Sex-Based Misconduct

Policy 112

1 Introduction

The purpose of this policy is to provide an administrative framework and oversight for reporting, investigating, adjudicating, and resolving sex-based misconduct by members of the Appalachian State University (“Appalachian”) community.

2 Scope

2.1 This policy applies to all members of the Appalachian community, including students, faculty, staff, visitors, volunteers, and others who participate in programs, activities, or conduct business on behalf of Appalachian that occur in locations, events, or circumstances where Appalachian exercises substantial control over both the respondent and the context in which the alleged sex-based misconduct occurs.

2.2 This policy addresses prohibited conduct that occurs either: (a) on property owned or controlled by Appalachian; (b) off Appalachian property in any building owned or controlled by a student organization that is officially recognized by Appalachian; or (c) on property owned or controlled by non-Appalachian entities or individuals that has an adverse or detrimental effect on Appalachian and its employees, employment applicants, students, visitors or volunteers.

2.3 Allegations of harassment and discrimination based on sex, gender, gender expression, gender identity, and sexual orientation, including instances involving sexual assault, dating violence, domestic violence, or stalking, are subject to this policy and Appalachian Policy 110 – Discrimination and Harassment. If there is a conflict between Appalachian Policy 110 – Discrimination and Harassment and this policy for the statuses and conduct referenced in this subsection, then this policy shall be controlling.

3 Definitions

3.1 Sex-Based Misconduct

Any conduct that involves the sexual harassment or sex-based discrimination of an individual based on their gender, gender expression, gender identity, sex (including pregnancy) or sexual orientation, including instances involving sexual assault, dating violence, domestic violence, or stalking.

3.2 Retaliation

Any adverse action against an individual, or an individual's spouse, partner, or other person with a close personal relation, for: (a) making or supporting a claim of Sex-Based Misconduct, (b) opposing any Sex-Based Misconduct, (c) participating in the reporting, investigation, or resolution of alleged violation(s) under this policy, or (d) otherwise engaging in a protected activity under this policy or other associated University policies.

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.

3.3 Prohibited Conduct

Engaging in acts of Sex-Based Misconduct or Retaliation, as expressed in this policy.

3.4 Title IX Coordinator

The individual designated by the University, as expressed in this policy, with the primary responsibility for coordinating Appalachian’s efforts related to the intake, investigation, resolution, and implementation of supportive measures to stop, remediate, and prevent Sex-Based Misconduct, and Retaliation prohibited under this policy.

3.5 Complainant

Any person who has alleged to be the victim of conduct that could constitute Sex-Based Misconduct or Retaliation.

3.6 Respondent
Any individual who has been reported to be the perpetrator of conduct that could constitute Sex-Based Misconduct or Retaliation.

3.7 Formal Complaint

A document submitted by a Complainant or signed by the Title IX Coordinator requesting Appalachian to investigate an allegation involving: (a) Sex-Based Misconduct against a Respondent, or (b) Retaliation against an individual who is engaging in protected activities under this policy.

3.8 Grievance Process

The Grievance Process refers to the entire span of actions and procedures commencing with Appalachian's initial receipt of a Formal Complaint of alleged Prohibited Conduct through final resolution and appeals. This process incorporates, as needed and determined by the Title IX Coordinator, the initial review of complaints, assessments of needs for assistance or supportive measures, options for informal resolutions, initiation and completion of formal investigations, adjudication, sanctioning, and appeals.

4 Policy and Procedure Statements

4.1 Prohibited Conduct

All members of the Appalachian community are prohibited from engaging in Sex-Based Misconduct or Retaliation (collectively, "Prohibited Conduct").

4.2 Allegations of Prohibited Conduct

All allegations notifying Appalachian of Prohibited Conduct shall be reviewed and addressed under the direction of the Title IX Coordinator, who shall work to ensure that appropriate and responsive actions are promptly implemented to effectively stop Prohibited Conduct, prevent its recurrence, and remedy any effects of discriminatory conduct.

4.3 Standard of Evidence

In any adjudication in the Grievance Process, the evidentiary threshold for finding a Respondent responsible for a violation of Prohibited Conduct is preponderance of the evidence (i.e., the weight and credibility of the evidence shows that it is more likely than not that a violation has occurred).

4.4 Training and Neutrality of Personnel

The Title IX Coordinator is responsible for training all Appalachian personnel involved in the assessment, investigation, adjudication, sanctioning, and appeals throughout the Grievance Process. These individuals shall receive annual training with respect to the Grievance Process and procedures, their respective responsibilities, and how to conduct themselves free of bias and with neutrality and professionalism.

4.5 Policy Implementation and Compliance

4.5.1 Appalachian's Director of Title IX Compliance shall serve as Appalachian's Title IX Coordinator and oversee all implementation of this policy pursuant to federal law and regulations. The Director of Title IX Compliance is responsible for the creation and implementation of procedures, consistent with this policy to address Sex-Based Misconduct and Retaliation. This policy and accompanying procedures supersede all prior existing policies and procedures for addressing and resolving allegations of Prohibited Conduct at Appalachian.

4.5.2 At minimum, the procedures for addressing allegations of Sex-Based Misconduct shall include: (1) the types and nature of conduct that constitutes Sex-Based Misconduct, (2) the processes and procedures to identify if an alleged perpetrator of Sex-Based Misconduct has committed a violation of this policy by a preponderance of the evidence, and (3) any other standards to meet federal and state law and regulations.

4.5.3 The Director of Title IX Compliance shall work in collaboration with the Office of Academic Affairs, the Office of Human Resources, and the Office of Student Conduct to review and publish Sex-Based Misconduct procedures for the administration of all allegations of Sex-Based Misconduct in compliance with applicable federal and state law, and UNC System policies.

4.5.4 Administration of this policy shall be consistent with applicable federal and state law and regulations, UNC System policies, and policies of the University.
4.6 Enforcement

Appalachian will enforce violations of this policy in accordance with applicable federal and state law, and UNC System policies. Violations of this policy, including but not limited to the engagement of Sex-Based Misconduct or Retaliation, or a Mandatory Title IX Responsible Employee’s, as identified in Appalachian Policy 110 – Discrimination and Harassment, failure to disclose Sex-Based Misconduct or Retaliation, may result in grounds for disciplinary action, up to and including termination or expulsion.

5 Additional References

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 VII, Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, et seq.)
Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.)
Uniformed Services Employment and Reemployment Rights Act (38 U.S.C. 4301, et seq.)

6 Authority

Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.)
34 C.F.R. Part 106

7 Contact Information

Director of Title IX Compliance | Title IX Coordinator – 828-262-2144

8 Original Effective Date

August 14, 2020

9 Revision Dates