

# Discrimination, Harassment, Retaliation and Sex-Based Misconduct

## From Appalachian State University Policy Manual

Policy 110

### 1 Introduction

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

1.2 This policy serves to address Prohibited Conduct which is adverse to the University's commitment to preventing discrimination and harassment, as well as to provide oversight and an administrative framework for reporting, investigating, adjudicating, and resolving violations of this policy.

### 2 Scope

2.1 This policy applies to all members of the University community, including students, employees, and other third parties who either participate in University programs or activities, or conduct business on behalf of the University, whether on or off-campus.

### 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;
- (b) a student or admission applicant's ability to participate in, access or benefit from University programs, services, or activities; or
- (c) a volunteer or visitor's ability to participate in, access or benefit from or deliver University's programs or services.

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## **3.2 Employees**

Individuals employed by the University including but not limited to employees full or part time who are SHRA, EHRA-NF, Faculty, Student Employees, and Postdoctoral fellows.

## **3.3 Harassment**

Communication or conduct, including, but not limited to: verbal, physical, electronic, or written, 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;
- (b) work environment; or
- (c) participation in a University program or activity.

### **3.3.1 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 in which 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.

### **3.3.2 Quid Pro Quo**

Conduct based on Protected Status whereby 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.

## **3.4 Prohibited Conduct**

Conduct which includes Discrimination, Harassment, Retaliation, or Sex Based Misconduct.

## **3.5 Protected Status**

Classes of individuals who receive certain protections under applicable federal and state law, and UNC System policies, due to 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.

## **3.6 Resolution Procedures**

Regulations governing University actions under this policy, commencing with the University's initial receipt of alleged misconduct through final resolution.

## **3.7 Retaliation**

Any adverse action against an individual, or an individual's spouse, partner, or other person with a close personal relation to the individual, for: (a) making or supporting a claim of Prohibited Conduct, (b) opposing any Prohibited Conduct, (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.

### **3.8 Sex Based Misconduct**

#### **3.8.1 Title IX Sex Based Misconduct**

Sex Based misconduct regulated by Title IX of the Education Amendments Acts which involves the sexual harassment or sex-based discrimination of an individual including instances involving quid pro quo harassment, sexual assault, dating violence, domestic violence, or sex-based stalking that occurred in the United States and in the University's education program or activity.

#### **3.8.2 Non-Title IX Sex Based Misconduct**

Sex Based misconduct that is not regulated by Title IX of the Education Amendments Acts due to the location or nature of the incident including quid pro quo harassment, discrimination, non-consensual sexual contact or intercourse, sexual exploitation, intimate partner violence, or stalking.

### **3.9 Student**

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.

### **3.10 Third Parties**

Individuals who either participate in University programs or activities, or conduct business on behalf of the University including but not limited to contractors, vendors, visitors, or guests.

## **4 Policy Statement**

### **4.1 Reporting**

**4.1.1 Generally.** Any person may report an allegation of Prohibited Conduct as defined in this policy. Individuals reporting allegations of Prohibited Conduct should report in accordance with the applicable Resolution Procedures within the Office of Access & Equity: Equal Opportunity ("EO").

**4.1.2 Required Reporting.** The following employees are required to report 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 to EO as promptly as possible, but in no event after seventy-two (72) hours of receipt: Faculty, Athletics Staff, Office of Human Resources Staff, University Housing Staff, and any University staff with supervisory responsibility.

**4.1.2.1** All Employees, not included above, should report information that may indicate the occurrence of Prohibited Conduct based on other Protected Statuses to EO as promptly as possible.

## **4.2 Applicable Procedures**

4.2.1 The University's Office of Access & Equity: Equal Opportunity ("EO") responds to reports of prohibited conduct as outlined in this policy, and utilizes Resolution Procedures to address and remedy the alleged prohibited conduct. Resolution procedures shall be governed and administered by EO to ensure fair and equitable resolutions, which shall include due process protections for complainants and respondents. Such applicable procedures shall be made readily available through EO.

## **4.3 Standard of Proof**

4.3.1 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.

## **4.4 Privacy and Confidentiality**

4.4.1 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.

## **4.5 Enforcement**

4.5.1 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  
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 Access and Equity [1] (828-262-2144)  
Office of Academic Affairs [2] (828-262-2070)  
Office of Human Resources [3] (828-262-3186)  
Office of Student Conduct [4] (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  
July 26, 2023

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