Discrimination and Harassment

Policy 110

1 Introduction

1.1 The purpose of this policy is to support Appalachian State University’s ("Appalachian") commitment to providing an institutional environment free from discrimination and harassment.

1.2 This policy serves to address prohibited conduct adverse to Appalachian’s commitment of preventing discrimination and harassment, as well as to provide an administrative framework and oversight for reporting, investigating, adjudicating, and resolving violations of this policy.

1.3 This policy applies to both prohibited conduct that occurs on Appalachian property, and off Appalachian property, that has an adverse and detrimental effect on the University and its constituents.

2 Scope

This policy applies to all members of the Appalachian community, including students, faculty, staff and others who participate in University programs, activities, or conduct business on behalf of the University.

3 Definitions

3.1 Discrimination

Conduct based on an individual’s Protected Status that 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, assignment, etc.);
(b) a student or admission applicant’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’s programs or services.

3.2 Harassment

Communication or conduct (e.g. verbal, physical, electronic, written, etc.) that creates a Hostile Environment or involves a Quid Pro Quo exchange for an individual within a Protected Status that unreasonably interferes with the individual’s:
(a) educational environment (e.g., admission, academic standing, grades, assignments, etc.);
(b) work environment (e.g., hiring, advancement, assignment, etc.); or
(c) participation in a University program or activity (e.g., campus housing, extra-curricular activities, etc.).

3.2.1 Hostile Environment

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 a Hostile Environment.

3.2.2 Quid Pro Quo

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.

3.3 Protected Status

The University prohibits Discrimination and Harassment based on age, color, disability, gender, gender expression, gender identity, genetic information, national origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation,
and veteran status, as defined by federal and state law and UNC system policies.

3.4 Retaliation

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

4 Policy and Procedure Statements

4.1 Prohibited Conduct

All members of the Appalachian community are prohibited from engaging in Discrimination or Harassment or engaging in Retaliation. (“Prohibited Conduct”)

4.2 Reporting

4.2.1 Reporting and Review of Prohibited Conduct

Allegations of Prohibited Conduct should be reported as promptly as possible to the applicable administrative office as identified in Section 4.4. Allegations must be reviewed and processed by the applicable administrative office in accordance with this policy and administrative office procedures, as further referenced in Section 4.4. Allegations of Prohibited Conduct should be disclosed to an administrative office by submitting either an informal report or formal complaint:

(a) an informal report is a disclosure of information alleging the occurrence of Prohibited Conduct, which may result in a formal complaint being made by an individual or University representative; and
(b) a formal complaint is a written allegation of Prohibited Conduct made by an individual or a University representative requesting the University to address the alleged behavior through a resolution process.

4.2.2 Interim Measures

Upon receiving an informal report or formal complaint, the appropriate administrative office reviewing allegation(s) of Prohibited Conduct may impose reasonable interim measures to temporarily address allegations to ensure a safe and nondiscriminatory environment. The measures imposed will be identified on a case-by-case basis, and the University will balance the burden placed on members of the Appalachian community with the University’s interest in ensuring a safe and nondiscriminatory environment.

4.2.3 Responsible Employee Reporting

4.2.3.1 Mandatory Title IX Responsible Employee Reporting

Upon receiving any information that may indicate the occurrence of Prohibited Conduct based on the Protected Status of gender, gender expression, gender identity, sex, or sexual orientation, the following employees are required to report the information to the Office of Title IX Compliance as promptly as possible, but in no event after seventy-two (72) hours: Faculty, Coaching Staff in the Athletics Department, Office of Human Resources Staff, University Housing Staff, and other University staff with supervisory responsibility.

4.2.3.2 Other Responsible Employee Reporting

As promptly as possible, upon receiving any information that may indicate the occurrence of Prohibited Conduct based on a Protected Status that is not referenced in Section 4.2.3.1, employees should report the information to the appropriate administrative office identified in Section 4.4.

4.2.3.3 Confidential Resources

Confidential Resources are employees in designated University departments who are responsible for maintaining the confidentiality of information they receive while acting within the scope of their employment capacity. These employees may not report information they obtain on allegations of Prohibited Conduct, unless:

(a) they obtain permission from the recipient of the Prohibited Conduct, as addressed under this policy;
(b) there is a threat to the health or safety of the individual or others; or
(c) there is a legal obligation (e.g., suspected abuse or neglect of a minor).

Employees, in the following University departments, are considered “Confidential Resources” and are exempt from reporting obligations referenced in Section 4.2.3.1 and Section 4.2.3.2: Counseling for Faculty and Staff, Counseling and Psychological Services, ComPsych (or a similar service provider), Psychology Clinic, Student Legal Clinic, Student Health Services, and University Ombuds.

4.2.3.4 Other Exemptions

Employees are not required to report information disclosed at public awareness events and programs open to the public in which attendees disclose incidents of Prohibited Conduct, nor are they required to report information obtained during an individual’s participation as a subject in an approved Institutional Review Board (“IRB”) human subjects research study, unless the disclosing party also initiates an informal report or formal complaint under this policy.

4.2.4 Complainants and Respondents

For purposes of this policy and administrative office procedures:

(a) a reporting party or “Complainant” is a person who submits an informal report or formal complaint regarding Prohibited Conduct under this policy; and
(b) a responding party or “Respondent” is a person who is alleged to have committed a Prohibited Conduct under this policy.

4.2.5 Privacy and Confidentiality

Information obtained by the University in response to allegations of Prohibited Conduct will be reviewed in a manner that balances an individual’s preferences for privacy with the University’s legal obligations, as well as the University’s obligations to provide a safe and nondiscriminatory environment. Complete confidentiality cannot be guaranteed, and information may be shared with others when necessary to investigate or address the Prohibited Conduct, to prevent its recurrence, or to fulfill legal obligations.

4.3 Standard of Proof

For purposes of this policy, the standard of proof used to determine the level of evidence needed to reach a determination in an administrative or adjudicative process that an individual is responsible for an alleged violation(s) will be the preponderance of the evidence (i.e., that it is more likely than not that the individual 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., formal complaints, police reports, investigation reports), exhibits (e.g., photographs, audio/video information, electronic communications including social media), and written or oral statements. Formal rules of evidence and procedure do not apply.

4.4 Policy Implementation

4.4.1

Administrative offices at Appalachian have been identified and tasked with the administration and implementation of this policy. These administrative offices work both independently and jointly to safeguard Appalachian in carrying out the University’s commitment to providing an educational or employment environment free from Discrimination and Harassment. Each administrative office will author and publish procedures to process informal reports and formal complaints, which will be assessed, investigated, and otherwise resolved in compliance with federal and state laws and regulations, UNC System policies, and policies of the University, as well as in collaboration with other administrative offices.

4.4.2

The administrative offices below are the units that have been identified with the responsibilities of administrating and implementing this policy (e.g., investigating and adjudicating an alleged violation of Discrimination and Harassment). Each identified office is responsible for collecting reports, questions, and comments, as well as conducting reviews and investigations, related to their office responsibilities. These offices will also be responsible for University Discrimination and Harassment prevention and response training. All reporting, questions, or comments that fall within the scope of this policy should be directed to the applicable administrative office as identified below. Depending on the occasion, more than one administrative office may be responsible for reviewing a matter that falls within the scope of this policy.

Administrative
Office of Academic Affairs
- Reviews all Prohibited Conduct matters governed under this policy pertaining to faculty employment-related matters.
- Any Prohibited Conduct reporting regarding a faculty-member or faculty-member applicant for employment, or questions or comments related to this policy, should be directed to this office.

Office of Disability Resources
- This office is responsible for enforcement of the Faculty Handbook.
- Reviews or investigates all Prohibited Conduct matters governed under this policy pertaining to disability accommodations or accessibility.
- Any Prohibited Conduct reporting on the basis of disability accommodations or accessibility, or questions or comments related to this policy, should be directed to this office.

Office of Human Resources
- Assists Academic Affairs in investigations of faculty Prohibited Conduct matters pertaining to faculty employment-related matters (e.g., equal employment opportunities, affirmative action).
- Any Prohibited Conduct reporting regarding a SHRA, EHRA non-faculty, student employee, or temporary employee, or applicant for employment under one of these classifications, or questions or comments related to this policy, should be directed to this office.
- Reviews or investigates all Prohibited Conduct matters governed under this policy pertaining to student conduct.

Office of Student Conduct
- This office is responsible for enforcement of the Code of Student Conduct and Academic Integrity Code.
- Reviews or investigates all Prohibited Conduct matters governed under this policy pertaining to gender, gender expression, gender identity, sex (including pregnancy and parenting), and sexual orientation.

Office of Title IX Compliance
- Assists Academic Affairs in investigations of faculty Prohibited Conduct matters pertaining to gender, gender expression, gender identity, pregnancy, sex, and sexual orientation.
- Any Prohibited Conduct reporting related to gender, gender expression, gender identity, pregnancy, sex, and sexual orientation., or questions or comments related to this policy, should be directed to this office.

4.5 Enforcement
Appalachian will enforce violations of this policy when the University has authority pursuant to federal and state law, and UNC System policies. Violations of this policy, including but not limited to the engagement of Discrimination, Harassment, or Retaliation, as defined by this policy, or a Responsible Employee’s failure to disclose Discrimination, Harassment, or Retaliation, may result in grounds for disciplinary action, up to and including termination or expulsion.

4.6 Academic Freedom
As permitted by federal and state law, Appalachian supports and encourages full freedom of inquiry, discourse, teaching, research, and publication. Such opportunities are afforded in pursuit of knowledge and learning without fear of sanction, unless the manner of expression is found through the administration of this policy to substantially impair the rights of others.

4.7 Appeals
Appeals of University decisions will be addressed in the procedures provided by each administrative office that was responsible for the review or investigation of the alleged violation. Each administrative office will author and publish procedures to resolve appeals.

5 Additional References
- Code of Student Conduct
- Equal Opportunity
- EHRA Non-Faculty Grievances
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 IV, the Violence Against Women Act, Violence Crime Control and Law Enforcement Act of 1994
Title VI, Civil Rights Act of 1964, as amended (42 U.S.C. 2000d, et seq.)
Title IX of the Education Amendments of 1972
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)
Age Discrimination Act of 1967 (29 U.S.C. 621 et seq.)
N.C. Gen. Stat. § 95-241
N.C. Gen. Stat. §§ 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
25 NCAC 01J .1101 and 25 NCAC 01J. 1302

7 Contact Information

Office of Academic Affairs (828-262-2070)
Office of Disability Resources (828-262-3056)
Office of Human Resources (828-262-3186)
Office of Student Conduct (828-262-2704)
Office of Title IX Compliance (828-262-2144)

8 Original Effective Date

March 6, 2012

9 Revision Dates

June 23, 2012
April 24, 2014
December 8, 2015
June 21, 2017
July 31, 2018
March 2, 2020