Discrimination, Harassment and Retaliation

Policy 110

1 Introduction

1.1 This policy prohibits all forms of discrimination and harassment based on protected class status. This policy also prohibits all forms of retaliation against any individual because of their participation in the reporting, investigation, or adjudication of alleged violations of this policy.

2 Scope

2.1 Individuals Covered by this Policy

2.1.1 This policy applies to all members of the Appalachian State University community including students, faculty, and staff, as well as visitors and contractors.

2.2 Jurisdiction

2.2.1 The University has authority to address any prohibited conduct, as outlined in this policy, that occurs on university premises. The University also reserves the right to address off-campus behavior prohibited by this policy when it is determined that the off-campus behavior is detrimental to the University and its educational mission. In making the determination of whether to address off-campus behavior pursuant to this policy, the Director of Investigations and Title IX Compliance will consider the seriousness of the allegation, the risk of harm, whether those involved are members of the University community, whether alleged misconduct is part of a series of actions that occurred both on and/or off campus and other factors relevant to the impact of the alleged misconduct on the University community.

3 Definitions

3.1 Director of Investigations and Title IX Compliance

Is defined as the Director of Investigations and Title IX Compliance of Appalachian State University or their designee. The Director serves as the University’s Title IX Coordinator. The Director may delegate the authority to perform any of the duties assigned to that official in this policy. All references to the Director of Investigations and Title IX Compliance include any such designee.

3.2 Complaint

A request by a person alleging the occurrence of discrimination, harassment or retaliation prohibited by this policy that the University address the alleged behavior through a formal process. All complaints must be reduced to writing, either initially or as part of an investigation.

3.3 Confidential Resource

A designated University office whose employees will not share information about or shared by the individuals involved in alleged violations of this policy without permission, unless there is a threat of serious harm to the individual or to others, or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor). The following offices/organizations are designated as Confidential Resources under this policy:

1. Student Legal Clinic
2. Student Health Services
3. University Ombuds
4. Counseling and Psychological Services
5. Counseling for Faculty and Staff
6. ComPsych or a similar service provider

3.4 Day

Unless specifically indicated otherwise, a “day” is a business day on which the University is open.
3.5 Discrimination

Unlawful or otherwise prohibited distinction of, preference for, or detrimental treatment of, an individual as compared to other individuals that is based on an individual’s protected status (as defined in this policy) and that is sufficiently serious to unreasonably interfere with or limit:

1. An employee’s or employment applicant’s access to employment or terms, conditions and benefits of employment (e.g., hiring, advancement, assignment, etc.);
2. A student’s or admission applicant’s ability to participate in, access, or benefit from educational programs, services, or activities (e.g., admission, academic standing, grades, assignment, campus housing, etc.);
3. An authorized volunteer’s ability to participate in a volunteer activity; or
4. A guest’s or visitor’s ability to participate in, access, or benefit from the University’s programs or deliver services.

Discrimination includes failure to provide reasonable accommodations, consistent with state and federal law and university policy, to a qualified person with a disability. Discrimination also includes failure to make religious accommodations consistent with state and federal law.

3.6 Harassment

3.6.1 Verbal, physical, electronic, or other conduct based upon an individual’s protected status (as defined in this policy) that creates a hostile environment or involves a quid pro quo exchange. Harassment occurs when this type of conduct unreasonably interferes with an individual’s:

1. Educational environment (e.g., admission, academic standing, grades, assignment, etc.);
2. Work environment (e.g., hiring, advancement, assignment, etc.);
3. Participation in a University program or activity (e.g., campus housing, extra-curricular activities, etc.); or
4. Receipt of legitimately requested services (e.g., disability or religious accommodations, etc.)

3.6.2 Hostile Environment Harassment - Unwelcome conduct based on protected status that is so severe, persistent, or pervasive that it alters the conditions of education, employment, or participation in a university program or activity, thereby creating an environment that a reasonable person in similar circumstances and with similar identities would find hostile, intimidating, or abusive. An isolated incident, unless sufficiently severe, does not constitute hostile environment harassment.

3.6.3 Quid Pro Quo Harassment - Unwelcome conduct based on protected status where submission to or rejection of such conduct is used, explicitly or implicitly, as the basis for decisions adversely affecting an individual’s education, employment, or participation in a University program or activity. Examples of quid pro quo harassment may include, but are not limited to:

1. Promising a promotion or higher grade if an individual acquiesces to sexual advances;
2. Denying an employee a pay raise after the employee has declined a request for sexual favors from a supervisor; or
3. Action to deny membership in an organization to an individual who has declined a request for sexual favors from a leader or member of that organization.

3.7 Protected Activity

An individual’s good faith

1. participation in the reporting, investigation, or resolution of alleged violation(s) of this policy;
2. opposition to policies, practices, or actions that the individual reasonably believes are violations of this policy; or
3. requests for accommodations on the basis of religion or disability.

3.8 Protected Status

Consistent with federal and state law and policies of The University of North Carolina, the University prohibits discrimination and harassment based on the following protected statuses:

1. Age: The number of years from the date of a person’s birth. With respect to employment, individuals who are forty (40) years of age or older are protected from discrimination and harassment.
2. Color: An individual’s skin pigmentation, complexion, shade, or tone.
3. Disability: A person who has a physical or mental impairment that substantially limits one or more major life activities; or has a record of such impairment; or is regarded as having such impairment. A qualified person with a disability is one who is able to perform the essential functions of the employment or volunteer position or the academic, athletic, or extra-curricular program, with or without reasonable accommodation.
4. Gender: An individual’s socially constructed status based on the behavioral, cultural, or psychological traits typically associated with societal attribution of masculinity and femininity, typically related to one’s assigned sex at birth.
5. Gender Identity: The gender with which an individual identifies psychologically, regardless of what gender was assigned at birth.

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

7. Genetic Information: Information about (a) an individual's genetic tests; (b) a genetic disorder in family members of such individuals; and (c) the manifestation of a disease or disorder in family members of such individuals. Genetic information includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research that includes genetic services by such individual or any family member of such individual.

8. National Origin: An individual's actual or perceived country or ethnicity of origin.

9. Political Affiliation: Membership in, participation in, or support of, a particular political party, group, or candidate.

10. Race: An individual's actual or perceived racial or ethnic ancestry as may be evidenced by physical characteristics, such as a person's skin color, hair, facial features, height, and weight.

11. Religion: All aspects of religious observance and practice, as well as sincerely held religious belief.

12. Sex: An individual's actual or perceived status of being biologically male or female, including pregnancy. Conduct of a sexual nature is conduct based on sex as a protected status.

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

14. Veteran Status: Covered veterans include disabled veterans, special disabled veterans, Vietnam era veterans, and other protected veterans as defined by federal and/or state law.

3.9 Report

A disclosure of information by a person alleging the occurrence of discrimination, harassment or retaliation prohibited by this policy. Filing a report may initiate or result in a formal complaint either by the Reporting Party or the University.

3.10 Reporting Party

A person who submits a report regarding discrimination, harassment, or retaliation prohibited or reasonably thought to be prohibited by this policy.

3.11 Responding Party

A person who is alleged to have committed violation(s) of this policy.

3.12 Responsible Employee

Any employee of the University who has supervisory responsibilities, any employee of the Office of Human Resources, any coach of an intercollegiate athletic team, and any employee of the University's Residence Life staff. Individuals identified as Confidential Resources are not considered to be Responsible Employees.

3.13 Retaliation

Any form of reprisal against an individual for engaging in protected activity under this policy. Retaliation may include intimidation, threats, coercion, or adverse employment or educational actions. Retaliation may be found even when an underlying report made in good faith was not substantiated. Retaliation may be committed by the Responding Party, the Reporting Party, or any other individual or group of individuals.

3.14 Title IX Responsible Employee

Any employee listed as a Responsible Employee and any member of the faculty, as defined in the University's Faculty Handbook. Individuals identified as Confidential Resources are not considered to be Title IX Responsible Employees.

3.15 University

Appalachian State University, a constituent institution of The University of North Carolina, with its main campus located in Boone, North Carolina. This includes any officially designated location, program or activity of the University.

4 Policy and Procedure Statements

4.1 Notice of Non-Discrimination Based on Protected Status

4.1.1 Appalachian State University prohibits all forms of discrimination based upon race, color, religion, sex, national origin, age,
political affiliation, veteran status, disability, sexual orientation, gender identity, gender expression, or genetic information.

4.1.2 Appalachian State University prohibits retaliation against any person based on that person’s participation in a protected activity. Retaliation against a Reporting Party’s spouse, partner, or other close personal relation to the Reporting Party is also impermissible. Any interference, coercion, restraint or reprisal directed against any person opposing, complaining of, or participating in an investigation of harassment and/or other forms of discrimination is prohibited.

4.2 Reporting Obligations of Responsible Employees and Title IX Responsible Employees

4.2.1 Duty of a Responsible Employee to Report: Any Responsible Employee who obtains knowledge of conduct prohibited by this policy must report such information within one (1) day to the Office of Title IX Compliance.

4.2.2 Duty of a Title IX Responsible Employee to Report: Any Title IX Responsible Employee who receives a report of sexual discrimination or harassment covered by this policy, including, but not limited to, a report of sexual assault, must report such information within one (1) day to the Office of Title IX Compliance.

4.2.3. The primary purpose of making such a report is to ensure that the person affected by the alleged prohibited conduct receives information about available resources and support, as well as processes to address the prohibited conduct. Responsible Employees and Title IX Responsible Employees will safeguard an individual’s privacy, but may not promise confidentiality.

4.2.4 All employees of the University are encouraged to promptly report any conduct potentially in violation of this policy to the Office of Title IX Compliance.

4.3 Reporting Options

4.3.1 Individuals who believe they have experienced conduct prohibited by this policy have the right to report and/or file a complaint with the University. Choosing to make a report, and deciding to file a complaint, is a process that unfolds over time. The University recognizes that the decision about how to proceed is personal and will make every effort to respect an individual’s autonomy in making this determination. There may be instances when the University determines that it must address a reported concern even if the Reporting Party does not wish to proceed with a formal complaint. These situations include, but are not limited to, when the information provided causes a safety concern for the individual reporting or the University community, when the University is required by law to address discrimination in the workplace, and similar situations. The University takes seriously every report and complaint of discrimination, harassment and retaliation. All individuals are encouraged to report and/or file a complaint of any incident of which they are aware, regardless of when or where the incident occurred, and to seek any necessary resources and support from University or other sources.

4.3.2 Consistent with this policy, upon receipt of a report, appropriate university officials will conduct an initial assessment to: (a) review the incident or behavior of concern; (b) assess any risk of harm to the parties, any other individuals, or the broader University community; (c) determine the Reporting Party’s desired course of action; and (d) identify any need for interim protective measures for the safety and well-being of the Reporting Party, any other individual, or the community.

4.3.3 Individuals who believe they have experienced discrimination, harassment or retaliation prohibited by this policy are encouraged to report and/or file a complaint about the incident directly as follows:

1. Individuals who believe they have experienced discrimination, harassment or retaliation by an employee, vendor, contractor or visitor of Appalachian State University are encouraged to report and/or deliver a complaint about the incident to the Office of Title IX Compliance.
2. Individuals who believe they have experienced sex/gender-based discrimination or harassment by a student, as defined in the University’s Code of Student Conduct, are encouraged to report and/or deliver a formal complaint about the incident to the Office of Title IX Compliance. Individuals who believe they have experienced any other forms of discrimination, harassment or retaliation by a student are encouraged to report and/or file a formal complaint about the incident to the Office of Student Conduct.

4.3.4 Any employee should file a complaint under this policy immediately, but in no event later than thirty (30) days following the incident(s). The University will address discrimination and harassment concerns brought to the attention of administrators more than thirty (30) days after an occurrence of such discrimination, harassment, and/or retaliation, but employees’ rights to appeal internal university decisions will not apply beyond the thirty (30) day reporting period.

4.3.5 Employees subject to the State Human Resources Act (SHRA) should file complaints under this policy within fifteen (15) calendar days to protect their appeal rights provided by Office of State Human Resources policies. The University will address discrimination and harassment concerns brought to the attention of administrators more than fifteen (15) calendar days after an occurrence of such discrimination, harassment, and/or retaliation but employees’ rights to appeal internal university decisions will not apply beyond the prescribed fifteen (15) calendar day reporting period.
4.4 Privacy and Confidentiality

4.4.1 Responsible employees and other University officials who receive reports or complaints subject to this policy are expected to respect the privacy of all individuals involved, consistent with the University’s responsibility to investigate the allegation(s) and determine what steps the University must take to eliminate the prohibited conduct, prevent its recurrence, and address its effects. University officials responsible for addressing alleged violations of this policy may share information on a “need to know” basis with other University employees, or as otherwise permitted by law.

4.4.2 Confidential Resources will not share information about or shared by the individuals involved in alleged violations of this policy without permission, unless there is a threat of serious harm to the individual or to others, or there is a legal obligation to reveal such information (e.g., suspected abuse or neglect of a minor).

4.5 Interim Protective Measures

4.5.1 When a report is received, the Office of Title IX Compliance, in consultation with other administrators, will impose reasonable and appropriate interim protective measures when necessary for the safety and well-being of the parties or witnesses involved. Interim protective measures are actions taken by the University to ensure equal access to its educational programs, services and activities, or access to employment and the conditions and benefits of employment, during the process of reporting, investigation, and/or adjudication. Interim protective measures may be applied to the Reporting Party, the Responding Party, and other involved individuals as appropriate to ensure their safety and well-being. Interim protective measures may be requested by the parties or directed by the University at any time, regardless of whether any particular course of action is sought by the Reporting Party. Interim measures are initiated on the basis of information gathered during a report or investigation and do not constitute disciplinary actions.

4.6 Standard of Proof

4.6.1 Before a person may be subjected to a serious disciplinary sanction for violation of this policy, the University must establish that the Responding Party is responsible for an alleged violation(s) by a preponderance of the evidence (i.e., that it is more likely than not that the Responding Party violated this policy). This determination must be based solely on the information presented, which may include, but is not limited to, pertinent records (e.g., complaints, police reports, investigation reports), exhibits (e.g., photographs, audio/video information, electronic communications including social media), and written and oral statements. Formal rules of evidence and procedure do not apply.

4.7 Investigations

4.7.1 If the Director of Investigations and Title IX Compliance determines that the most appropriate means for addressing the complaint is through an investigation, the Director will appoint an investigator will be identified and appointed.

4.7.2 The role of the investigator is to gather information and impartially review and report about the alleged incident.

4.7.3 A preliminary investigation may be conducted by interviewing involved parties and witnesses provided by the Reporting Party. If it is concluded that further investigation is warranted, the Responding Party will be advised of the allegations in writing and asked to provide a response to the complaint, along with a witness list and any relevant documentation. The investigation may include the review of written or oral statements, audio or video recordings, pictures, social media information, text messages, class schedules, police investigation reports, medical records and other relevant information.

4.7.4 The investigation will be conducted in a thorough, prompt, impartial and fair manner.

4.7.5 Prior to finalizing the investigative report, the investigator shall provide all parties the opportunity to review their own statements for accuracy. At the conclusion of an investigation, the investigator shall present an investigative report summarizing the key evidence and findings to the appropriate administrator or supervisor.

4.7.6 During an investigation involving students, the parties may be accompanied by support individuals and an advocate as provided in the University’s Code of Student Conduct. During an investigation involving employees, the parties may have a third party present for support; provided, however, that the third party is not providing legal representation and does not actively participate in the investigation.

4.8 Resolutions

4.8.1 Complaints involving alleged violation(s) of this policy by a student will be resolved through the Office of Student Conduct. Determinations of responsibility and the imposition of sanctions, if appropriate, shall be made pursuant to the Code of Student Conduct.

4.8.2 Complaints involving alleged violation(s) of this policy by a University employee, contractor, vendor or visitor will be resolved through the Office of Title IX Compliance. The Director of Investigations and Title IX Compliance shall determine
whether or not a violation of this policy has occurred. Determinations regarding sanctions and necessary corrective actions, if any, shall be made by the employee’s supervisor in consultation with the Director of Investigations and Title IX Compliance and other appropriate University administrators, subject to applicable grievance policies.

4.8.3 The totality of the circumstances and facts will be reviewed to determine whether the alleged conduct constitutes harassment and/or other forms of discrimination or retaliation. The University ordinarily will provide a written response to a reporting party within sixty (60) calendar days following receipt of a complaint by Director of Investigations and Title IX Compliance. This timeline is subject to adjustments as necessitated by the facts and circumstances of each case.

4.9 Appeals

4.9.1 Appeals involving alleged violation(s) of this policy by a student may be filed as provided in the Code of Student Conduct.

4.9.2 Appeals involving alleged violation(s) of this policy by an employee, vendor, contractor or visitor:

1. SHRA employees have grievance rights as provided in the University SHRA Grievance and Appeal Policy. If a grievance alleging conduct prohibited by this policy is filed, the grievance process will be held in abeyance until the Office of Title IX Compliance completes its investigation. Investigations initiated through the SHRA grievance process ordinarily will be completed within forty-five (45) calendar days. An extension may be granted only as provided in the SHRA Grievance and Appeal Policy. The Office of Title IX Compliance will notify the Reporting Party, the Responding Party, and the Office of Human Resources when its investigation is concluded.

2. EHRA Non-Faculty employees have grievance rights as provided in the EHRA Non-Faculty Grievances Policy. If a grievance alleging conduct prohibited by this policy is filed, the grievance process will be held in abeyance until the Office of Title IX Compliance completes its investigation. The Office of Title IX Compliance will notify the Reporting Party, the Responding Party and the Office of Human Resources when its investigation is concluded.

3. Faculty members have grievance rights as stated in the Faculty Handbook. If a grievance is filed alleging conduct prohibited by this policy, the grievance process will be held in abeyance until the Office of Title IX Compliance completes its investigation. The Office of Title IX Compliance will notify the Reporting Party, the Responding Party and the Vice Provost for Faculty Affairs when its investigation is concluded.

4.10 Education and Training

4.10.1 The University is committed to offering educational and training opportunities for the University community to promote awareness and prevention of prohibited conduct as outlined in this policy. Members of the Office of Title IX Compliance provide in-person training on recognizing, preventing and responding to reports of discrimination, harassment and retaliation. To request a presentation or training, or for additional information, please contact the Office of Title IX Compliance.

5 Additional References

Faculty Handbook
EHRA Non-Faculty Grievances Policy
SHRA Grievance and Appeal Policy
Code of Student Conduct
The UNC Policy Manual, Chapter 100.1, The Code, Section 103

6 Authority

North Carolina Office of State Human Resources - Unlawful Workplace Harassment
North Carolina Office of State Human Resources - Reasonable Accommodation
The UNC Policy Manual, Chapter 100.1, The Code, Section 103
Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, et seq.)
Title II, Civil Rights Act of 1964, as amended (42 U.S.C. 2000a, et seq.)
Title VI, Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, et seq.)
Title VII, Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, et seq.)
Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301, et seq.)
Title II, Genetic Information Nondiscrimination Act of 2008 (PL 110-233)
N.C.G.S. §§ 95-241, 126-1.1, 126-5, 126-7.1, 126-14, 126-14.1, 126-14.2, 126-16, 126-17, 126-34.01, 126-34.02, 126-82, 126-85, 168A-3, 168A-5, and 168A-10; 25 NCAC 01J .1101, 25 NCAC 01J. 1302

7 Contact Information
8 Original Effective Date

March 6, 2012

9 Revision Dates

June 23, 2012
April 24, 2014
December 8, 2015
June 21, 2017 (This revision combined and superseded two prior policies: 602.2 Harassment, Discrimination and Retaliation; and 401.2 Harassment and Discrimination.)
July 31, 2018 (This revision consisted only of the name change for the Office of Equity, Diversity and Compliance - now Office of Title IX Compliance; and title change for Associate Vice Chancellor for Equity, Diversity and Compliance - now Director of Investigations and Title IX)