

APPALACHIAN COLLEGE OF PHARMACY SEXUAL MISCONDUCT POLICY AND PROCEDURES



Appalachian College of Pharmacy
1060 Dragon Road • Oakwood, VA 24631
Phone (276) 498-4190 • Fax (276) 498-4193
www.acp.edu

IMPORTANT NOTICE: The contents of the Appalachian College of Pharmacy (ACP) Sexual Misconduct Policy are subject to change. Students and employees are responsible for staying informed of current and updated policies and procedures which may be published to ACP's website whether or not such changes have been directly received by the student or employee. It shall not be a defense for a failure to follow any rule or policy that he or she was not personally aware of or understood the rules, policies, and procedures or the sanctions set forth herein. All students and employees are charged with notice and understanding of the policies herein and revisions made thereto upon same being posted on the ACP website.

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I. Sexual Misconduct Policy

Appalachian College of Pharmacy does not discriminate on the basis of sex in the education program and the College is required by Title IX and 34 CFR Part 106 - Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance not to discriminate in such a manner. The requirement not to discriminate in the education program extends to admission and employment. Inquiries about the application of Title IX and 34 CFR Part 106 to Appalachian College of Pharmacy may be referred to the College's Title IX Coordinator, to the Assistant Secretary, or both.

II. Scope of Policy

The Appalachian College of Pharmacy has adopted the following standards of conduct (herein after broadly referred to as “Sexual Misconduct Policy” or “Policy”) for all members of our community-- students, faculty, administrators, staff, vendors, contractors, and third parties-- with respect to sexual harassment, sexual exploitation, sexual violence, stalking, and dating and domestic violence (collectively referred to as “Prohibited Conduct”) to address ACP’s responsibilities under Title IX and the Violence Against Women Reauthorization Act of 2013 (also known as the Campus SaVE Act). These standards apply equally to all regardless of the sex, gender, sexual orientation, gender identity, or gender expression of any of the individuals involved.

Sexual Misconduct (both on and off campus) violates ACP policy and Federal Civil Rights Laws and may also be subject to criminal prosecution. ACP is committed to creating and sustaining an educational and working environment free of sex discrimination, sexual harassment, sexual violence, sexual exploitation, domestic violence, dating violence, and stalking. The safety and well-being of the campus community is a priority for ACP.

This Sexual Misconduct Policy adopted by ACP is designed to provide for a prompt, fair, and impartial investigation and resolution of complaints, while ensuring a Complainant’s and Respondent’s protections under Title IX.

III. Title IX Coordinator

Pursuant to Title IX of the Education Amendments of 1972 and the U.S. Department of Education’s implementing regulations at [34 C.F.R. Part 106](#), ACP’s Title IX Coordinator has primary responsibility for coordinating ACP’s efforts to comply with and carry out its responsibilities under Title IX, which prohibits sex discrimination in admissions, employment, and all the operations of ACP, as well as prohibiting retaliation for the purpose of interfering with any right or privilege secured by Title IX. The Title IX Coordinator oversees this process in order to ensure the appropriate steps are taken to end the Prohibited Conduct (under Title IX and the Campus SaVE Act), prevent its recurrence, and redress its effects. The Title IX Coordinator shall be appointed by the President of ACP.

Title IX Coordinator:

Caterina M. Hernandez, PhD
Office Phone: (276) 498- 5235
Address: McGlothlin Hall (1060 Dragon Rd., Oakwood, VA 24631)
Email: TitleIXCoordinator@acp.edu
Website: <http://www.acp.edu/title-ix-compliance/>

Any person may report sex discrimination, including sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sex discrimination or sexual harassment), in person, by mail, by telephone, or by electronic mail, using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. Such a report may be made at any time (including during non-business hours) by using the telephone number or electronic mail address, or by mail to the office address, listed for the Title IX Coordinator.

All ACP faculty and staff are required to report allegations of Prohibited Conduct as defined in this Policy (or potentially Prohibited Conduct) to the Title IX Coordinator unless they have a recognized confidentiality privilege. Additionally, any student with knowledge of Prohibited Conduct is strongly encouraged to report the concern to the Title IX Coordinator.

Under Virginia Code § 23-9.2:15: Any responsible employee who in the course of his employment obtains information that an act of sexual violence may have been committed against a student attending the institution or may have occurred on campus, in or on a noncampus building or property, or on public property shall report such information to the Title IX coordinator as soon as practicable after addressing the immediate needs of the victim. "Sexual violence" means physical sexual acts perpetrated against a person's will or where a person is incapable of giving consent.

Individuals may contact the Title IX Coordinator to:

- seek information or training about students' rights and courses of action available to resolve reports or complaints that involve potential sex discrimination, including Sexual Misconduct,
- file a complaint or make a report of sex discrimination, including Sexual Misconduct,
- notify ACP of an incident or policy or procedure that may raise potential Title IX concerns,
- get information about available resources (including confidential resources) and support services relating to sex discrimination, including Sexual Misconduct, and
- ask questions about ACP's policies and procedures related to sex discrimination, including Sexual Misconduct.

A person may also contact or file a complaint with the US Department of Education, Office for Civil Rights (OCR; Phone: 1-800-421-3481; Email: OCR@ed.gov) regarding an alleged violation of Title IX online at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

IV. Assistance Following Incident of Sexual Misconduct

Immediate Assistance

If you or someone you know is the victim of any form of Sexual Misconduct, you are strongly urged to seek assistance. If you are the victim of any form of *Sexual Violence*, you are strongly urged to seek **immediate assistance from police and healthcare providers**.

The following resources in the area can provide 24-hour assistance:

- **If you are in immediate danger, dial 911.**
- Buchanan County Sheriff's Office (276) 935-2313
- Buchanan General Hospital (276) 935-1000
- Clinch Valley Medical Center (276) 596-6000

You are also strongly urged to contact the Title IX Coordinator regarding any violations of this Policy (by phone 276-498-5224 or email TitleIXCoordinator@acp.edu or in person at McGlothlin Hall, Appalachian College of Pharmacy, 1060 Dragon Road, Oakwood, VA 24631). The Title IX Coordinator is also available to assist you with notifying the police.

V. Prohibited Conduct and Definitions

The Appalachian College of Pharmacy is committed to creating and sustaining an educational and working environment free of sex discrimination, sexual harassment, sexual violence, domestic violence, dating violence, and stalking. Therefore, ACP prohibits the following actions both on and off campus: sexual harassment, sexual violence, sexual exploitation, domestic violence, dating violence, and stalking. An attempt to commit an act identified in this Policy, as well as assisting or willfully encouraging any such act, is also considered a violation of this Policy.

ACP has one of the strongest anti-fraternization policies in the national academic community that prohibits ACP administration, faculty, and staff from sexually harassing or dating students:

“ACP is charged with and takes seriously providing a safe and productive learning environment for its students and therefore considers it inappropriate for any ACP employee to establish or allow to be established an intimate physical relationship with a student, regardless of gender, whose academic performance, work performance, or financial support or aid will be evaluated, determined, or influenced by such employee. ACP considers it a violation of this policy for any employee to offer or request sexual favors, make sexual advances, or engage in sexual conduct, regardless of consent, with a student who is not the employee's spouse. This policy is specifically designed to avoid any implied or direct misuse of power that any employee may exert or intimate over a student at any time such student is enrolled at ACP.”

A. Sexual Harassment: means conduct on the basis of sex that satisfies one or more of the following:

- (1) An employee of the College conditioning the provision of an aid, benefit, or service of the College on an individual's participation in unwelcome sexual conduct;
- (2) Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the College's education program or activity; or
- (3) “Sexual assault” as defined in 20 U.S.C. 1092(f)(6)(A)(v), “dating violence” as defined in 34 U.S.C. 12291(a)(10), “domestic violence” as defined in 34 U.S.C. 12291(a)(8), or “stalking” as defined in 34 U.S.C. 12291(a)(30).

B. Hostile Environment: A “hostile environment” exists when *sexual harassment* is sufficiently serious to deny or limit the student's ability to participate in or benefit from ACP's programs or activities. A hostile environment can be created by anyone involved in an ACP program or activity (*e.g.*, administrators, faculty members, students, and campus visitors). In determining whether *sexual harassment* has created a hostile environment, ACP considers the conduct in question from both a subjective and objective perspective. It will be necessary, but not enough, that the conduct was

unwelcome to the student who was harassed. But ACP will also need to find that a reasonable person in the student's position would have perceived the conduct as undesirable or offensive in order for that conduct to create or contribute to a hostile environment. To make the ultimate determination of whether a hostile environment exists for a student or students, ACP considers a variety of factors related to the severity, persistence, or pervasiveness of the *sexual harassment*, including: (1) the type, frequency, and duration of the conduct; (2) the identity and relationships of persons involved; (3) the number of individuals involved; (4) the location of the conduct and the context in which it occurred; and, (5) the degree to which the conduct affected one or more student's education. The more severe the *sexual harassment*, the less need there is to show a repetitive series of incidents to find a hostile environment. Indeed, a single instance of *sexual assault* may be sufficient to create a hostile environment. Likewise, a series of incidents may be sufficient even if the *sexual harassment* is not particularly severe.

First Amendment Considerations

This policy does not impair the exercise of rights protected under the First Amendment. ACP's Sexual Misconduct Policy prohibits only sexual harassment that creates a hostile environment. In this and other ways, ACP applies and enforces this policy in a manner that respects the First Amendment rights of students, faculty, and others.

C. Unwelcome Conduct: Conduct is considered "unwelcome" if the individual did not request or invite it and considered the conduct to be undesirable or offensive. Unwelcome conduct may take various forms, including, name-calling, graphic or written statements (including the use of cell phones or the Internet), or other conduct that may be physically threatening, harmful, or humiliating. Unwelcome conduct does not have to include intent to harm, be directed at a specific target, or involve repeated incidents. Unwelcome conduct can involve persons of the same or opposite sex.

Participation in the conduct or the failure to complain does not always mean that the conduct was welcome. The fact that an individual may have welcomed some conduct does not necessarily mean that the individual welcomed other conduct. Also, the fact that an individual requested or invited conduct on one occasion does not mean that the conduct is welcome on a subsequent occasion.

D. Sexual Exploitation: means taking sexual advantage of another person without Consent, and includes, without limitation, causing or attempting to cause the Incapacitation of another person in order to gain a sexual advantage over such other person; causing the prostitution of another person; recording, photographing or transmitting identifiable images of private sexual activity and/or the intimate parts (including genitalia, groin, breasts or buttocks) of another person; allowing third parties to observe private sexual acts; engaging in voyeurism; and/or knowingly or recklessly exposing another person to a significant risk of sexually transmitted infection, including HIV.

E. Sexual Violence: means physical sexual acts such as unwelcome sexual touching, sexual assault, sexual battery, rape, sexual exploitation, domestic violence, dating violence, and stalking (when based on gender or sex) perpetrated against an individual against his or her will and without consent or against an individual who is incapable of giving consent due to that individual's use of drugs or alcohol, status as a minor, or disability.

F. Sexual Assault: The term "sexual assault" means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

In Virginia, **sexual assault** is defined as sexual abuse of an individual by the use of force, threat, or

intimidation. Rape, sodomy, sexual battery, and attempts to commit these crimes are some of the several types of sexual assault offenses.

Sexual assault includes, but is not limited to:

1. *Non-consensual sexual contact*: means “Sexual Contact” that occurs without Consent. For this Policy “Sexual Contact” is defined as the deliberate touching of a person’s intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas), or using Force to cause a person to touch his or her own or another person’s intimate parts.
2. *Non-consensual sexual intercourse*: means Sexual Intercourse that occurs without Consent. For this Policy Sexual Intercourse means penetration (anal, oral or vaginal) by a penis, tongue, finger, or an inanimate object.

G. Consent: means words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Consent cannot be gained by Force, by ignoring or acting in spite of the objections of another, or by taking advantage of the Incapacitation of another, where the accused knows or reasonably should have known of such Incapacitation. Consent is also absent when the activity in question exceeds the scope of Consent previously given. The age of consent in Virginia is 18, with a close-in-age exception that allows teenagers aged 15 to 17 to engage in sexual acts but only with a partner younger than 18.

H. Force: means physical force, violence, threat, intimidation or coercion.

I. Incapacitation: means the physical and/or mental inability to make informed, rational judgments. States of Incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol is involved, one does not have to be intoxicated or drunk to be considered Incapacitated. Rather, Incapacitation is determined by how the alcohol consumed impacts a person’s decision-making capacity, awareness of consequences, and ability to make informed judgments. The question is whether the accused individual knew, or a sober, reasonable person in the position of the accused should have known, that the complainant was Incapacitated. Because Incapacitation may be difficult to discern, individuals are strongly encouraged to err on the side of caution; when in doubt, assume that another person is Incapacitated and therefore unable to give Consent. Being intoxicated or drunk is never a defense to a complaint of Prohibited Conduct under this Policy.

J. Domestic Violence: The term “domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

Domestic Violence as defined in the Commonwealth of Virginia:

Domestic Violence is a pattern of physically, sexually, and/or emotionally abusive behaviors used by one individual to assert power or maintain control over another in the context of an intimate or family relationship.

- K. Dating Violence:** The term “dating violence” means violence committed by a person—
- (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and
 - (B) where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - (i) The length of the relationship.
 - (ii) The type of relationship.
 - (iii) The frequency of interaction between the persons involved in the relationship.

Dating Violence as defined in the Commonwealth of Virginia

Dating Violence is a kind of intimate partner violence that occurs between two people in a close relationship. It can be verbal, physical, or emotional abuse by one partner against the other within the context of either casual dating or a long-term relationship.

Individuals encompassed in these definition include, but are not limited to: persons who have or have had a dating or engagement relationship; persons who have or have had a social relationship of a romantic or intimate nature; current or former spouses, domestic partners, parents, children, stepchildren and other persons related by blood or by current or prior marriage; persons who share or formerly shared a common dwelling; persons who have or allegedly have a child in common; persons who share or allegedly share a relationship through a child; and personal assistants and personal caregivers for the elderly or disabled.

- L. Stalking:** The term “stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to—
- (A) fear for his or her safety or the safety of others; or
 - (B) suffer substantial emotional distress.

In Virginia stalking is defined as engaging in conduct, on more than one occasion, directed at another person with the intent to place the person in fear of death, criminal sexual assault, or bodily injury to that other person or that person's family or household member.

Conduct that can amount to stalking is that which is unwelcome and that would cause a reasonable person to fear for his/her or other's safety, or to suffer other emotional distress. This may include any actions directed at another person, whether done directly, indirectly, through others, via devices, or via any other methods or means (specifically including electronic means), including but not limited to:

- Following a person;
- Being or remaining in close proximity to a person;
- Entering or remaining on or near a person's property, residence, or place of employment;
- Monitoring, observing or conducting surveillance of a person;
- Threatening (directly or indirectly) a person;
- Communicating to or about a person;
- Giving gifts or objects to, or leaving items for, a person;
- Interfering with or damaging a person's property (including pets); or
- Engaging in other unwelcome contact.

M. Supportive Measures: Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment.

VI. Reporting Procedures and Information

Any victim of ACP's Sexual Misconduct policy has the right to simultaneously file a Title IX complaint with ACP and a criminal complaint with law enforcement. While victims are strongly encouraged to report any incident of sexual violence to the police and/or ACP's Title IX Coordinator so that steps may be taken to protect the victim and the rest of the campus community, non-reporting is also an option.

A. Reporting Incidents to ACP

Incidences of Prohibited Conduct or other Title IX concerns should be reported to ACP's Title IX Coordinator.

Title IX Coordinator:

Caterina M. Hernandez, PhD

Office Phone: (276) 498- 5235

Address: McGlothlin Hall (1060 Dragon Rd., Oakwood, VA 24631)

Email: TitleIXCoordinator@acp.edu

Website: <http://www.acp.edu/title-ix-compliance/>

All ACP faculty and staff are required to report allegations of Prohibited Conduct (or potentially prohibited conduct) to the Title IX Coordinator unless they have a recognized confidentiality privilege. VA Code § 23-9.2:15 requires responsible employees to report any information about an act of sexual violence to the Title IX coordinator "as soon as practicable" after addressing the victim's immediate needs. Additionally, any person with knowledge of Prohibited Conduct is encouraged to report the concern to the Title IX Coordinator.

A person may also contact or file a complaint with the US Department of Education, Office for Civil Rights (OCR; Phone: 1-800-421-3481; Email: OCR@ed.gov) regarding an alleged violation of Title IX online at: <http://www2.ed.gov/about/offices/list/ocr/complaintintro.html>.

B. Reporting Incidents to Law Enforcement

If you are in immediate danger, dial 911. Any victim of ACP's Sexual Misconduct Policy has the right to contact or not to contact the police at any time. If you so desire, ACP's Title IX Coordinator is available to assist you in notifying the police.

Buchanan County Sheriff's Office

Office Phone: (276) 935-2313

Address: 1327 Lovers Gap Rd., Vansant, VA 24656

Virginia Code § 23-234 requires notification to the commonwealth’s attorney of a law enforcement investigation of a felony sexual assault occurring on campus, in a non-campus building or property, or on public property, within 48 hours of beginning an investigation.

C. Confidentiality

All ACP faculty and staff are required to report allegations of Prohibited Conduct (or potentially prohibited conduct) to the Title IX Coordinator unless they have a recognized confidentiality privilege. VA Code § 23-9.2:15 requires responsible employees to report any information about an act of sexual violence to the Title IX coordinator “as soon as practicable” after addressing the victim’s immediate needs. Additionally, any person with knowledge of Prohibited Conduct is encouraged to report the concern to the Title IX Coordinator.

Physicians, licensed counselors, clergy, sexual assault counselors and advocates who work or volunteer on or off campus, and who provide medical or mental health treatment or counseling may not report any information about an incident of Sexual, Domestic, or Dating Violence to anyone else at the College, including the Title IX Coordinator, without the victim’s consent.

ACP will take steps to preserve the Complainant’s and Respondent’s privacy and to protect the confidentiality of information except where required by law. All reports and information regarding Prohibited Conduct will be handled discretely, with facts made available only to those who need to know to respond, investigate, and/or resolve the matter.

Virginia Code § 23-234 requires notification to the commonwealth’s attorney of a law enforcement investigation of a felony sexual assault occurring on campus, in a non-campus building or property, or on public property, within 48 hours of beginning an investigation.

D. Clery Act

1. ***Timely Warnings.*** If ACP determines that the Respondent poses a serious and immediate threat to the campus community, a designated Campus Security Authority under the Clery Act may be called upon to issue a timely warning to the community. Any such warning will not include any information that identifies the victim.
2. ***Reporting.*** All reported crimes that take place on-campus must be recorded and are published in an Annual Security Report. Several crimes must be listed, including:
 - Stalking: ongoing conduct that could cause a reasonable person to fear for the safety of themselves or others, or suffer emotional distress (e.g., following, monitoring, threatening, communicating to or about the victim, or interfering with a victim’s property)
 - Intimidation: words or conduct that places the victim in reasonable fear of bodily harm (does not include use of a weapon, which is a different crime under Clery)
 - Dating Violence: threats or actual sexual or physical abuse in a dating relationship
 - Domestic Violence: crime of violence committed by former spouse, cohabiting partner, or someone with whom you share a child
 - Sexual Assault: rape (oral, anal or vaginal), fondling, incest, or statutory rape

- Hate Crimes: any crime motivated by perpetrator bias against the victim based on race, religion, gender, gender identity, sexual orientation, ethnicity, national origin, and disability (whether actual or perceived)

Clery Act Reports **do not** provide any identifying information about a victim. They include only the date of the report, the date of the crime, and the general location. The Clery Act does not require a college or university that receives a report of a campus crime to initiate an investigation.

E. Supportive Measures

Supportive measures are non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed. Such measures are designed to restore or preserve equal access to the College's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the College's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work or housing locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The College must maintain as confidential any supportive measures provided to the complainant or respondent, to the extent that maintaining such confidentiality would not impair the ability of the College to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

F. Preservation of Evidence

It is important that any individual that has been victim of sexual assault, domestic or dating violence, or stalking take steps to preserve and collect evidence to safeguard the full range of options available to them through ACP's administrative complaint procedures, criminal prosecution, or for the purposes of obtaining protection orders. If possible, an individual who has been sexually assaulted should seek medical attention immediately and should not shower, bathe, brush their teeth, douche or change clothes or bedding before going to the hospital or seeking medical attention. If the individual decides to change clothes, he or she should not wash the clothes worn during the assault and should bring them to the hospital or medical facility. Do not straighten up the area where the incidence took place or dispose of items that were present during the incident. These steps are important to help preserve evidence for possible use in legal actions or requests for a civil no-contact order and/or an order of protection. Because evidence dissipates quickly, individuals who wish to preserve evidence are encouraged to seek medical attention within 48 hours (and no more than 86 hours) of the incident.

G. Amnesty

Amnesty will not be extended for any violations of ACP policy for victims or witnesses of Prohibited Conduct.

VII. Investigation and Grievance Procedures

ACP is required to investigate and resolve all reports or complaints of Prohibited Conduct under this

Policy in a manner that provides for a prompt, fair, and impartial investigation and resolution. A Title IX investigation and grievance/adjudication process should normally be completed within 60 calendar days after ACP has received a formal Sexual Misconduct complaint or the Title IX Investigator signs a formal Sexual Misconduct complaint. .

Violations of this Policy will result in disciplinary actions, including but not limited to: warnings, educational projects, mandatory training or counseling, no contact orders, termination of employment, suspension, probation, demotion, or dismissal from ACP. The standard that will be used in this Policy for determining whether or not the Prohibited Conduct occurred is a “preponderance of the evidence” (i.e., whether it is more likely than not that the Respondent has committed the violation).

Please note that any sanctions or interim measures imposed on the Respondent that directly relate to the Complainant/Impacted Party, such as a no contact order, transfer of class sections, or suspension, will be disclosed to the Complainant/Impacted Party and the Respondent simultaneously.

While an informal mediation process is one option for resolving complaints regarding sexual harassment, mediation CANNOT be used for adjudication of violations that involve sexual violence, including sexual assault.

In addition to ACP’s internal Title IX proceedings, some Prohibited Conduct may also be subject to an external criminal investigation by law enforcement. Victims of Prohibited Conduct that is also subject to criminal charges are encouraged to contact law enforcement. Criminal investigation by law enforcement does not relieve ACP of its duty to resolve internal complaints of Prohibited Conduct. Additionally, ACP may not wait until the conclusion of the police investigation to commence its own investigation, although it may be necessary to temporarily delay the fact-finding portion of the investigation while police gather evidence.

During the course of the investigation, adjudication, and appeals processes, should a conflict of interest exist wherein an individual is not capable of making a fair and impartial judgment on the complaint, an impartial designee shall be appointed as outlined in section D below.

Requirements for Grievance Process

ACP’s grievance process must—

(i) Treat complainants and respondents equitably by providing remedies to a complainant where a determination of responsibility for sexual harassment has been made against the respondent, and by following this grievance process before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined in § 106.30, against a respondent.

Remedies must be designed to restore or preserve equal access to the College’s education program or activity. Such remedies may include the same individualized services described in § 106.30 as “supportive measures”; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent;

(ii) Require an objective evaluation of all relevant evidence – including both inculpatory and exculpatory evidence – and provide that credibility determinations may not be based on a person’s status as a complainant, respondent, or witness;

(iii) Require that any individual designated by ACP as a Title IX Coordinator, investigator, decision-maker, or any person designated by ACP to facilitate an informal resolution process, not have a conflict of interest or bias for or against complainants or respondents generally or an individual complainant or respondent. ACP must ensure that Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, receive training on the definition of sexual harassment in § 106.30, the scope of the College's education program or activity, how to conduct an investigation and grievance process including hearings, appeals, and informal resolution processes, as applicable, and how to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias. ACP must ensure that decision-makers receive training on any technology to be used at a live hearing and on issues of relevance of questions and evidence, including when questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant. ACP also must ensure that investigators receive training on issues of relevance to create an investigative report that fairly summarizes relevant evidence. Any materials used to train Title IX Coordinators, investigators, decision-makers, and any person who facilitates an informal resolution process, must not rely on sex stereotypes and must promote impartial investigations and adjudications of formal complaints of sexual harassment;

(iv) Include a presumption that the respondent is not responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process;

(v) Include reasonably prompt time frames for conclusion of the grievance process, including reasonably prompt time frames for filing and resolving appeals and informal resolution processes if the College offers informal resolution processes, and a process that allows for the temporary delay of the grievance process or the limited extension of time frames for good cause with written notice to the complainant and the respondent of the delay or extension and the reasons for the action. Good cause may include considerations such as the absence of a party, a party's advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodation of disabilities;

(vi) List the possible disciplinary sanctions and remedies that the College may implement following any determination of responsibility. Possible sanctions include but are not limited to the following: warnings, educational projects, mandatory training or counseling, no contact orders, termination of employment, suspension, probation, or dismissal from ACP. Sanctions requiring administrative action (*e.g.*, termination of employment, suspension, probation, dismissal) will be executed by the Dean;

(vii) Apply the same standard of evidence for formal complaints against students as for formal complaints against employees, including faculty, and apply the same standard of evidence to all formal complaints of sexual harassment. The standard of evidence to be used to determine responsibility is the preponderance of the evidence standard;

(viii) Include the procedures and permissible bases for the complainant and respondent to appeal;

(ix) Describe the range of supportive measures available to complainants and respondents; and

(x) Not require, allow, rely upon, or otherwise use questions or evidence that constitute, or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

VIII. Notice

1. Upon receipt of a formal complaint or the signing of a formal by the Title IX Coordinator, the Title IX Coordinator will provide the following written notice to the parties who are known:

(A) Notice of the College's grievance process that complies with this section, including any informal resolution process.

(B) Notice of the allegations of sexual harassment potentially constituting sexual harassment as defined in § 106.30, including sufficient details known at the time and with sufficient time to prepare a response before any initial interview. Sufficient details include the identities of the parties involved in the incident, if known, the conduct allegedly constituting sexual harassment under § 106.30, and the date and location of the alleged incident, if known.

The written notice must include a statement that the respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the grievance process.

The written notice must inform the parties that they may have an advisor of their choice, who may be, but is not required to be, an attorney, and may inspect and review evidence.

The written notice must inform the parties of any provision in the College's code of conduct that prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

If, in the course of an investigation, the College decides to investigate allegations about the complainant or respondent that are not included in the notice, the College must provide notice of the additional allegations to the parties whose identities are known.

In accordance with VA Code § 23-9.2:15, upon receipt of information that an act of sexual violence may have been committed, the Title IX Coordinator, or designee, shall report the information, including any personally identifiable information to a review committee. ACP's Threat Assessment Team will serve as the review committee. The review committee shall meet within 72 hours to review the information. If the review committee determines disclosure of the information, including personally identifiable information, is necessary to protect the health or safety of the student or other individuals, the representative of law enforcement on the review committee shall immediately disclose such information to the law-enforcement agency that would be responsible for investigating the alleged act of sexual violence. The Title IX coordinator or designee shall notify the victim that such disclosure is being made.

In the event that the alleged act of sexual violence would constitute a felony violation, the representative of law enforcement on the review committee shall inform the other members of the review committee and consult with the Commonwealth's Attorney within 24 hours.

IX. Dismissal of a Formal Complaint

(i) ACP will investigate the allegations in a formal complaint. If the conduct alleged in the formal complaint would not constitute sexual harassment as defined in § 106.30 even if proved, did not occur in the ACP's education program or activity, or did not occur against a person in the United States, then the ACP must dismiss the formal complaint with regard to that conduct for purposes of sexual harassment under title IX or this part; such a dismissal does not preclude action under another provision of the ACP's code of conduct.

(ii) ACP may dismiss the formal complaint or any allegations therein, if at any time during the investigation or hearing: a complainant notifies the Title IX Coordinator in writing that the complainant would like to withdraw the formal complaint or any allegations therein; the respondent is no longer enrolled or employed by the College; or specific circumstances prevent the ACP from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein.

(iii) Upon a dismissal, the College must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.

X. Consolidation of Formal Complaints

ACP may consolidate formal complaints as to allegations of sexual harassment against more than one respondent, or by more than one complainant against one or more respondents, or by one party against the other party, where the allegations of sexual harassment arise out of the same facts or circumstances. Where a grievance process involves more than one complainant or more than one respondent, references in this section to the singular "party," "complainant," or "respondent" include the plural, as applicable.

XI. Investigation of a Formal Complaint

When investigating a formal complaint and throughout the grievance process, the College must—

(i) Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rest on the College and not on the parties provided that the College cannot access, consider, disclose, or otherwise use a party's that are made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in the professional's or paraprofessional's capacity, or assisting in that capacity, and which are made and maintained in connection with the provision of treatment to the party, unless the College obtains that party's voluntary, written consent to do so for a grievance process;

(ii) Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence;

(iii) Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence;

- (iv) Provide the parties with the same opportunities to have others present during any grievance proceeding, including the opportunity to be accompanied to any related meeting or proceeding by the advisor of their choice, who may be, but is not required to be, an attorney, and not limit the choice or presence of advisor for either the complainant or respondent in any meeting or grievance proceeding; however, the College may establish restrictions regarding the extent to which the advisor may participate in the proceedings, as long as the restrictions apply equally to both parties;
- (v) Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate;
- (vi) Provide both parties an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in a formal complaint, including the evidence upon which the College does not intend to rely in reaching a determination regarding responsibility and inculpatory or exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to conclusion of the investigation. Prior to completion of the investigative report, the College must send to each party and the party's advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least 10 days to submit a written response, which the investigator will consider prior to completion of the investigative report. The College must make all such evidence subject to the parties' inspection and review available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of cross-examination; and
- (vii) Create an investigative report that fairly summarizes relevant evidence and, at least 10 days prior to a hearing (if a hearing is required under this section or otherwise provided) or other time of determination regarding responsibility, send to each party and the party's advisor, if any, the investigative report in an electronic format or a hard copy, for their review and written response.

XII. Hearings

(i) ACP's grievance process must provide for a live hearing. At the live hearing, the decision-maker(s) must permit each party's advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility. Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party's advisor of choice and never by a party personally, notwithstanding the discretion of the College to otherwise restrict the extent to which advisors may participate in the proceedings. At the request of either party, the College must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the decision-maker(s) and parties to simultaneously see and hear the party or the witness answering questions. Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker(s) must first determine whether the question is relevant and explain any decision to exclude a question as not relevant. If a party does not have an advisor present at the live hearing, the College must provide without fee or charge to that party, an advisor of the College's choice, who may be, but is not required to be, an attorney, to conduct

cross-examination on behalf of that party. Questions and evidence about the complainant's sexual predisposition or prior sexual behavior are not relevant, unless such questions and evidence about the complainant's prior sexual behavior are offered to prove that someone other than the respondent committed the conduct alleged by the complainant, or if the questions and evidence concern specific incidents of the complainant's prior sexual behavior with respect to the respondent and are offered to prove consent. If a party or witness does not submit to cross-examination at the live hearing, the decision-maker(s) must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker(s) cannot draw an inference about the determination regarding responsibility based solely on a party's or witness's absence from the live hearing or refusal to answer cross-examination or other questions. Live hearings pursuant to this paragraph may be conducted with all parties physically present in the same geographic location or, at the College's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other. The College must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review.

XIII. Determination Regarding Responsibility

(i) The decision-maker(s), who cannot be the same person(s) as the Title IX Coordinator or the investigator(s), must issue a written determination regarding responsibility. To reach this determination, the College must apply the standard of evidence described in this section.

(ii) The written determination must include—

(A) Identification of the allegations potentially constituting sexual harassment as defined in § 106.30;

(B) A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;

(C) Findings of fact supporting the determination;

(D) Conclusions regarding the application of the ACP's code of conduct to the facts;

(E) A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the College imposes on the respondent, and whether remedies designed to restore or preserve equal access to the College's education program or activity will be provided by the College to the complainant; and

(F) The College's procedures and permissible bases for the complainant and respondent to appeal.

(iii) The College must provide the written determination to the parties simultaneously. The determination regarding responsibility becomes final either on the date that the College provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which an appeal would no longer be considered timely.

(iv) The Title IX Coordinator is responsible for effective implementation of any remedies.

XIV. Appeals

(i) ACP offers both parties an appeal from a determination regarding responsibility, and from ACP's dismissal of a formal complaint or any allegations therein, on the following bases:

(A) Procedural irregularity that affected the outcome of the matter;

(B) New evidence that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter; and

(C) The Title IX Coordinator, investigator(s), or decision-maker(s) had a conflict of interest or bias for or against complainants or respondents generally or the individual complainant or respondent that affected the outcome of the matter.

(ii). Disagreement with the finding or sanctions is not, by itself, grounds for appeals.

(iii) The request for an appeal, including the grounds upon which the request is based, must be submitted in writing to the President within five (5) business days following the date on the determination letter.

(iv) As to all appeals, the College must:

(A) Notify the other party in writing when an appeal is filed and implement appeal procedures equally for both parties;

(B) Ensure that the decision-maker(s) for the appeal is not the same person as the decision-maker(s) that reached the determination regarding responsibility or dismissal, the investigator(s), or the Title IX Coordinator;

(C) Ensure that the decision-maker(s) for the appeal complies with the standards set forth in this policy;

(D) Give both parties a reasonable, equal opportunity to submit a written statement in support of, or challenging, the outcome;

(E) Issue a written decision describing the result of the appeal and the rationale for the result; and

(F) Provide the written decision simultaneously to both parties.

XV. Informal Resolution

ACP may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to an investigation and adjudication of formal complaints of sexual harassment consistent with this section. Similarly, ACP may not require the parties to participate in an informal resolution process under this section and may not offer an informal resolution process unless a formal complaint is filed. However, at any time prior to reaching a determination regarding responsibility the College may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication, provided that the College –

- (i) Provides to the parties a written notice disclosing: the allegations, the requirements of the informal resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations, provided, however, that at any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint, and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared;
- (ii) Obtains the parties' voluntary, written consent to the informal resolution process; and
- (iii) Does not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.

XVI. Transcripts with a Prominent Notation

In accordance with Virginia Code § 23-9.2:18, academic transcripts will indicate with “a prominent notation” if a student has been suspended for, permanently dismissed for, or voluntarily withdraws from the institution while under investigation for an offense involving sexual violence. The notation shall be removed if the student has been found not to have committed an offense of sexual violence or completes the suspension, returns to the university and is in good standing.

XVII. Recordkeeping

- (i) ACP must maintain for a period of seven years records of –
 - (A) Each sexual harassment investigation including any determination regarding responsibility and any audio or audiovisual recording or transcript required, any disciplinary sanctions imposed on the respondent, and any remedies provided to the complainant designed to restore or preserve equal access to the College's education program or activity;
 - (B) Any appeal and the result therefrom;
 - (C) Any informal resolution and the result therefrom; and
- (ii) For each response required under § 106.44, ACP must create, and maintain for a period of seven years, records of any actions, including any supportive measures, taken in response to a report or formal complaint of sexual harassment. In each instance, the College must document the basis for its conclusion that its response was not deliberately indifferent, and document that it has taken measures designed to restore or preserve equal access to the College's education program or activity. If ACP does not provide a complainant with supportive measures, then the College must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain bases or measures does not limit the College in the future from providing additional explanations or detailing additional measures taken.

XVIII. Retaliation

- (a) *Retaliation prohibited.* ACP nor other person may intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or

privilege secured by title IX or § 106.71, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or sexual harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of sexual harassment, for the purpose of interfering with any right or privilege secured by title IX or § 106.71, constitutes retaliation. The College must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of sexual harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Complaints alleging retaliation may be filed according to the grievance procedures for sex discrimination required to be adopted under § 106.8(c).

(b) *Specific circumstances.* (1) The exercise of rights protected under the First Amendment does not constitute retaliation prohibited under paragraph (a) of § 106.71.

(2) Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding under this part does not constitute retaliation prohibited under paragraph (a) of § 106.71, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.

XIX. Prevention and Education

The Appalachian College of Pharmacy prohibits acts of sexual violence, domestic violence, dating violence, and stalking. In an effort to prevent such acts from occurring, the Title IX coordinator is responsible for providing training and educational programs to all ACP employees and students, including Primary Prevention programs for new students and employees, as well as ongoing prevention and awareness campaigns for current students and employees.

These programs may include, but are not limited to:

- Climate surveys of students and employees
- ACP policies and procedures regarding Sexual Misconduct
- Common facts and myths about the causes of Sexual violence
- Safe options for bystander intervention
- Methods to encourage peer support for victims
- How to recognize the warning signs of abusive behavior to avoid potential risks
- Resources available for victims of Sexual Misconduct