



Discrimination and Harassment

Policy 110

1 Introduction

The purpose of this policy is to support Appalachian State University's (the "University") commitment to creating and maintaining an institutional environment free from Discrimination, Harassment, and related Retaliation.

This policy defines Prohibited Conduct that is adverse to the University's commitment to preventing Discrimination and Harassment, establishes oversight, and provides an administrative framework for reporting, investigating, adjudicating, and resolving violations of this policy.

2 Scope

This policy applies to all members of the University community, including Students, Employees, and Third-Parties.

3 Definitions

3.1 Consent

An affirmative decision by all participants to engage in mutually acceptable sexual activity. Consent means clear, knowing, and voluntary approval given by words, non-verbal, or demonstrated actions to engage in sexual activity, which is freely and mutually understandable. Consent must be ongoing throughout the sexual activity, and any party can withdraw Consent at any time.

3.2 Dating Violence

Conduct defined as violence committed by an individual (i) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (ii) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; type of relationship; and frequency of interaction between the individuals involved in the relationship. Dating violence includes, but is not limited to, sexual or physical abuse or the threat of such abuse.

3.3 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's or applicant for employment's access to employment, terms or conditions of employment, or benefits of employment;
- (b) a Student's or applicant for admission's ability to participate in, access, or benefit from the University's educational programs, services, or activities; or
- (c) a volunteer or visitor's ability to participate in, access, or benefit from a University program or service.

3.4 Discriminatory Harassment

Discriminatory Harassment is a type of Discrimination that occurs when unwelcome verbal, physical, electronic, or other conduct based on Protected Status is severe or pervasive enough to interfere with an individual's:

- (a) educational environment (e.g., admission, academic standing, grades, assignments);
- (b) work environment (e.g., hiring, advancement, assignments);
- (c) participation in a University program or activity (e.g., campus housing); or
- (d) receipt of legitimately-requested services (e.g., disability, pregnancy, religious accommodations), thereby creating Hostile Environment or Quid Pro Quo.

3.4.1 Hostile Environment

Conduct based on Protected Status that is subjectively and objectively offensive and is so severe or pervasive that it alters the conditions of education or employment; or limits or denies an individual's ability to participate in or benefit from a University program or activity. An isolated incident, unless sufficiently severe, does not constitute a Hostile Environment.

3.4.2 Quid Pro Quo

Conduct based on Protected Status whereby submission to or rejection of such conduct is explicitly or implicitly:

- (a) a term or condition of an individual's employment, education, or receipt of University services or benefits; or
- (b) is used as the basis for decisions adversely affecting an individual's education, employment, or participation in a University program or activity.

3.5 Domestic Violence

A felony or misdemeanor crime of violence committed by:

- (a) current or former spouse of the victim;
- (b) a current or former intimate partner of the victim;
- (c) a person with whom the victim shares a child in common;
- (d) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

- (e) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction; or
- (f) any other person against an adult or minor victim who is protected from that person's acts under the domestic or family laws of the jurisdiction.

3.6 Employee

A person employed by the University, including but not limited to those holding temporary, probationary, time-limited, full or part-time, SHRA, EPS, SAAO, Faculty, Student Employees, and Non-Student Temporary positions.

3.7 Prohibited Conduct

Conduct which includes Dating Violence, Discrimination, Discriminatory Harassment, Domestic Violence, Retaliation, Sexual Assault, Sexual Exploitation, Sexual Harassment, Stalking, or Title IX Sexual Harassment.

3.8 Protected Status

Persons whose characteristics are protected under federal law, state law, or UNC System policies and University policies. Protected status includes age, color, disability, gender, gender expression, gender identity, genetic information, national origin, race, religion, sex (including pregnancy, childbirth, or related medical conditions), sexual orientation, or veteran status.

3.9 Resolution Procedures

Procedures governing the University's response to reports of Prohibited Conduct, investigatory processes, adjudication, and resolution of violations of University policy or applicable law.

3.10 Retaliation

Any adverse action (including but not limited to intimidation, threats, or coercion relating to an adverse action) against a person because that person made a report of Prohibited Conduct, participated as a witness or party in an investigation, resolution proceeding, or hearing; or requesting a reasonable accommodation or modification based on disability, religion, or pregnancy or related condition.

3.11 Sexual Assault

Any sexual act directed against another individual, without their Consent, including instances where the individual is incapable of giving Consent. Sexual Assault includes:

- (a) the penetration of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without Consent;
- (b) the touching of the private body parts of another person for the purpose of sexual gratification, without Consent;
- (c) sexual intercourse with a person who is under the statutory age of consent; or sexual intercourse between persons who are related to each other within the degrees wherein marriage

is prohibited by law.

3.12 Sexual Exploitation

When a person takes non-consensual or abusive sexual advantage of another for their own advantage or benefit, or to benefit or advantage anyone other than the one being exploited, and when that behavior does not otherwise constitute one of the other forms of Prohibited Conduct offenses. Sexual Exploitation includes, but is not limited to: non-consensual creation or distribution of intimate images; allowing a third party to observe private sexual activity; engaging in voyeurism; or otherwise invading sexual privacy.

3.13 Sexual Harassment

Sexual harassment is a form of Discriminatory Harassment on the basis of sex or of a sexual nature. Sexual Harassment can include unwelcome sexual advances, requests for sexual favors, Sexual Exploitation, and other verbal, non-verbal or physical harassment of a sexual nature.

3.14 Stalking

Engaging in any actions on more than one occasion directed at a specific individual that places or is likely to place a reasonable person in fear or at risk of physical, mental, or emotional harm to themselves or others. Such actions may occur directly, indirectly, or through a third party, and may include, but are not limited to, unwelcome communication of any type (e.g., face-to-face, telephone calls, voice messages, electronic mail, written letters, or notes); unwanted gifts; pursuing/following; observing/surveillance; or interference with property. Reports of stalking will be assessed on an individualized basis to determine the applicable University office and procedures used to resolve alleged incidents.

3.15 Student

An individual who has accepted an offer of admission to the University, is currently enrolled in coursework or has registered for coursework at the University, has a continuing relationship with the University, is auditing coursework, or is participating in an educational program sponsored by or affiliated with the University. In general, the continuing relationship ends upon conferral of a degree, termination of the relationship, or a break in enrollment of twelve (12) consecutive months after the last semester attended at the University.

3.16 Third-Party

An individual who either participates in or is attempting to participate in a University program or activity or conducts business on behalf of or at the request of the University, including but not limited to contractors, volunteers, vendors, visitors, or guests.

3.17 Title IX Sexual Harassment

Pursuant to Title IX of the Education Amendments Act, conduct on the basis of sex when the conduct occurs on University grounds or other property owned or controlled by the University; or in the context of a University employment or education program or activity, including, but not limited to, locations, internships, placements, events, or circumstances over which the University has substantial control over both the individual alleged to have engaged in Prohibited Conduct and the context in which the conduct occurs; or in any building owned or controlled by a Student organization that the University officially recognizes; and in the United States, and satisfies one of the following:

- (a) An employee conditioning the provision of University aid, benefits, or services on an employee's or student's participation in unwelcome sexual contact;
- (b) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person's equal access to a University education program or activity; or
- (c) Sexual Assault, Dating Violence, Domestic Violence, or Stalking.

4 Policy and Reporting

4.1 Policy Statement

The University strictly prohibits all forms of Discrimination and Harassment as defined within this policy, including any form of Retaliation for reporting or cooperating in the University's Resolution Procedures of an alleged violation.

4.2 Reporting

4.2.1 Generally

Any person may report an allegation of Prohibited Conduct as defined in this policy. Individuals reporting Prohibited Conduct allegations should report to the Office of Access & Opportunity: Equal Opportunity ("EO") by completing the Access & Opportunity: Equal Opportunity Report Form (http://cm.maxient.com/reportingform.php?AppStateUniv&layout_id=40) or by phone, in-person, or mail directly to EO.

4.2.2 Required Reporting

Employees are required to report any information that may indicate the occurrence of Prohibited Conduct to EO as promptly as possible, but in no event after forty-eight (48) hours (2 business days) with the exception of confidential employees acting in an official confidential role, such as University counseling services, Ombuds, Student Health Service, pastoral counselors, and Student Legal Services. Absent a recognized exception, employees may be subject to disciplinary action for failing to report.

4.2.3 Timing of Alleged Prohibited Conduct

To the extent possible, reports should be submitted within 180 Days of the alleged Prohibited Conduct. Delays in reporting could impact the University's ability to fully respond, collect relevant information or evidence, or take disciplinary action.

4.2.4 Anonymous Reports

Anonymous reporting and reports from non-University affiliated individuals are permitted; however, EO's ability to respond or take further action may be impacted by the level of available information regarding the incident or individuals involved.

4.2.5 Reports in Response to Personnel Matters

4.2.5.1 SHRA Employees

Current or former Employees subject to the State Human Resources Act ("SHRA") who need to report allegations of Prohibited Conduct must initiate the SHRA grievance procedure (<https://hr.appstate.edu/hr-services/employee-relations/appeals-and-grievances>) pursuant to the UNC System SHRA Employee Grievance Policy (<https://oshr.nc.gov/documents/university-shra-grievance-policy-effective-april-2023/open>) within 15 calendar days of the action. The SHRA grievance submission will be treated as a report and processed pursuant to the UNC System SHRA Employee Grievance Policy rather than EO Resolution Procedures.

4.2.5.2 Exempt Professional Staff

Current or former Employees Exempt Professional Staff ("EPS") who need to report allegations of Prohibited Conduct must initiate the Exempt Professional Staff Review of Personnel Actions, within 14 calendar days of the action being reviewed. The EPS Review Request will be treated as a report and processed per Policy 602.23 and pursuant to EO Resolution Procedures.

4.2.5.3 Faculty

Faculty who need to report allegations of Prohibited Conduct related to terms and conditions of employment negatively affected by a decision made by an administrator in a supervisory role over the faculty must initiate the applicable grievance process in accordance with Chapter VI, Section 603, 605, and 607 of The Code and any accompanying policies or regulations in the UNC Policy Manual, including but not limited to UNC Policy 101.3.2[R] and outlined in the Faculty Handbook (<https://facultyhandbook.appstate.edu/>) within the designated time frame of the applicable grievance process. Faculty grievance requests will be treated as a report and processed per the Faculty Handbook and pursuant to EO Resolution Procedures.

4.2.6 External Reporting

Reporting to EO does not preclude an individual from filing an external charge of Prohibited Conduct directly with the US Department of Education's Office for Civil Rights, the Equal Employment Opportunity Commission, the US Department of Education's Office for Civil Rights, the North

Carolina Office of Administrative Hearings-Civil Rights Division, or other relevant agency, nor does it prevent an individual from pursuing a related civil action or criminal charge.

4.3 Applicable Resolution Procedures

EO responds to reports of Prohibited Conduct and utilizes Resolution Procedures to address and remedy the alleged Prohibited Conduct. Resolution Procedures shall be governed and administered by EO, including due process protections for persons alleged to have engaged in Prohibited Conduct. Such applicable procedures shall be made readily available through EO.

4.4 Standard of Proof

The evidentiary standard for all violations of this policy, utilized to determine whether an individual is responsible for an alleged violation(s), shall be a preponderance of the evidence. This standard is met when the evidence shows that it is “more likely than not” that the alleged Prohibited Conduct occurred.

4.5 Privacy and Confidentiality

Information obtained by the University in response to allegations of Prohibited Conduct shall be reviewed in a manner that considers an individual's preferences for privacy with the University's legal obligations and its obligations to provide a safe and nondiscriminatory environment. Complete confidentiality cannot be guaranteed, and information may be shared as necessary to investigate or address the Prohibited Conduct, fulfill legal obligations, or pursuant to University policies.

4.6 Enforcement

The University shall enforce violations of this policy in accordance with applicable federal and state law, and UNC System policies. Violations of this policy may result in grounds for disciplinary action, up to and including termination or expulsion.

5 Additional References

[Code of Student Conduct \(https://studentconduct.appstate.edu\)](https://studentconduct.appstate.edu)

[Equal Opportunity](#)

[Exempt Professional Staff Review of Personnel Actions](#)

[Faculty Handbook \(https://facultyhandbook.appstate.edu\)](https://facultyhandbook.appstate.edu)

[Policy Statement on the Family Educational Rights and Privacy Act of 1974, as Amended](#)

[Personnel Records Policy \(https://oshr.nc.gov/documents/personnel-records-policy/open\)](https://oshr.nc.gov/documents/personnel-records-policy/open)

[SHRA Grievance and Appeal](#)

[The UNC Policy Manual, Chapter 100.1, The Code, Section 103 \(https://www.northcarolina.edu/apps/policy/index.php?pg=dl&id=10866&format=pdf&inline=1\)](https://www.northcarolina.edu/apps/policy/index.php?pg=dl&id=10866&format=pdf&inline=1)

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 Access and Opportunity [1] (<http://eo.appstate.edu>) (828-262-2144)
 Office of Academic Affairs [2] (<https://academicaffairs.appstate.edu>) (828-262-2070)
 Office of Human Resources [3] (<https://hr.appstate.edu>) (828-262-3187)
 Office of Student Conduct and Academic Integrity [4] (<https://studentconduct.appstate.edu>) (828-262-2704)

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
November 4, 2022
August 27, 2024
August 20, 2025

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