

# 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 to preventing discrimination and harassment, as well as to provide an administrative framework and oversight for reporting, investigating, adjudicating, and resolving violations of this policy.

## 2 Scope

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

2.2 This policy applies both to prohibited conduct that occurs: (a) on property owned or controlled by Appalachian, or (b) 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 gender, gender expression, gender identity, sex or sexual orientation, including instances involving sexual assault, dating violence, domestic violence, or stalking, are subject to this policy and Appalachian [Policy 112 – Sex-Based Misconduct Policy](#). If there is a conflict between Appalachian [Policy 112 – Sex-Based Misconduct Policy](#) and this policy for the statuses and conduct referenced in this subsection, then Appalachian [Policy 112 – Sex-Based Misconduct Policy](#) shall be controlling.

## 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**

Classes of people who receive certain protections under applicable federal and state law, and UNC System policies, because of their age, color, disability, gender, gender expression, gender identity, genetic information, national origin, political affiliation, race, religion, sex (including pregnancy), sexual orientation, or veteran status.

### **3.4 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 Discrimination or Harassment, (b) opposing any Discrimination or Harassment, (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.

## **4 Policy and Procedure Statements**

### **4.1 Prohibited Conduct**

All members of the Appalachian community are prohibited from engaging in Discrimination, Harassment, or Retaliation (collectively, "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 that may result in a subsequent 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 Supportive / 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 Appalachian will balance the burden placed on members of the Appalachian community with its interest in ensuring a safe and nondiscriminatory environment.

#### **4.2.3 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 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 Appalachian in response to allegations of Prohibited Conduct will be reviewed in a manner that balances an individual's preferences for privacy with Appalachian's legal obligations, as well as, its 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 determine whether an individual is responsible for an alleged violation(s) will be the preponderance of the evidence. This simply means that the evidence presented to the administrative office responsible for the review or investigation of the alleged violation tends to prove that it is more likely than not that the alleged respondent(s) 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 of the parties or witnesses. 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 that will be assessed, investigated, and otherwise resolved in compliance with applicable 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 responsible for 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 in their respective areas. 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 facts and circumstances, more than one administrative office may be responsible for reviewing a matter that falls within the scope of this policy.

| <b>Administrative<br/>Office</b> | <b>Responsibility</b> |
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|  | Reviews all Prohibited Conduct matters governed under this policy pertaining to faculty employment-related |
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| Office of Academic Affairs     | <p>matters.</p> <p>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.</p> <p>This office is responsible for enforcement of the Faculty Handbook.</p>   |
| Office of Disability Resources | <p>Reviews or investigates all Prohibited Conduct matters governed under this policy pertaining to disability accommodations or accessibility.</p> <p>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.</p>   |
| Office of Human Resources      | <p>Reviews or investigates all Prohibited Conduct matters governed under this policy pertaining to SHRA, EHRA non- faculty, temporary, and student employee employment- related matters (e.g., equal employment opportunities, affirmative action).</p> <p>Assists Academic Affairs in investigations of faculty Prohibited Conduct matters pertaining to faculty employment-related matters (e.g., equal employment opportunities, affirmative action).</p>   |
| Office of Student Conduct      | <p>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.</p> <p>Any Prohibited Conduct reporting related to student conduct, or questions or comments related to this policy, should be directed to this office.</p> <p>This office is responsible for enforcement of the Code of Student Conduct and Academic Integrity Code.</p> |
| Office of Title IX Compliance  | <p>Reviews or investigates all Prohibited Conduct matters governed under this policy pertaining to gender, gender expression, gender identity, sex or sexual orientation.</p> <p>Assists Academic Affairs in investigations of faculty Prohibited Conduct matters pertaining to gender, gender expression, gender identity, sex or sexual orientation.</p>   |
|                                | <p>Any Prohibited Conduct reporting related to gender, gender expression, gender identity, sex or sexual orientation, including instances involving sexual assault, dating violence, domestic violence, and stalking, or questions or comments related to this policy, should be directed to this office.</p>  |

## 4.5 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 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 according to the procedures provided by the respective administrative office 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](#)  
[Faculty Handbook](#)  
[SHRA Grievance and Appeal](#)  
[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.)  
Section 504 of the 1973 Rehabilitation Act of 1973 (29 U.S.C. 701 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 VII, Civil Rights Act of 1964, as amended (42 U.S.C. 2000e, et seq.)  
Title IX of the Education Amendments Act of 1972  
Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act of 1990  
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)  
Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212 et seq.)  
Pregnancy Discrimination Act of 1978 (95 U.S.C. 555, et seq.)  
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  
N.C. Gen. Stat. §§ 168A-3, 168A-5 168A-10  
25 NCAC 01J .1101 and 25 NCAC 01J. 1302

## 7 Contact Information

Office of Academic Affairs [\[1\]](#) (828-262-2070)  
Office of Disability Resources [\[2\]](#) (828-262-3056)  
Office of Human Resources [\[3\]](#) (828-262-3186)  
Office of Student Conduct [\[4\]](#) (828-262-2704)  
Office of Title IX Compliance [\[5\]](#) (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  
August 14, 2020