

Right of Entry/Search and Seizure

Policy 404.1

1 Introduction

1.1 Attendance at Appalachian State University is a voluntary decision to join the University community. In making this decision, students assume the responsibility to know and abide by the policies, procedures, and rules which the community has identified as basic to its educational mission of developing in students intellect, character, and citizenship. Community living in a University residence hall is one of the means the University uses to fulfill its educational mission. Residence hall living is an extension of the instructional goals of the institution and is intended to be a laboratory for group living through which students should acquire skills and educational experiences consistent with the mission of the University.

2 Scope

2.1 This policy applies to all persons who live in the residence hall community.

3 Definitions

3.1 Authorized University Personnel

1. Full-time professional members of the Division of Student Affairs, excluding clerical personnel.
2. Area coordinators, resident directors, and resident assistants.
3. Full-time members of the Office of Residence Life and Housing who are responsible for management, maintenance and repair, administration, programming, discipline, or other residence life or housing functions.

4 Policy and Procedure Statements

4.1 Background and Purposes

4.1.1 Living in a college residence hall at Appalachian is not comparable to living in an apartment, family home, or other private dwelling. Expectations for privacy in a college residence hall at Appalachian are considerably less than one would expect in an apartment, family home, or private dwelling. Residence halls are designed as "group living," in which students share common space and the University determines occupancy and roommates. It is not the intent or designed purpose of residence halls to provide the level of privacy expected in an apartment, family home, or other individual dwelling. Students license space in the residence halls under the conditions set forth in the license agreement. This agreement establishes a more limited expectation of privacy in residence halls at Appalachian than persons would have in their own homes. The Agreement establishes the primary purpose of resident halls as educational. Providing shelter or "housing" is a secondary purpose.

4.1.2 It is the responsibility of resident assistants, residence hall directors, and other residence hall staff to report violations of University policies or law to the Appalachian State University Police and/or appropriate University officials.

4.1.3 No provision in the residence hall contract gives a University official authority to grant consent on a student's behalf to a search of students' living quarters by police or other law enforcement officers. However, a student's room may be entered and searched under the policies and procedures outlined below. Illegal substances (e.g., drugs), stolen property, contraband, and other items or property forbidden by University policy or by the residence hall license agreement seized by law enforcement officers for possible use as evidence in criminal prosecutions will be used as evidence in charges of misconduct under the Appalachian State University Code of Student Conduct or the Residence Life Intervention System as determined appropriate by University officials.

4.1.4 The entry into or search of the living quarters of a student can be conducted by the following people for the purposes and under the procedures detailed below:

1. by law enforcement officers, including members of the Appalachian State University Police Department, in the performance of statutory duties and in accordance with legally defined procedures governing search and seizure when there is cause to believe that a violation of a state or federal law is being or has been committed.
2. by University custodial personnel to perform routine custodial services.
3. by authorized University personnel to ensure that health, fire, and safety regulations are maintained.
4. by authorized University and contractor personnel or their agents to make improvements and repairs, including emergency repairs, and to provide routine maintenance services.

5. by authorized University personnel and/or law enforcement officers or members of the fire department, in emergency situations to protect students' health and welfare, or to prevent damage to the property of students and the University.
6. by authorized University officials when there is cause to believe that a violation of University regulations is being or has been committed. University regulations include, but are not limited to, the Code of Student Conduct, residence hall policies, and provisions of the residence hall license agreement. "Cause" means a reasonable ground of suspicion which would lead a reasonable person to believe that another person is committing or has committed an act in violation of University regulations.

4.2 University Staff

4.2.1 Other members of the University staff and contractors or their agents may enter student rooms under the conditions prescribed only when accompanied by authorized University personnel.

4.2.2 When it is necessary to enter a student's room to perform maintenance or repair services on behalf of the Housing Office when the occupants are not in, the authorized University employee or non-University contracted personnel will be accompanied by another University employee, if practicable.

4.2.3 When practicable, students will be informed of planned repair or maintenance work to assigned rooms and should be notified if entry is made in their absence.

4.2.4 Authorized University personnel may enter a resident's living quarters under circumstances explained in Section 1 above when they have cause to believe the residents' safety or health is in jeopardy, or when the residents may be unable to respond to a request to enter. Examples include, but are not limited to, smoke or the odor of smoke coming from a room; other noxious odors, the unaccounted for, prolonged absence of a resident of the living quarters prompting concern for him or her; or circumstances which would give rise to the belief that the resident may be incapacitated (such as might occur with a seizure, heart attack, injury, or drug overdose).

4.2.5 Room searches made under the conditions explained in Section 1 above when the occupants are believed to be present, there exists cause to believe a violation of University regulations is being or has been committed, and a delay could endanger the health or safety of the residents or result in the destruction of evidence of a violation, may be conducted under the procedures established in this policy. Resident assistants and resident directors may be called on to assist in a search.

4.3 Guidelines for Entry into a Residence Hall Room for the Purpose of Enforcing State, Federal, or Local Law and Related University Policies

1. Any person having reason to believe that a person in a residence hall room is committing or has committed a violation of law should report this suspicion to a member of the residence hall staff (resident assistant, hall director, area coordinator, etc.). The residence hall staff member will take steps to confirm the information, and if he/she believes a violation of law is occurring or has occurred, the person will contact the University Police Department. A University police officer or other law enforcement official, or a fire department official with jurisdiction, will control the means and method of investigation, including any search and seizure.
2. The University police officer(s) will conduct the investigation, including any resulting search, seizure, referral to the Office of Student Conduct, or arrest, consistent with the applicable law governing such actions. In certain circumstances, consistent with governing law, an officer may conduct a search or take other appropriate action without a warrant.
3. The University police officer will inform the student(s) of the purpose of the inquiry and attempt to determine whether the students are in violation of University policy or law. If the University Police conclude from their initial inquiry that their reasonable ground for suspicion is supported by sufficiently strong circumstances to conclude that it is more probable than not that University regulations or state or federal law are or were being violated, they will ask the students' voluntary consent to have the room searched for the purposes of seizing evidence of criminal misconduct or policy violation.
4. The University police officer will inform the residents of the room who are present of the purpose of the search and the object(s) for which the search is being conducted.
5. If either resident of the room consents to the search, the police officer shall search the entire room and any adjoining bathroom or other space.
6. If there is no answer to the initial request to gain entry and there is a noxious odor or smoke emanating from the suspected room, the residence hall staff member or law enforcement officer will use a pass key to enter the room to determine the source of the noxious odor or smoke and shall extinguish the source for the health and safety of other inhabitants in the building. (Note: Residence hall policies prohibit any open flames such as candles.)
7. If evidence of criminal misconduct is located in the search, the officer will take custody of said items and refer the occupant(s) of the room to the Office of Student Conduct for appropriate action under the Code of Student Conduct. At the officer's discretion, he or she may also arrest the occupant(s) and charge the occupant(s) with a violation(s) of law.

4.3.1 All evidence seized during searches may be used in University disciplinary hearings under the Code of Student Conduct or the Residence Life Intervention System.

5 Additional References

6 Authority

7 Contact Information

8 Original Effective Date

January 19, 1994

9 Revision Dates

February 1, 1998