



Discrimination and Harassment

Policy 110

1 Introduction

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

1.2 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

2.1 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 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.

3.3 Employee

An individual 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.

3.4 Harassment

Communication in any form (including verbal, physical, electronic, or written) or conduct based on an individual's Protected Status that is protected by federal law, state law, or University policy that creates a Hostile Environment or involves a Quid Pro Quo exchange that unreasonably interferes with the individual's education, employment, or participation in a University program or activity. Not all harassing communication or conduct rises to unlawful harassment.

3.4.1 Hostile Environment

Communication or 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.

3.4.3 Sex-Based Harassment

Sex-based harassment is a form of sex discrimination that includes sexual harassment and other harassment based on sex (including pregnancy, childbirth, and related medical conditions, sexual orientation, and gender identity) that includes Sex-Based Quid Pro Quo, Sex-Based Hostile Environment, and Specific Offenses (i.e. Sexual Assault, Dating Violence, Domestic Violence, and Stalking), and other conduct based on sex (i.e. sex-based stereotypes, sexist comments, or facially neutral offensive conduct motivated by sex).

3.4.4 Sex-Based Hostile Environment

Unwelcome conduct based on sex that either (a) occurs within an educational program or activity that is severe, pervasive, and objectively offensive, or (b) that is subjectively and objectively offensive and is so severe or pervasive that it alters the conditions of employment or education; 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 Sex-Based Hostile Environment.

3.4.5 Sex-Based Quid Pro Quo

An Employee conditioning the provision of any aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct.

3.4.6 Specific Offenses

Specific Offenses include:

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

- i. 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;
- ii. the touching of the private body parts of another person for the purpose of sexual gratification, without Consent;
- iii. sexual intercourse with a person who is under the statutory age of consent; or
- iv. sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

3.4.6.2 Dating Violence is 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.

3.4.6.3 Domestic Violence is felony or misdemeanor crimes of violence committed by (i) a current or former spouse of the victim, (ii) a current or former intimate partner of the victim, (iii) a person with whom the victim shares a child in common, (iv) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, (v) a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction, or (vi) 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.

3.4.6.4 Sexual Exploitation is 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.

3.4.6.5 Stalking is engaging in any actions on more than one occasion directed at a specific individual that places or is likely to place a reasonable individual 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.

3.5 Prohibited Conduct

Conduct which includes Discrimination, Harassment, or related Retaliation.

3.6 Protected Status

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

3.7 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.

3.8 Retaliation

Intimidation, threats, coercion, or discrimination against any individual, or an individual's spouse, partner, or other person with a close personal relation to the individual, because the individual has reported information, made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this policy, including in a facilitated resolution process. Retaliation may be found even when an underlying report or complaint made in good faith was not substantiated.

3.9 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.

3.10 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, 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 Prohibited Conduct allegations should report to the Office of Access & Equity: Equal Opportunity (“EO”).

4.1.2 **Required Reporting.** All 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.

4.2 Applicable Resolution Procedures

4.2.1 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 to ensure fair and equitable resolutions, which shall include due process protections for individuals alleged to have engaged in Prohibited Conduct. 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 \(https://studentconduct.appstate.edu\)](https://studentconduct.appstate.edu)

[Equal Opportunity](#)

[EPS Grievances](#)

[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 Equity [1] (<http://eo.appstate.edu>) (828-262-2144)

Office of Academic Affairs [2] (<https://academicaffairs.appstate.edu>) (828-262-2070)

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

Retrieved from "https://policy.appstate.edu/index.php?title=Discrimination_and_Harassment&oldid=26448"

▪