Based Prohibited Conduct:** Misconduct that is not regulated by Title IX due to the location or nature of the incident.
16. **Sex/Gender-Based Prohibited Conduct Process:** A method of case resolution to address Sex/Gender-Based Prohibited Conduct.
17. **Supportive Measures:** Nondisciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after filing a formal complaint or where no formal complaint has been filed.
18. **Title IX:** Title IX of the Education Amendments of 1972 protects individuals from discrimination based on sex in education programs or activities that receive federal financial assistance.
19. **Title IX Coordinator:** An official designated by Appalachian to oversee institutional compliance with Title IX, VAWA, and other federal and state laws and mandates. References to the Title IX Coordinator throughout these procedures may also encompass a designee.
20. **Title IX Prohibited Conduct:** Misconduct on the basis of sex that is regulated by Title IX.
21. **Title IX Prohibited Conduct Process:** A method of case resolution to address Title IX Prohibited Conduct, which complies with the requirements of the Title IX regulations.

## IV. Prohibited Conduct

Conduct under this policy is prohibited regardless of the sex, gender, gender expression, gender identity, sexual orientation, and/or pregnancy of the Complainant or Respondent.

## A. Title IX Prohibited Conduct

**Title IX Prohibited Conduct** is the following misconduct that occurred in the United States and in the University's education program or activity.

1. **Quid Pro Quo Harassment** is conduct where a University employee conditions the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

*Quid pro quo* harassment applies whether the condition proposed by the employee is communicated expressly or implied. Examples of *quid pro quo* harassment include but are not limited to:

- a. A professor offers a student a higher grade in a class in exchange for having sex with or going on a date with the professor;
  - b. A supervisor offers an employee a career advancement opportunity in exchange for having sex or going on a date with the supervisor; or
  - c. An employee is offered an opportunity to serve on a University committee by another employee in exchange for a sexual relationship.
2. **Sexual Harassment** is unwelcome conduct on the basis of sex that a reasonable person would determine is so severe, pervasive, **and** objectively offensive that it effectively denies a person equal educational access to the University's education programs or activities. Such conduct includes unwelcome conduct of a sexual nature and may consist of unwelcome conduct based on sex or sex stereotyping.
    - a. **Intent Not Required.** Unwelcome conduct may be actionable sexual harassment regardless of the Respondent's intent to cause harm.
    - b. **Evaluating Conduct.** In assessing whether the unwelcome conduct is so severe, pervasive, and objectively offensive that it effectively denies a person equal access, the University uses a reasonable person standard that takes into account the totality of known circumstances in a particular situation, including but not limited to:
      - The frequency, nature, and severity of the conduct;
      - The age, disability status, and other characteristics of the parties;
      - Whether the conduct was physically threatening;
      - The effect of the conduct on the Complainant's mental or emotional state;
      - Whether the conduct was directed at more than one person;
      - Whether the conduct arose in the context of other discriminatory conduct; and

- Whether the conduct unreasonably interfered with the Complainant’s educational or work performance and/or University programs or activities.

The term “effectively denies” does not require a Complainant to be entirely or physically excluded from educational opportunities and may be established when the conduct undermines and detracts from the student’s education experience or the employee’s performance.

3. **Sexual Assault** is any sexual act directed against another person, without their consent, or instances in which the Complainant is incapable of giving consent. This includes the following sex offenses<sup>1</sup>.
  - a. **Rape** is penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the Complainant.
  - b. **Fondling** is the touching of the private body parts of another person (buttocks, groin, breasts), for the purpose of sexual gratification, without the consent of the Complainant.
  - c. **Incest** is sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by North Carolina law.<sup>2</sup>
  - d. **Statutory Rape** is sexual intercourse with a person who is under the statutory age of consent in the State of North Carolina, which is 16 years old.<sup>3</sup>
4. **Dating Violence**<sup>4</sup> is conduct defined as violence on the basis of sex committed by a person (i) who is or has been in a social relationship of a romantic or intimate nature with the Complainant; and (ii) where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - a. Length of the relationship;
  - b. Type of relationship; and
  - c. Frequency of interaction between the persons involved in the relationship.

Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

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<sup>1</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines “Sexual Assault” as the forcible and non-forcible sex offenses in the Clery Act at 20 U.S.C. 1092(f)(6)(A)(v).

<sup>2</sup> N.C.G.S. § 14-178.

<sup>3</sup> N.C.G.S. § 14-27.25.

<sup>4</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines “Dating and Domestic Violence” as defined in 34 U.S.C. 12291(a)(8) and 34 U.S.C. 12291(a)(10).

5. **Domestic Violence** is defined as violence on the basis of sex committed by (i) a current or former spouse or intimate partner of the Complainant; (ii) by a person with whom the Complainant shares a child in common; (iii) by a person who is cohabitating with or who has cohabitated with the Complainant as a spouse or intimate partner; (iv) by a person similarly situated to a spouse of the Complainant under the [domestic or family violence laws of the State of North Carolina](#); or (v) by any other person against an adult or youth Complainant who is protected from that person's acts under the domestic or family violence laws of North Carolina.
6. **Sex-Based Stalking**<sup>5</sup> is conduct on the basis of sex defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others or (ii) suffer substantial emotional distress.
  - a. **Course of Conduct.** Course of conduct means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any actions, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - b. **Substantial Emotional Distress.** Substantial emotional distress means significant mental suffering or anguish that may but does not necessarily require medical or other professional treatment or counseling.

## B. Sex/Gender-Based Prohibited Conduct

**Sex/Gender-Based Prohibited Conduct** that is not regulated by Title IX due to the location or nature of the incident is also prohibited by Appalachian.

1. **Sex/Gender-Based Discrimination** is an unlawful or otherwise prohibited preference for, or detrimental treatment of, one individual compared to other individuals. The conduct must be sufficiently serious to unreasonably interfere with or limit:
  - a. An employee or employment applicant's access to employment, terms, conditions, or benefits of employment (e.g., hiring, advancement, assignments, etc.);
  - b. A student or prospective student's ability to participate in, access, or benefit from University programs, services, or activities (e.g., admission, academic standing, grades, assignments, campus housing, etc.); or
  - c. A volunteer or visitor's ability to participate in, access, or benefit from or deliver University programs or services.
2. **Sex/Gender-Based *Quid Pro Quo* Harassment** is conduct where an employee or student conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct.

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<sup>5</sup> The Title IX regulation at 34 C.F.R. § 106.30(a) defines Stalking as defined in 34 U.S.C. 12291(a)(30).



*Quid pro quo* harassment applies whether the condition proposed by the employee or student is communicated expressly or implied. Examples of *quid pro quo* harassment include but are not limited to:

- a. A professor offers a student a higher grade in a class in exchange for having sex with or going on a date with the professor;
  - b. A supervisor offers an employee a career advancement opportunity in exchange for having sex with or going on a date with the supervisor; or
  - c. A student is offered a leadership opportunity in an organization by a fellow student in exchange for a sexual relationship.
3. **Sex/Gender-Based Hostile Environment Harassment** exists when unwelcome conduct on the basis of an individual's perceived or actual sex/gender is sufficiently severe, persistent, **or** pervasive that it effectively denies a person equal educational access. Such conduct includes unwelcome conduct of a sexual nature and may consist of unwelcome conduct based on sex or sex stereotyping.
- a. **Intent Not Required.** Unwelcome conduct may be actionable sex/gender-based harassment regardless of the Respondent's intent to cause harm.
  - b. **Evaluating Conduct.** In evaluating whether the unwelcome conduct is so severe, pervasive, or objectively offensive that it effectively denies a person equal access, the University uses a reasonable person standard that takes into account the totality of known circumstances in a particular situation, including but not limited to:
    - The frequency, nature, and severity of the conduct;
    - The age, disability status, and other characteristics of the parties;
    - Whether the conduct was physically threatening;
    - The effect of the conduct on the Complainant's mental or emotional state;
    - Whether the conduct was directed at more than one person;
    - Whether the conduct arose in the context of other discriminatory conduct;
    - Whether the conduct unreasonably interfered with the Complainant's educational or work performance and/or University programs or activities; and
    - Whether the conduct implicates concerns related to academic freedom or protected speech.

The term "effectively denies" does not require a Complainant to be entirely physically excluded from educational opportunities and may be established when the conduct so

undermines and detracts from the student's education experience or the employee's performance.

A hostile environment can be created by persistent or pervasive conduct or by a single or isolated incident, if sufficiently severe. The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the conduct is physical. A single incident of non-consensual sexual contact or non-consensual sexual intercourse, for example, may be sufficiently severe to constitute a hostile environment. In contrast, the perceived offensiveness of a single verbal or written expression, standing alone, is typically not sufficient to constitute a hostile environment.

4. **Non-Consensual Sexual Contact** is any intentional (not incidental or accidental) sexual touching, however slight, with any object or body part, performed by a person upon another such person, without consent.

Non-Consensual Sexual Contact includes intentional touching of the breasts, buttocks, groin, or genitals, whether clothed or unclothed, or intentionally touching another with any of these body parts; and making another touch you or themselves with or on any of these body parts.

5. **Non-Consensual Sexual Intercourse** is any penetration, however slight, with any object or body part, performed by a person upon another person, without consent.

Non-Consensual Sexual Intercourse includes vaginal penetration by a penis, object, tongue, or finger, anal penetration by a penis, object, tongue, or finger, and any contact, no matter how slight, between the mouth of one person and the genitalia of another person.

6. **Sexual Exploitation** occurs when a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and when that behavior does not otherwise constitute one of the other forms of Prohibited Conduct offenses. Examples of sexual exploitation include, but are not limited to:

- a. Causing the incapacitation of another person (through alcohol, drugs, or any other means) for the purpose of comprising that person's ability to give consent;
- b. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., live streaming of images);
- c. Prostituting another person;
- d. Non-consensual video, photo, or audio-taping of sexual activity and/or a person's intimate parts, including the dissemination or posting of said sexual activity;

- e. Observing another person while they undress, are naked, or are engaging in sexual activity without their consent;
  - f. Knowingly transmitting or exposing another person to a sexually transmitted infection or virus without the other's knowledge; and
  - g. Exposing one's genitals in non-consensual circumstances or inducing another to expose their genitals.
7. **Intimate Partner Violence** includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, or other intimate relationship. Intimate partner violence includes "dating violence" and "domestic violence," as defined by VAWA. Existence of such a relationship shall be determined based on a consideration of the following factors:
- a. Length of the relationship;
  - b. Type of relationship; and
  - c. Frequency of interaction between the persons involved in the relationship.

Intimate partner violence can include, but is not limited to the following:

- a. **Physical violence** is when a person hurts or tries to hurt a partner by hitting, kicking, or using another type of physical force.
  - b. **Sexual violence** is forcing or attempting to force a partner to participate in a sex act, sexual touching, or a non-physical sexual event (e.g., sexting) when the partner does not or cannot consent.
  - c. **Psychological aggression** is the use of verbal and non-verbal communication with the intent to harm another person mentally or emotionally and/or to exert control over another person.
8. **Stalking** is defined as engaging in a course of conduct directed at a specific person that would cause a reasonable person to (i) fear for their safety or the safety of others or (ii) suffer substantial emotional distress.
- a. **Course of Conduct** means two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any actions, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property.
  - b. **Substantial Emotional Distress** means significant mental suffering, distress, or anguish that may, but does not necessarily require medical, mental health, or other professional treatment.

### C. Retaliation

No University community member may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by these procedures, or because the individual has made a referral or complaint, provided information regarding a referral or complaint, assisted, participated or refused to participate in any manner in an investigation, proceeding, or hearing under these procedures.

Seeking charges against a student Complainant for Code of Student Conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a referral or complaint of sex discrimination or sexual harassment for the purpose of interfering with these procedures, constitutes retaliation.

Complaints alleging retaliation should be reported immediately to the Title IX Coordinator and will be promptly addressed in accordance with these procedures.

### D. Related Terms

1. **Coercion.** Unreasonable pressure for sexual activity. Coercive conduct differs from seductive conduct based on factors such as the type and/or extent of the pressure used to obtain consent. When someone makes clear by words or actions that they do not want to engage in certain sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
2. **Consent.** For consent to be present, it must be knowing and voluntary, with clear permission, by word or action, to engage in sexual activity.

When parties consent to BDSM (a combined acronym referring to bondage/discipline, domination/submission, sadism/masochism) or other forms of kink, non-consent may be shown by using a safe word. Resistance, force, violence, or even saying “no” may be part of the kink and thus consensual, so Appalachian’s evaluation of communication in kink situations shall be guided by reasonableness, rather than strict adherence to a policy that assumes non-kink relationships as a default. For more information about consent, visit, [What is Consent?](#)

3. **Force.** The use of physical violence and/or physical imposition to gain sexual access. Force also includes threats, intimidation (implied threats), and coercion intended to overcome resistance or produce consent. Sexual activity that is forced is, by definition, non-consensual, but non-consensual sexual activity is not necessarily forced. Silence or the absence of resistance alone is not consent. The absence of resistance does not demonstrate consent. While resistance is not required or necessary, it is a clear demonstration of non-consent.
4. **Incapacitation.** A person cannot consent if they are unable to understand what is happening or are disoriented, helpless, asleep, or unconscious for any reason, including by alcohol, medication, or other drugs.

- a. Incapacitation occurs when someone cannot make rational, reasonable decisions because they cannot give knowing/informed consent (e.g., understanding the “who, what, when, where, why, or how” of their sexual interaction).
- b. Incapacitation is determined by considering all relevant indicators of an individual’s state and is not synonymous with intoxication, impairment, blackout, and/or being drunk.
- c. Incapacitation also includes a person whose incapacity results from a temporary or permanent physical or mental health condition, intellectual disability, and/or involuntary physical restraint.

## V. Privacy and Confidentiality

1. **Privacy.** Privacy means that information related to a report of Prohibited Conduct will be shared with limited University Employees who “need to know” to assist individuals in gaining access to support and resources, and in the assessment, investigation, and resolution of a report. Information may be disclosed pursuant to the Family Educational Rights and Privacy Act (“FERPA”) or as otherwise required by law or to carry out the purposes of Title IX and Policy 112.
2. **Confidentiality.** Confidentiality means that information shared with an individual designated as confidential under [Appalachian Policy 110 - Discrimination and Harassment](#) cannot report information they obtain from an individual regarding allegations of Prohibited Conduct, unless:
  - a. They obtain written permission from the individual;
  - b. There is a threat to health or safety of the individual or others; or
  - c. There is a legal obligation (e.g., suspected abuse or neglect of a minor).
3. **Enforcement and Implementation of Other University Policies.** Appalachian encourages the reporting of Prohibited Conduct. Sometimes, individuals are hesitant to report to Appalachian officials or participate in these procedures because they fear that they may be in violation of certain University policies or laws.
  - a. **Students.** To encourage reporting and participation, the Office of Title IX Compliance will withhold making a referral to the Office of Student Conduct when a formal complaint involves misconduct, such as underage drinking or use of drugs at the time of the incident. However, this does not preclude a referral when the misconduct alleged involves more serious allegations falling outside of Prohibited Conduct as outlined in these procedures.
  - b. **Employees.** The Office of Title IX Compliance may make a referral to the appropriate administrative office which governs the Respondent (Academic Affairs and/or Human Resources) when the alleged misconduct involves allegations that may fall under other University Policies such as [Policy 110 - Harassment and Discrimination](#), or [Policy 603.32 -](#)

[Workplace Violence](#). These referrals will be addressed through procedures described in the Faculty Handbook, and any other UNC System, Office of State Human Resources, or University policies.

## VI. Reporting Obligations

### 1. Clery Act Requirements

- a. **Federal Statistical Reporting.** Pursuant to the [Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act](#) (“Clery Act”), Appalachian includes statistics about certain offenses, including any alleged sexual assault, dating violence, domestic violence, or stalking, in its [annual security report](#) and provides those statistics to the United States Department of Education in a manner that does not include any personally identifying information about individuals involved in an incident. All University employees, including all confidential resources except for professional<sup>6</sup> or pastoral counselors<sup>7</sup> acting within the scope of that role, are required to report non-identifying statistical information about those offenses as required by state and federal law. Clery reports should be completed and submitted **immediately** to Appalachian’s Clery Act Compliance Coordinator utilizing the [Campus Security Authority Reporting Form](#).
- b. **Federal Timely Warning Requirements.** The Clery Act requires Appalachian to issue timely warnings to the University community about certain crimes that have been reported and may continue to pose a serious or continuing threat to the campus community. Consistent with the Clery Act, Appalachian withholds the names and other personally identifying information of Complainants when issuing timely warnings. The administration of a Timely Warning is made by the Clery Act Compliance Coordinator.
- c. The Clery Act Compliance Coordinator can be reached as follows:

**Bill McGowan**  
461 Rivers Street  
Boone NC 28608  
(828) 262-8111  
[mcgowanwj1@appstate.edu](mailto:mcgowanwj1@appstate.edu)

2. **Mandatory Referrals.** Upon receiving any information that may indicate the occurrence of Prohibited Conduct, the following employees are required to share the information to the Office of Title IX Compliance as promptly as possible, but in no event after **seventy-two (72) hours**:

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<sup>6</sup> *Professional counselor.* A person whose official responsibilities include providing mental health counseling to members of the institution's community and who is functioning within the scope of the counselor's license or certification. (34 CFR § 668.46)

<sup>7</sup> *Pastoral counselor.* A person who is associated with a religious order or denomination, is recognized by that religious order or denomination as someone who provides confidential counseling, and is functioning within the scope of that recognition as a pastoral counselor. (34 CFR § 668.46)

Faculty, Athletics Staff, Office of Human Resources Staff, University Housing Staff, and other University staff with supervisory responsibility. Please view [Appalachian Policy 110 - Discrimination and Harassment](#) for more information.

Generally, disclosures in climate surveys, classroom writing assignments or discussions, human subjects research, or at events such as “Take Back the Night” marches or speak-outs do not provide notice that must be reported to the Title IX Coordinator by employees unless the Complainant indicates that they desire a report to be made or seek a specific response from Appalachian. Supportive measures may be offered as the result of such disclosures without formal Appalachian action.

Failure of a Mandatory Referrer to report an incident of Prohibited Conduct may result in disciplinary action for failure to comply.

3. **Officials with Authority (OWA).** An OWA is an Appalachian employee explicitly vested with the responsibility to implement corrective measures including interim or supportive measures for allegations of Prohibited Conduct.

OWAs are required to report within **seventy-two (72) hours** any knowledge of Prohibited Conduct, whether from a Complainant, a third party, or witnessing the Prohibited Conduct.

4. **Employee Reporting Under Other University Policies.** University employees may have additional reporting obligations under [Policy 110: Discrimination and Harassment](#) and [Policy 602.32 Workplace Violence](#).

## VII. Referral and Reporting Options

Choosing to make a report and deciding how to proceed after making the report can be a process that unfolds over time. Reporting can provide safety and support for individuals affected by Prohibited Conduct, provide the Complainant with resources and information about filing a formal complaint, and help create a safer campus community.

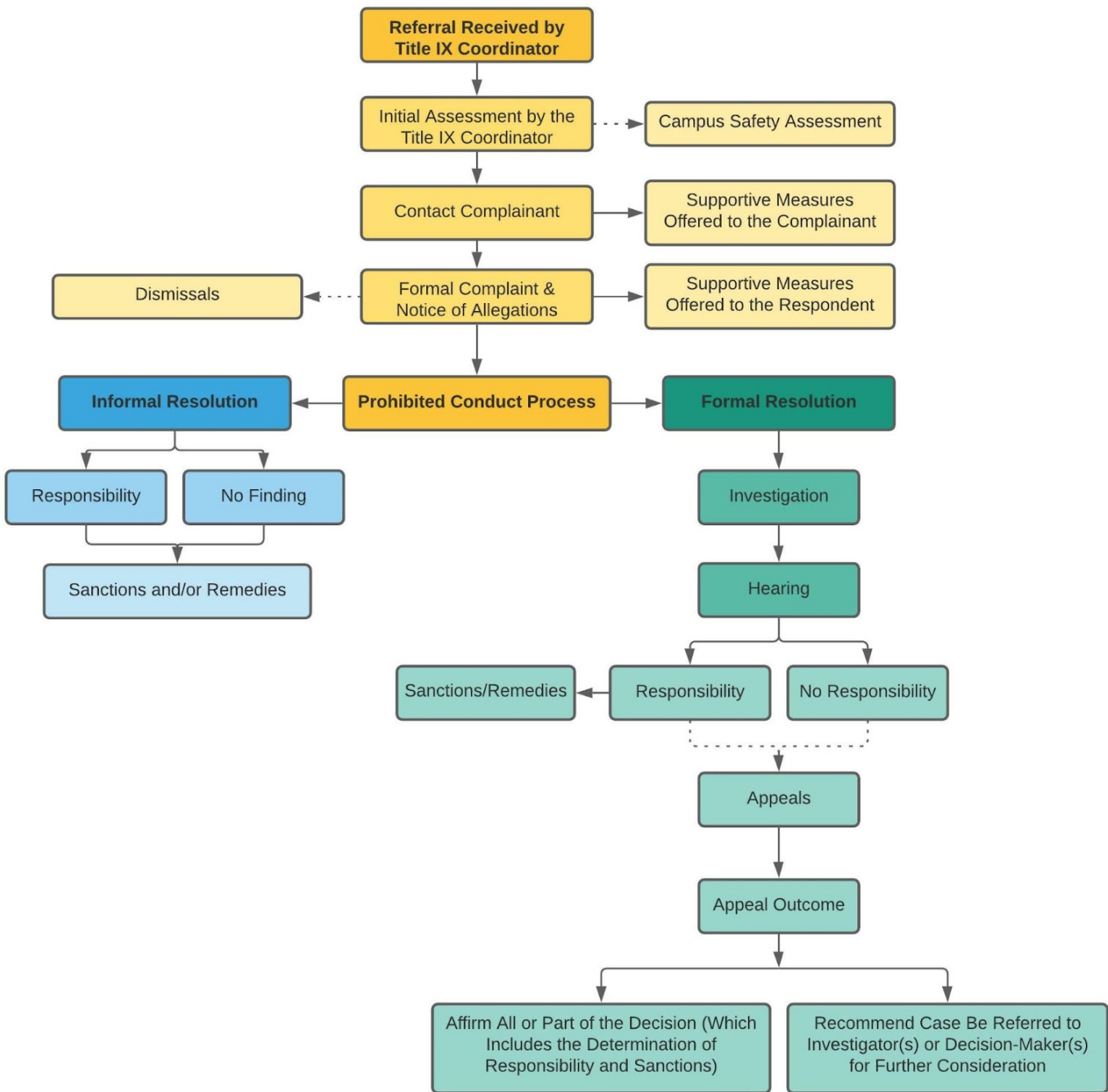
If you are ready to file a report, you can choose to report to any or all of the following:

1. **Law Enforcement.** If you would like to file an official report, pursue criminal charges, receive assistance with obtaining a Protective Order (50B or 50C), or would like to learn more about options available to you through law enforcement, consider contacting:
  - a. Appalachian State University Police Department: (828) 262-2150
  - b. Boone Police Department: (828) 268-2900
  - c. Watauga County Sheriff's Department: (828) 264-3761
  - d. **If you need immediate emergency assistance call 911.**

2. **Office of Title IX Compliance.** Any person may submit a referral, whether or not the referring individual was subjected to the alleged Prohibited Conduct. A referral is not the same as filing a Formal Complaint.
- a. You can contact the Office of Title IX Compliance via:
- **Online Form:** [Title IX and Sex/Gender-Based Misconduct Referral Form](#)
  - **Email:** [titleix@appstate.edu](mailto:titleix@appstate.edu)
  - **Phone:** (828) 262-2144
  - **Mail:** ASU Box 32053, Boone, NC 28608
  - **In-Person:** 123 I.G. Greer Hall
- b. **Anonymous Reporting.** An individual, including a Complainant, may report allegations of Prohibited Conduct anonymously via any method listed above. While Appalachian will work to appropriately respond to and remedy the allegations reported anonymously, please be advised Appalachian's response may be limited. If a Complainant is requesting anonymity, the Title IX Coordinator will honor their request to the extent they are able after assessing any health and safety issues impacting the campus community.



## VIII. Procedures for Addressing Prohibited Conduct



## **IX. Initial Assessment and Supportive Measures**

### **A. Initial Assessment**

Upon receipt of information about Prohibited Conduct, the Title IX Coordinator will make an initial assessment to determine if the alleged Prohibited Conduct falls under Policy 112 and respond to any immediate health or safety concerns raised by the information.

### **B. Supportive Measures**

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant or the Respondent before or after filing a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to Appalachian's education programs or activities without unreasonably burdening either party, including measures designed to protect the safety of all parties or Appalachian's educational environment or deter sexual harassment. Supportive measures may be temporary or permanent.

Supportive measures may include but are not limited to: counseling, modifications of work or class schedules, campus escort services, mutual no-contact directives between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. Appalachian will maintain the privacy of any supportive measures provided under these procedures to the extent practicable. A list of private and confidential resources can be located on the [Office of Title IX Website](#).

When the Title IX Coordinator receives a report of alleged Prohibited Conduct, the Title IX Coordinator will promptly contact the Complainant to:

1. Assess the Complainant's safety and well-being;
2. Discuss the availability of supportive measures and consider the Complainant's wishes for supportive measures regardless of whether the Complainant files a formal complaint;
3. Provide the Complainant with written information regarding the Complainant's rights and options for filing a formal complaint under these procedures, including resolution options;
4. Seek to determine if the Complainant wishes to notify law enforcement, wishes to be assisted in notifying law enforcement, or does not wish to notify law enforcement;
5. Inform the Complainant that the University will share information only on a need-to-know basis and will strive to protect the Complainant's privacy, including the omission of the Complainant's identifying information in publicly available records, to the extent permissible by law.

If the Complainant submits a formal complaint, or a decision is reached to take any other action under these procedures that impacts a Respondent, the Title IX Coordinator will contact the Respondent to:

1. Discuss the availability of supportive measures and consider the Respondent's wishes for supportive measures;
2. Provide the Respondent with written information regarding the Respondent's rights and options under these procedures, including resolution options following the filing of a formal complaint;
3. Inform the Respondent that the University will share information only on a need-to-know basis and will strive to protect the Respondent's privacy, including the omission of the Respondent's identifying information in publicly available records, to the extent permissible by law.

### **C. Campus Safety Assessment**

The Title IX Coordinator may determine at any point during the procedures that the Campus Safety Assessment Team should conduct a Campus Safety Assessment of a Respondent.

1. **Campus Safety Assessment Team.** The Campus Safety Assessment Team will include at a minimum: (i) the Title IX Coordinator, (ii) a representative of the App State Police Department, and (iii) a representative from Student Affairs, Academic Affairs, and/or Human Resources depending on the circumstances of the reported incident and the status of the Respondent. The Campus Safety Assessment Team may also include members from the Office of Disability Resources, Counseling for Faculty/Staff, and/or Counseling and Psychological Services. The Title IX Coordinator will strive to have representatives from the departments above but has the discretion to make an assessment without a representative from every department.
2. **Assessment Considerations.** The Campus Safety Assessment Team will determine whether the reported information and any other available information provides a rational basis for concluding that there is a threat to the health or safety of the Complainant or any other member of the University community. The Campus Safety Assessment Team conducts determinations under the presumption that the Respondent is not responsible for any alleged policy violation(s). This determination will be based upon a review of the totality of the known circumstances and will be guided by a consideration of the following risk factors:
  - a. Whether the Respondent has prior arrests, is the subject of prior reports and/or complaints related to any form of Prohibited Conduct as outlined in these procedures;
  - b. Whether the Respondent has a history of failing to comply with any University No Contact Directive, other University protective measures, and/or any judicial protective order;
  - c. Whether the Respondent has threatened to commit violence or any form of Prohibited Conduct as outlined in these procedures;

- d. Whether the Prohibited Conduct involved multiple Respondents or Complainants;
- e. Whether the Prohibited Conduct involved physical violence. “Physical violence” means exerting control over another person through physical force. Examples of physical violence include hitting, punching, slapping, kicking, restraining, strangling, and brandishing or using any weapon;
- f. Whether the report reveals a pattern of Prohibited Conduct;
- g. Whether the Prohibited Conduct was facilitated through the use of “date-rape” or similar drugs or intoxicants;
- h. Whether the Prohibited Conduct occurred while the Complainant was unconscious, physically helpless, or unaware that the Prohibited Conduct was happening;
- i. Whether the Complainant is (or was at the time of the Prohibited Conduct) a minor (under 18); and/or
- j. Whether any other aggravating circumstances or signs of predatory behavior are present.

### 3. Respondent Status

- a. **Student Respondent.** Appalachian may remove a student Respondent from the University’s program or activity on an emergency basis, so long as Appalachian conducts a campus safety assessment.
  - Emergency removal may include but is not limited to removing a student from a residence hall, suspending a student’s participation in extracurricular activities, and interim suspension from campus, including all property owned or controlled by the University.
  - A student Respondent will be provided written notice and an opportunity to appeal any decisions for emergency removal following the appeal procedures outlined in XVI.
  - Violation of an emergency removal will be referred to the Office of Student Conduct, which may result in further disciplinary review.
- b. **Employee Respondent.** Consistent with the Faculty Handbook, University, UNC System, and Office of State Human Resources (OSHR) policies, administrative leave may be imposed on a non-student employee (SHRA, EHRA, Faculty).
  - An employee Respondent placed on administrative leave does not have a right to appeal that decision.

- Violation of the conditions of administrative leave will be referred to the administrative office that governs the Respondent for further disciplinary review.

## X. Formal Complaint

### A. Initiating a Formal Complaint

A formal complaint may be submitted by a Complainant from the Complainant's official University email account, through the report form provided by the Title IX Coordinator, or in hard copy if signed. If the Complainant does not wish to file a formal complaint, the Title IX Coordinator will inform the Complainant that they may choose to file one later.

1. **Title IX Coordinator Files a Formal Complaint.** Where the Title IX Coordinator has determined that a Complainant's request not to file a formal complaint cannot be honored because the request would impede Appalachian's ability to ensure the safety of either the Complainant or other members of the campus community, the Title IX Coordinator will file a formal complaint. The Title IX Coordinator is not a Complainant or party under these procedures. In such cases, the Title IX Coordinator will notify the Complainant that Appalachian intends to proceed with an investigation but that the Complainant is not required to participate in the investigation or any other actions undertaken by the University. Written notice will be provided to all parties and include a notice of allegations and the identification of parties, if known. The Title IX Coordinator will provide information regarding the pending resolution even if the Complainant does not participate in the investigation or other actions.
2. **Consolidation of Formal Complaints.** Where the allegations arise out of the same facts or circumstances, the Title IX Coordinator has the discretion to consolidate formal complaints:
  - a. Against more than one Respondent;
  - b. By more than one Complainant against one or more Respondents; or
  - c. By one party against the other party (i.e., Counter-Complaint).
3. **Counter-Complaints.** Appalachian permits the filing of Counter-Complaints made in good faith. Counter-Complaints may be resolved through the same investigation as the initial formal complaint, or pursued after a resolution of the initial formal complaint, in which case a delay may occur. When Counter-Complaints are not made in good faith, they will be considered retaliatory and may be reviewed and investigated pursuant to these procedures.

### B. Dismissal

1. **Mandatory Dismissal.** Appalachian must dismiss a formal complaint under Title IX if at any time during these procedures it is determined that:

- a. The allegation(s) in the formal complaint would not constitute Title IX Prohibited Conduct even if proved;
- b. The allegation(s) in the formal complaint did not occur in Appalachian's education program or activity;
- c. The allegations(s) did not occur against a person in the United States; or
- d. At the time of filing a formal complaint, the Complainant was not participating in or attempting to participate in Appalachian's education program or activity.

However, a Title IX mandatory dismissal does not preclude Appalachian from resolving allegations through the Sex/Gender-Based Prohibited Conduct Process when a formal complaint has been submitted.

- 2. **Discretionary Dismissal.** Appalachian may dismiss a formal complaint if at any time during these procedures it is determined:
  - a. The allegation(s) in the formal complaint would not constitute Sex/Gender-Based Prohibited Conduct even if proved;
  - b. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein;
  - c. The Respondent is no longer enrolled or employed by Appalachian; or
  - d. Specific circumstances prevent Appalachian from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.
- 3. **Notice of Dismissal.** Upon dismissal, the Title IX Coordinator will promptly send written notice and the rationale for doing so simultaneously to the parties. Any party may appeal the dismissal (See Section XVI. Appeals). Should a formal complaint be dismissed due to a request from the Complainant to withdraw the formal complaint, the Complainant may later request to reinstate or refile the complaint.

## **XI. Notice of Formal Complaint**

Upon receipt of a formal complaint, the Title IX Coordinator will provide the Complainant(s) and Respondent(s) (parties) written notice of the following:

- 1. Sufficient details of the allegations including the identity of the parties, if known; the date, time, and location, if known; and nature of the alleged Prohibited Conduct and any other relevant conduct;
- 2. The potential policy violation(s) and applicable process, either the Title IX Prohibited Conduct Process or the Sex/Gender-Based Prohibited Conduct Process;

3. A statement of the potential sanctions/responsive actions;
4. A statement that Appalachian presumes the Respondent is not responsible for the alleged Prohibited Conduct until a determination regarding responsibility is made at the conclusion of these procedures;
5. A statement that the parties may have an Advisor of their choice who may be, but is not required to be, an attorney;
6. A statement that the parties may inspect and review all evidence that is not protected by a recognized privilege (e.g., attorney-client privilege);
7. A statement explaining Appalachian's prohibition against retaliation and that the University will take prompt action in response to any alleged act of retaliation;
8. A statement informing the parties that Appalachian's policy prohibits knowingly making false statements, including knowingly submitting false information during these procedures.

## **XII. Resolution Options**

Any individual involved in the administration of resolution options may neither have nor demonstrate a conflict of interest or bias for or against Complainants or Respondents generally or for or against an individual Complainant or Respondent.

1. **Informal Resolution** includes a variety of informal options for resolving formal complaints. Note, however, that an informal resolution is **not available** where an employee is alleged to have engaged in Title IX Prohibited Conduct directed at a student.
2. **Formal Resolution** involves an investigation, hearing, remedy, and sanction, if applicable.

### **A. Advisors**

Each party is permitted to have an Advisor of their choice, at their own expense, accompany them for all meetings, interviews, and hearings within these procedures. The parties may select whomever they wish to serve as their Advisor as long as the Advisor is not an employee involved in intake, a case manager, or an individual part of the adjudication process. Appalachian will also appoint an Advisor, without fee or charge, to any party if the party chooses. If one party has an attorney as their Advisor, Appalachian is not obligated to provide an attorney as the other party's Advisor.

1. **Hearings.** For hearings, parties are required to have an Advisor present to conduct cross-examination of parties and witnesses. If a party does not have an Advisor present at the hearing, Appalachian will appoint an Advisor.
2. **Expectations and Decorum.** An Advisor will be required to complete specific paperwork regarding these procedures and the parameters of student or employee confidentiality before

serving as an Advisor. If an Advisor interferes with the procedures, the Title IX Coordinator may remove them from the role.

## B. Withdrawal or Resignation

1. **Students.** Should a student Respondent withdraw from Appalachian, the resolution process may continue providing the parties with an opportunity to participate in the process. The Title IX Coordinator will determine if the case will be referred to a Decision-Maker(s) at the conclusion of the investigation or dismiss the formal complaint. Should a student Respondent withdraw and not participate in the resolution process, a hold may be applied to prevent registration, transcript attainment, and/or graduation when a formal complaint has not been dismissed, and the student Respondent withdraws while the process is pending. In addition, the Respondent will be inputted into the UNC System Database noting that there is a case pending resolution.
2. **Employees.** If an employee resigns during a pending allegation of Prohibited Conduct, the Title IX Coordinator may dismiss the formal complaint. However, the employee who resigns with unresolved allegations pending is not eligible for rehire with Appalachian, and the records retained by the Title IX Coordinator and the Office of Human Resources may reflect that status.

## XIII. Informal Resolution

Once a formal complaint has been filed and has not been subject to a mandatory and discretionary dismissal, either party may voluntarily request in writing to initiate an informal resolution at any point during these procedures, prior to reaching a determination regarding responsibility. Appalachian may then, at the discretion of the Title IX Coordinator, facilitate an informal resolution that does not involve a full investigation and hearing. If the Title IX Coordinator determines that this is an appropriate resolution option, both parties must provide voluntary, written consent to proceed with the informal process.

At any time before reaching a final agreement, all parties have the right to withdraw from the informal resolution process and request a formal resolution process, or to resume an investigation and hearing that has previously been initiated in regards to the formal complaint.

Note, however, that an informal resolution is **not available** where an employee is alleged to have engaged in Title IX Prohibited Conduct directed at a student.

1. **Notice.** Before agreeing to participate in a voluntary, informal resolution process, the parties will receive written notice setting forth:
  - a. A summary of the formal complaint including allegations;
  - b. The requirements of the informal resolution process, including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations; and



- c. Any outcomes (i.e., sanctions, job actions, remedies, etc.) resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.
2. **Facilitator.** The Title IX Coordinator or an appointed trained facilitator will oversee the parties' informal resolution. Either party should notify the Title IX Coordinator immediately if they believe that the facilitator has a conflict of interest or bias. Should the parties not reach an agreement and pursue or resume the formal resolution process, the facilitator may not be called as a witness in a hearing under these procedures.
3. **Agreement Process.** The facilitator will meet separately with the parties to discuss possible resolutions to the formal complaint and to ascertain each party's perspective regarding responsibility and sanctions. If the facilitator identifies a potential resolution, the facilitator will send all parties a proposed resolution in an electronic format and give the parties three (3) days to submit a written response, either agreeing with the proposed terms, suggesting changes to the agreement, or declining the proposed terms. The facilitator will correspond with the parties about any proposed modifications and send an updated resolution, if applicable. Parties will then have an additional three (3) days to consider the offered resolution. If all parties sign the offered informal resolution, the resolution becomes final and may not be appealed.

Should the parties not reach an agreement or a party does not fully participate in the informal resolution process (e.g., not meeting with the facilitator to discuss proposed terms), this process will end, and the formal resolution process may continue.

In cases involving an employee Respondent, the appropriate office (Human Resources or Academic Affairs) must approve the proposed resolution before it is offered.

- a. **Limitation.** An informal resolution may not be an agreement to "waive" a live hearing following an investigation in the formal resolution process.
  - b. **Determination.** The agreement will include one of the following determinations which may result in sanctions and/or remedies (as outlined in Section XV):
    - Assignment of No Finding to Respondent; or
    - Assignment of Full or Partial Responsibility to Respondent.
4. **Alternative Dispute Resolutions.** Either party may request in writing to initiate an alternative dispute resolution at any point during these procedures before reaching a determination regarding responsibility. Alternative dispute resolutions are considered informal resolutions and may include mediation or restorative justice processes, by which the parties reach a mutually agreed-upon resolution of an allegation.

## XIV. Formal Resolution

Once a formal complaint has been filed and has not been subject to a mandatory and discretionary dismissal, a formal resolution process may commence if (i) there is a request by either party to pursue the formal resolution process or (ii) the Title IX Coordinator signed the formal complaint. Once the decision to commence a formal resolution is made, the Title IX Coordinator shall appoint a trained Investigator(s) to conduct the investigation, usually within three (3) days of determining that an investigation should proceed.

At the discretion of the Title IX Coordinator and in consultation with the Office of General Counsel, Appalachian reserves the right to contract with external Investigator(s), Decision-Maker(s), and Appellate Officer(s) whenever Appalachian either lacks capacity or is too conflicted to ensure timely, impartial processes as discussed throughout these procedures.

### A. Investigations

1. **Investigators.** An Investigator is a neutral fact-finder. Either party should notify the Title IX Coordinator immediately if they believe that the appointed Investigator has a conflict of interest or bias.

The Title IX Coordinator, in consultation with the appropriate University official overseeing the implementation of other relevant policies, may request that the Investigator also investigate violations of other University policies.

Throughout the investigation process, the Investigator will:

- a. Maintain the burden of gathering evidence sufficient to reach a determination regarding responsibility;
- b. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other evidence;
- c. Interview all available, relevant witnesses and conduct follow-up interviews as necessary;
- d. Not access, consider, disclose or otherwise use a party's records that are made or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional, unless given voluntary, written consent to do so by the party;
- e. Not restrict the ability of either party to discuss the allegations under investigation;
- f. Provide an equal opportunity for the parties to be accompanied by an Advisor to interviews and any related meeting.

- g. Audio record all investigative interviews of the parties and witnesses (interviews may not be recorded by the parties, their Advisors, or witnesses);
  - h. Provide all parties an equal opportunity to inspect and review all evidence obtained as part of the investigation that is relevant and/or directly related to the allegation(s).
- 2. **Timeframe for Completion of Investigation; Extension for Good Cause.** The Office of Title IX Compliance will make a good faith effort to complete all evidence collection within sixty (60) days. If circumstances require, Appalachian may undertake a delay in its investigation. Such circumstances include but are not limited to: a request to temporarily delay the investigation due to an active law enforcement investigation, the absence of parties or witnesses, and coordination of accommodations on the basis of disability. The Office of Title IX Compliance will communicate regularly with the parties to update them on the progress and timing of the investigation.
- 3. **Investigative Report.** Before completing the investigative report, the Investigator will send all parties and their Advisors an electronic draft investigative report, including a file of all relevant and/or directly related evidence obtained as part of the investigation, and give the parties ten (10) days to submit a written response. The Investigator will then consider the written responses and finalize the investigative report.

At the conclusion of an investigation, the Investigator will send the final investigative report to all parties, their Advisors, the Title IX Coordinator, and Decision-Maker(s), and give the parties at least ten (10) days to submit a written response prior to a hearing.

- 4. **Impact Statements.** Prior to the scheduled hearing, either party may submit a written statement to the Title IX Coordinator for consideration by the designated University official in determining an appropriate sanction, if applicable. Parties will be provided a copy of any submitted written Impact Statements at the conclusion of the hearing for review. Should there be a finding of responsibility, the Title IX Coordinator will provide any submitted written Impact Statements to the designated University official during the sanctioning phase of the process.

## **B. Hearings**

Upon the conclusion of the investigation, trained Decision-Maker(s) will oversee a hearing to make a determination regarding the formal complaint. Decision-Maker(s) will be appointed by the Title IX Coordinator. Either party should notify the Title IX Coordinator immediately if they believe that a Decision-Maker(s) has a conflict of interest or bias.

- 1. **Composition of Live Hearing.** Each hearing will consist of one to three trained Decision-Maker(s), including a Hearing Officer, based on availability of the Decision-Maker(s) and/or the nature of the offense. The Decision-Maker(s) will not have had any previous involvement with the investigation or any previous process enacted to resolve the formal complaint (e.g., Informal Resolution).

2. **Location of Live Hearing.** Hearings may be conducted with all parties, witnesses, and other participants physically present or virtually at the live hearing, with technology enabling participants to see and hear each other simultaneously.
3. **Notice of Live Hearing.** No fewer than ten (10) days prior to the hearing, the Title IX Coordinator will send notice of the hearing to the parties and their Advisors. The notice will contain:
  - a. A summary of the formal complaint including 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;
  - b. The time, date, and location of the hearing;
  - c. Information about the ability for parties to request alternate participation options for the hearing. Such a request must be submitted to the Title IX Coordinator at least five (5) days prior to the hearing;
  - d. A list of the Decision-Maker(s), including the Hearing Officer, along with an invitation to object to any Decision-Maker(s) based on whether bias or any conflict of interest exists. This objection must be raised with the Title IX Coordinator at least five (5) days prior to the hearing; and
  - e. Notification that the parties are required to have an Advisor to ask any questions for a hearing and to provide assistance during the hearing. The party must notify the Title IX Coordinator within five (5) days prior to the hearing if they do not have an Advisor, and Appalachian will appoint one.
4. **Hearing Timing and Graduating Respondents.** Hearings for possible violations that occur near or after the end of an academic term and cannot be resolved before the end of the term will typically be held immediately after the end of the term or during the summer, as needed. If the Respondent is a graduating student, a hold may be applied to the Respondent's account to prevent transcript and diploma attainment until the matter is fully resolved, including any appeal. A student pending the resolution of an alleged violation of Prohibited Conduct is not in good standing to graduate.

### **(1) Pre-Hearing**

The Hearing Officer will convene a pre-hearing meeting(s) with the parties and their Advisors to generally discuss the hearing procedures, address any concerns or questions about the process, and review the Civility Agreement for signatures.

1. **Cross-Examination Questions.** The Hearing Officer may rule on the relevance of proposed cross-examination questions ahead of time to avoid any improper evidentiary introduction or provide recommendations for more appropriate phrasing. However, this advance review opportunity does not preclude the Advisors from asking a question for the first time at the

hearing or from asking for a reconsideration based on any new information or testimony offered at the hearing. The Hearing Officer must still share their rationale for any exclusion or inclusion of a question during the live hearing.

2. **Witnesses.** The parties may request the presence of any witness they deem relevant to the determination of responsibility. With the full agreement of the parties, the Hearing Officer 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 Officer otherwise assent to the witness's participation, any witness scheduled to participate in the hearing must have been interviewed by the Investigator, have offered a written statement to the Investigator, or answered written questions posed by the Investigator. The request to have a witness present for the hearing must be made to the Hearing Officer no later than three (3) days prior to the hearing.
3. **New Evidence.** If the parties and Hearing Officer do not assent to the admission of new evidence at the hearing, the Hearing Officer may delay the hearing and request the investigation to be reopened to consider that evidence.
4. **Civility Agreement.** Appalachian is committed to the highest standards of civil behavior in all proceedings. Therefore, parties and their Advisors, and any witnesses will be required to review and sign a Civility Agreement that reviews rules of decorum prior to the hearing.

## (2) Hearing

1. **Purpose of a Hearing.** The hearing is an opportunity for the parties to address the Decision-Maker(s) about issues relevant to the determination of responsibility. The Hearing Officer has the discretion to determine the specific hearing format. A typical hearing may include brief opening remarks by the Complainant and/or Respondent; questioning of the parties, the Investigator(s), and any witnesses by the Decision Maker(s); direct examination of the party by the party's Advisor; cross-examination of the parties by the parties' Advisors; questioning of the Investigator(s), and any witnesses by the parties' Advisors; and brief concluding remarks by the Complainant and/or Respondent.
2. **Participation in the Hearing**
  - a. **Parties and Witnesses.** Parties and witnesses are not required to participate in these procedures. 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 Decision-Maker(s). The Decision-Maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the hearing or refusal to answer questions.
  - b. **Advisors.** While the Advisor may provide support and advice to a party, the Advisor may not speak on behalf of the party or otherwise participate in or in any manner disrupt the

hearing. Advisors will conduct cross-examination on behalf of the party. Should an Advisor be unexpectedly unable to attend a hearing or is removed from the hearing under the Civility Agreement, Appalachian will permit at least five (5) days for the party to find another Advisor. If the party cannot find a new Advisor within the specified time period, Appalachian reserves the right to assign the party an Appalachian-provided Advisor. The hearing process will resume soon after and no later than ten (10) days from the date the hearing was paused, absent exceptional circumstances.

3. **Cross-Examination, Relevancy Determinations, and Inferences.** The parties may not question each other or any witness at the hearing. Instead, cross-examination must be conducted directly, orally, and in real-time by the party's Advisor.

All cross-examination questions posed at the hearing are subject to a relevance determination by the Hearing Officer as only relevant questions are permitted at the hearing.

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

- a. The Investigator's opinions on credibility, recommended findings, or determinations of responsibility;
  - b. Incidents not directly related to the possible violation, unless they evidence a pattern;
  - c. Details that are not supportive of any material fact concerning the allegations;
  - d. Information protected by a legally recognized privilege (e.g., attorney-client privilege);
  - e. Any party's medical, psychological, and other similar records unless the party has given voluntary, written consent; and
  - f. 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.
4. **Objections to Relevancy Determinations.** Following a relevancy determination, Advisors, on behalf of their parties, may object to a Hearing Officer's rationale. An Advisor will be given the opportunity to explain their objection to the Hearing Officer. The Hearing Officer may then, after private consultation with either other Decision-Maker(s) and/or the Office of General Counsel, maintain or modify their original relevancy determination. The Hearing Officer's determination is then final, and the hearing will proceed.
  5. **Recordings of Hearing.** Appalachian will create an audio and/or audiovisual recording of any live hearing, excluding deliberations, and make it available to the parties for inspection and review. The parties may not record the proceedings, and no other recordings will be permitted. The

Decision-Maker(s), the parties, their Advisors, and appropriate administrators of Appalachian will be permitted to listen to the recording in a controlled environment determined by the Title IX Coordinator. No person will be given or be allowed to make a copy of the recording without the written permission of the Title IX Coordinator. The Title IX Coordinator may decide on a case-by-case basis to order a transcript of the hearing to be reviewed only by the parties, their Advisors, and Decision-Maker(s).

### **(3) Determination**

The Decision-Maker(s) will deliberate and make a determination regarding responsibility for each matter of Prohibited Conduct alleged against the Respondent using the preponderance of evidence standard.

1. The following determinations of responsibility may apply:
  - a. **Assignment of No Responsibility to Respondent.** If a Respondent is not found responsible for any allegation, the Decision-Maker(s) shall write a Notice of Outcome with a finding of “Not Responsible” for the policy violation(s).
  - b. **Assignment of Full or Partial Responsibility to Respondent.** If the Decision-Maker(s) find the Respondent responsible for any of the allegations in the formal complaint, the Title IX Coordinator will refer the case to the appropriate University official who will determine specific sanctions in accordance with Section XV. Any sanction(s) will subsequently be incorporated into the Notice of Outcome. The Decision-Maker(s) and/or the Title IX Coordinator will be available to confer with the appropriate University official determining the sanction(s)/remedies as appropriate.
2. **Notice of Outcome.** Upon receipt of the Decision- Maker(s) determination of responsibility, and the appropriate University official’s determination of sanction(s) and/or remedies, if applicable, The Title IX Coordinator will then share the Notice of Outcome simultaneously with the parties within ten (10) days of receiving the Decision-Maker(s)’ decision. To the extent Appalachian is permitted to share such information under state or federal law, the Notice of Outcome will include the following:
  - a. Identification of the allegations potentially constituting Prohibited Conduct;
  - b. A description of the procedural steps taken from the receipt of the formal complaint through the determination of outcome, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to obtain evidence, and hearings held;
  - c. Findings of fact supporting the determination;
  - d. Conclusions regarding the application of these procedures to the facts;

- e. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions imposed on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- f. The University's procedures and permissible bases for the parties to appeal the determination.

## **XV. Sanctions and Remedies**

### **A. Sanctions**

Where there is a finding of responsibility, Appalachian may impose one or more sanctions on the Respondent and/or provide remedies to the Complainant designed to restore or preserve equal access to Appalachian's education program or activity.

In keeping with Appalachian's commitment to foster an environment that is safe, inclusive, and free from discrimination and harassment, these procedures provide wide latitude to impose sanctions and/or remedies that are tailored to the facts and circumstances of the formal complaint, the impact of the conduct on the Complainant and the University community, and accountability of the Respondent. The imposition of sanctions and/or remedies is intended to eliminate the Prohibited Conduct, prevent its recurrence, and remedy its effects while supporting Appalachian's educational mission and legal obligations.

1. **Referral for Sanctions.** Following the receipt of the written determination from the Decision-Maker(s), the Title IX Coordinator will refer the case to the appropriate University official for the imposition of sanctions, if any, the provision of remedies, if any, and to otherwise complete the formal resolution process. The Decision-Maker(s) and the Title IX Coordinator may consult with the administrative offices listed below to determine specific sanctions:
  - a. **Student Respondent.** For a student Respondent, a finding of responsibility will be shared with a representative from the Office of Student Affairs or designee, who will determine sanctions.
  - b. **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.
  - c. **SHRA or EHRA Non-Faculty Respondent.** For SHRA or EHRA Non-Faculty Respondents, a finding of responsibility will be shared with the Director of the Office of Human Resources or designee, who will determine sanctions.



- d. **For all other Respondents**, including third parties engaged in carrying out Appalachian programs or events, a finding of responsibility will be shared with the appropriate office as determined by the Title IX Coordinator.
2. **Factors to Be Assessed in Sanctioning.** In assessing any sanction in light of a finding of responsibility, the Appalachian shall, at a minimum, consider the following:
    - a. The nature and severity of the conduct and the degree of any damage, injury, or harm resulting from it;
    - b. The impact of the conduct on the Complainant or other relevant parties;
    - c. The impact or implications of the conduct on Appalachian and the campus community;
    - d. Prior or subsequent misconduct of the Respondent, including the Respondent's relevant prior discipline history, both at Appalachian or elsewhere (if known);
    - e. Maintenance of a safe and respectful educational and employment environment;
    - f. Information provided in an impact or mitigation statement;
    - g. Any other mitigating, aggravating, or compelling circumstances relevant to the misconduct and
    - h. The professional judgment of the Decision-Maker(s).

### **(1) Range of Sanctions**

1. **Students.** The range of sanctions for Prohibited conduct by a student Respondent may include, alone or in combination, any of the following: [**Note:** Failure to comply with any administered sanction(s) resulting from an informal or formal resolution process, or implemented remedies such as a No Contact Directive may result in a referral to the Office of Student Conduct.]
  - a. **Letter of Concern.** Notification that the University is concerned about the Respondent's behavior.
  - b. **Disciplinary Warning.** Official disciplinary action conveying to the Respondent that their behavior was unacceptable and that any future violation of Prohibited Conduct as outlined in these procedures may result in more severe disciplinary action, including Disciplinary Probation, Suspension, or Expulsion.
  - c. **Disciplinary Probation.** A period in which the Respondent's behavior is under University review, conveying that the behavior was unacceptable and that any future violation of Prohibited Conduct as outlined in these procedures may result in more severe disciplinary action, including Suspension or Expulsion.

- d. **Suspension.** Separation from the University for a period of no less than the remainder of the current semester.
- During the period of Suspension, the Respondent shall be banned from all University premises and University-sponsored activities, and is subject to arrest for trespassing.
  - A notation of Suspension shall be recorded on a Respondent's transcript maintained by the Registrar's Office. A notation will also be added to the University of North Carolina Suspension/Expulsion database. The notation of Suspension shall be removed contingent upon fulfillment and completion of administered sanctions.
  - A date at which time the Respondent may request to be cleared by the Office of Title IX Compliance can be established contingent upon completion of all administered sanctions.
- e. **Expulsion.** Permanent separation from Appalachian.
- Pending the decision of the Vice Chancellor for Student Affairs regarding the recommendation from the Formal Resolution, a Respondent shall be banned from all Appalachian premises and Appalachian-sponsored activities, and is subject to arrest for trespassing.
  - Expulsion precludes enrollment and matriculation at any University of North Carolina constituent institution.
  - A notation of expulsion shall be recorded on a Respondent's transcript maintained by the Registrar's Office. A notation will also be added to the University of North Carolina Suspension/Expulsion database.
  - The former student may petition the Chancellor, through the Office of Title IX Compliance, to rescind the expulsion no earlier than two (2) years after the effective date of expulsion. The Chancellor's conclusion shall be based on the former student's petition and relevant documentation supporting or opposing the rescindment. If the expulsion is rescinded, the expulsion notation shall be removed from the former student's transcript, and they are no longer precluded from enrollment and matriculation at any University of North Carolina constituent institution on the basis of the expulsion.
- f. **Additional Conditions on Continued Enrollment.**
- Community service with a non-profit agency;

- Restitution for loss, damage, or actual expenses incurred as a result of the Respondent's behavior;
- Participation in educational programming, which may include online programs, initial counseling intake, evaluation, and compliance with any recommendations, reflection pieces, or other activities;
- Change in current University housing privileges;
- Restriction from representing Appalachian in any official function or leadership position (i.e., varsity athletics, student leadership position, cheerleader, senator or officer in the Student Government Association, elected office in any recognized student organization);
- Ban for a definite or indefinite period of time from all or a portion of any University premises or University-sponsored activity;
- Restriction of contact with other specified members of the University; or
- Any other sanction determined appropriate.

2. **Sanctions for Employees.** The range of sanctions for Prohibited Conduct by an employee (faculty, EHRA Non-Faculty, SHRA, and student employees) Respondent may include those listed below or additional sanctions based on the specifics of the incident. Sanctions may be imposed as follows: [**Note:** Failure to comply with any administered sanction(s) resulting from an informal or formal resolution, or implemented remedies such as a No Contact Directive may result in a referral to the administrative office governing the Respondent (Academic Affairs and/or Human Resources).]

- a. **Letter of Reprimand/Written Warning.** Notice, in writing, that continuation or repetition of Prohibited Conduct may be cause for additional disciplinary action. Such letter will be placed in the employee's personnel file;
- b. **Removal From Administrative Role.** Removal from current administrative role (*i.e.*, program director, assistant/associate dean, *etc.*) accompanied by loss of associated stipend;
- c. **Demotion in Rank.** Reduction in faculty rank, accompanied by associated pay decrease. Upon a specified period of time, a request for promotion in rank may be considered;
- d. **Suspension Without Pay.** Exclusion from University premises, attending classes, and other privileges or activities for a specified period of time, as set forth in the suspension notice. Notice of this action will remain in the employee's personnel file. Conditions for return to work may be specified in the suspension notice; or

- e. **Discharge/Termination.** Permanent termination of employment status and exclusion from University premises, privileges, and activities. This action will be permanently recorded in the employee's personnel file.
  
- f. **Additional Conditions on Continued Employment.**
  - Educational Requirements: Completion of training, projects, programs, or requirements designed to help the responsible party manage behavior and understand why it was inappropriate (including any appropriate and relevant community service opportunities or professional development);
  - Enhanced Supervision, Observation or Review: More frequent and/or more in-depth supervision or formal review of performance or conduct relevant to the violation;
  - Formal Performance Improvement Plan (not applicable for faculty);
  - Restitution: Repayment to the University and/or an affected party for damages resulting from the policy violation;
  - Assignment to a new supervisor (not applicable to faculty);
  - Transfer and/or reassignment of duties (not applicable to faculty);
  - Restriction of professional development resources (not applicable to faculty);
  - Decrease in pay or denial of pay increase: Decrease in pay for a specified period of time, or denial of scheduled pay increase; and/or
  - Denial of promotion.

## **B. Remedies**

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 (Section IX) and other remedies that burden the Respondent, including but not limited to:

1. Imposition or extension of a No-Contact Directive;
2. Reimbursement for counseling or other medical expenses related to Prohibited Conduct;
3. Imposition or extension of academic, University housing, and/or University employment modifications;
4. Imposition or extension of increased monitoring, supervision, and/or security at locations or in connection with activities where the Prohibited Conduct occurred or is likely to reoccur;

5. Targets or broad-based educational programming or training for relevant persons or groups;
6. Imposition of one or more 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
7. Imposition of any other remedial or protective measures that are tailored to achieve the goals of these procedures to promote a safe, nondiscriminatory environment.

## **XVI. Appeals and Response to Notice of Outcome**

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

The 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. The result of an informal resolution is not subject to appeal. The appeal is not an opportunity for a party to reexamine each aspect of the Decision-Maker(s) decision or seek a *de novo* (i.e., from the beginning) review. Instead, the basis for the appeal is to focus on specific aspects of the written final determination, such as procedural irregularities, that could have affected the outcome of the formal complaint.

The response is an opportunity for parties to submit a statement in support of the final determination. Parties may wish to provide this response should an appeal be filed by the other party, or to document their support of the outcome of the formal complaint.

**Timeline for Submission.** Appeals and responses must be written and submitted to the Title IX Coordinator within five (5) days of receiving notice of a dismissal of a formal complaint or of receiving a Notice of Outcome from a Formal Resolution.

1. **Grounds for Appeal.** Appeals must include a rationale and any supporting evidence for any of the following three grounds:
  - a. Procedural irregularity that affected the outcome of the matter;
  - b. New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made that could affect the outcome of the matter; and
  - c. The Title IX Coordinator, Investigator(s), or Decision-Maker(s) had a conflict of interest or bias for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter.
4. **Appeal Process.**

- a. **Notice of Appeal.** The Title IX Coordinator will simultaneously notify all parties in writing when an appeal is filed.
- b. **Designation of Appellate Officer.** Within three (3) days of receiving an appeal, the Title IX Coordinator will assign the appeal to a trained Appellate Officer not previously involved in any process as outlined in these procedures.
- c. **Appeal Packet.** The Title IX Coordinator will provide the Appellate Officer with an Appeal Packet containing the following: (i) the appeal; (ii) the non-appealing party's response to the Notice of Outcome, if provided; (iii) the Final Investigative Report; (iv) the Decision-Maker(s)'s written determination; (v) any information reviewed and considered by the Investigator or Decision-Maker(s); (vi) all evidence submitted to the Investigator or Decision-Maker(s); and (vii) a recording of the hearing.
- d. **Appeal Outcome.** The Appellate Officer has the authority to: (i) affirm all or part of the decision (which includes the determination of responsibility, as well as the sanction(s)); and/or (ii) recommend the case be referred to the same or new Investigator(s) or Decision-Maker(s) for further consideration.
- d. **Notice of Appeal Outcome.** The Appellate Officer, with assistance from the Title IX Coordinator, will issue the outcome of the appeal within ten (10) days of receiving the Appeal Packet unless the Appellate Officer requests an extension of the timeline from the Title IX Coordinator for good cause. The appeal outcome letter will explain the result of the appeal and the rationale for the Appellate Officer's decision.
  - i. **Student Respondents.** For student cases that do not result in suspension or expulsion, the Appellate Officer's decision is final.
    - Consistent with Section 502 D.(3) of *The Code* of the University of North Carolina (*The Code*)<sup>8</sup>, where the sanction is suspension or expulsion, an appeal may be made to the Board of Trustees within three (3) days of notification that the original appeal has been denied. This appeal is for an individual student case (not campus organizations), provided the appeal is based on (i) violation of due process; or (ii) material deviation from substantive and procedural standards adopted by the Board of Governors.
    - The Board of Trustees will review the appeal within ten (10) days. Reasonable extensions of time will be permitted. No appeal to the President of the UNC System or the Board of Governors is permitted. The appeal decision of the Board of Trustees is final.

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<sup>8</sup> The UNC Policy Manual 700.4.1 Policy on Minimum Substantive and Procedural Standards for Student Disciplinary Proceedings, Section V.A.6. Appeal Rights and The UNC Policy Manual, Chapter 100.1 - *The Code*, Section 502 D.(3).

- ii. **Employee Respondents.** For faculty and staff cases, any additional relevant handbook or grievance procedures may apply.

## **XVII. Record Retention**

The University shall retain all records relating to a report of Prohibited Conduct for eight (8) years after the date the report was received and in accordance with the [University's Record Retention and Disposition Schedule](#). Any record where a sanction is Suspension or Expulsion is maintained indefinitely. Appalachian has the right to maintain any record in excess of the minimum period.

## **XVIII. Preservation of Rights**

Nothing in these procedures shall:

1. Restrict the rights that would otherwise be protected by the First Amendment;
2. Deprive a person of any rights that would otherwise be protected from government conduct under the Due Process Clauses of the Fifth and Fourteenth Amendments;
3. Restrict any other rights guaranteed by the U.S. Constitution; or
4. Prevent the University from complying with other federal laws, including but not limited to Title VII of the Civil Rights Act.

## **XIX. Training**

All administrators identified within these procedures, including but not limited to the Title IX Coordinator, Informal Resolution Facilitators, Investigators, Decision-Makers, Hearing Officers, Appellate Officers, and Advisors appointed by Appalachian receive regular training on topics including, but not limited to, the definition of sexual harassment; the scope of the University's education program or activity; how to conduct an investigation and a grievance process including hearings, appeals, and informal resolution processes; how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; using technology; and on issues of relevance of questions and evidence. All completed training can be found at [titleix.appstate.edu](http://titleix.appstate.edu).

## **XX. Contact Information for Questions and Concerns**

Any questions regarding Title IX may be referred internally to the Title IX Coordinator or externally to the U.S. Department of Education's Office of Civil Rights or the U.S. Equal Employment Opportunity Commission:

**Director of Title IX Compliance/Title IX Coordinator**

Office of Title IX Compliance

123 I.G. Greer Hall - P.O. Box 32053

Appalachian State University  
Boone, NC 28608  
Phone: 828.262.2144  
Email: [titleix@appstate.edu](mailto:titleix@appstate.edu)  
Website: [titleix.appstate.edu](http://titleix.appstate.edu)

**U.S. Department of Education's Office for Civil Rights (OCR)**

U.S Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202-1100  
Customer Service Hotline: 800.421.3481

Phone: 877.521.2172  
Email: [OCR@ed.gov](mailto:OCR@ed.gov)  
Website: <http://www.ed.gov/ocr>

**U.S. Equal Employment Opportunity Commission**

131 M Street, NE  
Washington, D.C. 20507  
Phone: 202.663.4900  
Email: [info@eEOC.gov](mailto:info@eEOC.gov)  
Website: <http://www.eEOC.gov>

## **XXI. Review and Revision**

Subject to the authority of the Title IX Coordinator, these procedures shall be reviewed annually to determine appropriate revisions to ensure compliance with federal, state and local law. The Title IX Coordinator reserves the right to review and amend these procedures at any time.