



Complaint Procedure Discrimination/Harassment/Retaliation/Title IX

In order to comply with Title IX of the Education Amendments of 1972 and other state and federal laws, the Sexual Misconduct Board Hearing Procedures in conjunction with the Discrimination/Harassment/Sex Discrimination/Sexual Harassment/Title IX Complaint Procedures supersede and replace any prior discrimination, harassment and retaliation complaint procedures set forth in any other College publication including but not limited to the *Student Handbook* (replaces the *Student Conduct Code* procedures for addressing acts of unlawful discrimination, harassment and retaliation including but not limited to sexual harassment and sexual violence), *College Catalog*, *Faculty Handbook* and *Classified Employee Handbook*.

In order to comply with Title IX of the Education Amendments of 1972 and other state and federal laws, the Discrimination/Harassment/Sex Discrimination/Sexual Harassment/Title IX Complaint Procedures and Sexual Misconduct Board Hearing Procedures apply to all complaints under investigation at the time of the effective dates and all complaints filed thereafter.

Procedures

Various state and federal laws prohibit discrimination and harassment of certain protected classes. Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state civil rights laws, Glenville State College has developed internal policies that prohibit discrimination and harassment including but not limited to discrimination and harassment on the basis of sex and disability. *See* Glenville State College Policies 6, 13 and 50.

This procedure addresses discrimination and harassment complaints based upon age, ancestry, color, disability, national or ethnic origin, race, religion, sexual orientation¹, gender, genetic information, veteran status, marital status and sex (including but not limited to rape and sexual exploitation)

These procedures also address retaliation claims.

Complainant is at all times free to pursue a complaint with the Equal Employment Opportunity Commission, the West Virginia Human Rights Commission, the United States Department of Education Office for Civil Rights (responsible for enforcing Title IX), the United States Department of Labor (Office of Federal Contract Compliance Programs), or by consulting a labor/employment attorney at her or his own expense.

A. Procedures for Reporting and Responding to Reports of Discrimination

The following procedures have been implemented by the College to receive, investigate, and resolve complaints of discrimination and harassment including discrimination and harassment on the basis of sex and disability. These procedures are designed to provide a supportive process for individuals who report discrimination and to ensure a fair process for individuals who are accused of discriminatory conduct. Internal investigation of allegations of institutional discriminatory treatment or systemic discriminatory practices is intended to ensure that Glenville State College meets its commitment to an open and inclusive educational and employment environment. These procedures also describe the College's efforts to conduct timely, thorough, and fair investigations as required by law.

This Procedure applies to all aspects of Glenville State College's operations and programs. It applies to all College students and employees, including faculty, administrators, classified staff, administrators, as well as student employees. It also applies to all vendors, contractors, subcontractors and others who do business with the College. It applies to all visitors or guests on campus to the extent that there is an allegation of harassment made by them against College students, employees, affiliates or agents. This policy does not apply to accused individuals who are not students, employees, affiliates or agents of the College.

¹ Sexual orientation is not a protected class for the purposes of state and federal antidiscrimination/harassment laws but discrimination or harassment on the basis of sexual orientation is prohibited by College Policies 6 and 13. Although Title IX does not prohibit discrimination on the basis of sexual orientation, sexual harassment directed at gay or lesbian student that is sufficiently serious to limit or deny a student's ability to participate in or benefit from the school's program constitutes sexual harassment prohibited by Title IX and BOG Policy 13. For example, if a male student or a group of male students target another male student for physical sexual advances, serious enough to deny or limit the victim's ability to participate in or benefit from the school's program, the institution would need to respond promptly and effectively, through these procedures just as it would if the victim and accused were of opposite sexes. *Revised Sexual Harassment Guidance: Harassment of Students by School Employees, other Students or Third Parties*, United States Department of Education Office of Civil Rights, (2001). <http://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>

Sexual harassment has been recognized as a form of discrimination in violation of Title IX. Acts of sexual violence are acts of sexual harassment. This procedure addresses conduct that if proven would constitute sexual harassment including but not limited to acts of sexual violence. In this procedure, sexual harassment, including acts of sexual violence, are included in the generic terms sexual misconduct, harassment and discrimination.

B. Making Reports

All discrimination, harassment and retaliation claims including but not limited to claims based upon disability and sex (including acts of sexual violence) are filed with the Title IX/Affirmative Action/Equal Opportunity Coordinator and Americans with Disabilities Act Compliance Officer (hereinafter “Coordinator”):

Krystal Smith, Chief Human Resources Officer
Title IX/Affirmative Action/Equal Employment Opportunity Coordinator
Americans with Disabilities Act Compliance Officer Harry
Heflin Administration Building – Second Floor Mailing
Address:
200 High Street
Glennville, WV 26351
(304) 462-6193

Krystal.Smith@glennville.edu

In the Coordinator’s absence or if the complaint is against the Coordinator complaints should be filed with the Title IX Co-Coordinator:

Teresa Sterns, Title IX Co-Coordinator
Office of the President – Second Floor Harry
B. Heflin Administration Building Mailing
Address:
200 High Street
Glennville, WV 26351
(304) 462-6102

Teresa.Sterns@glennville.edu

The Coordinator and ADA Compliance Officer also has primary responsibility for coordinating efforts for investigation, resolution, implementation of corrective measures, and monitoring the educational environment and workplace to stop, remediate, and prevent discrimination and harassment including but not limited to discrimination on the basis of sex and disability.

Chairs, deans, department administrators, and supervisors have a duty to identify and report discriminatory/harassing/retaliatory behaviors. Employees and persons with responsibility for supervising or ensuring safety of others (including student employees in the course of their employment duties) have a duty to report discriminatory/harassing/retaliatory behaviors observed or reported to them. Chairs, deans, department administrators and supervisors may be directly involved in resolving allegations of discrimination, retaliation and harassment. If the accused is an employee, the Coordinator may investigate allegations of discrimination in consultation with the accused's supervisor, provided the supervisor is not an alleged perpetrator. Chairs, Deans, department administrators and other supervisors have a duty to monitor the accused employee's behavior and to take appropriate disciplinary action if he or she continues to violate College policy or procedure.

As a public institution, the College must provide due process to the accused. These Procedures are designed to provide a fair process for both the alleged victim and the accused while also affording the person filing a complaint his/her Title IX protections. Consistent with due process, the accused is presumed not responsible for the conduct set forth in the complaint until proven otherwise.

Should the accused be found responsible for harassment, discrimination or retaliation the College will take steps to prevent the recurrence of any discrimination, harassment or retaliation and will issue appropriate sanctions pursuant to the appropriate College disciplinary procedures.

The College is also committed to upholding the First Amendment of the United States Constitution. Nothing in these procedures is intended to abridge the rights or freedoms guaranteed by the First Amendment.

Individuals are encouraged to report alleged discrimination and harassment immediately in order to maximize the College's ability to obtain evidence, and conduct a thorough, impartial and reliable investigation. Failure to promptly report may result in the loss of relevant evidence and witness testimony, and may impair the College's ability to enforce these procedures. Complaints should be filed within 30 calendar days of the incident but may be filed up to 300 calendar days after.

Complaints may be filed after 30 days however, individuals are encouraged to report incidents as soon as possible because the passage of time may affect the institution's ability to investigate the incident.

C. Title IX

Title IX of the Education Amendments of 1972 (Title IX), 20 U.S.C. §§ 1681 *et seq.*, and its implementing regulations, 34 C.F.R. Part 106, prohibit discrimination on the basis of sex in education programs or activities operated by recipients of Federal financial assistance. Sexual harassment, which includes acts of sexual violence, is a form of sex discrimination prohibited by Title IX.

Title IX also protects third parties from sexual harassment or violence in a school's education programs and activities. For example, Title IX protects a high school student participating in a college's recruitment program, a visiting student athlete, and a visitor in a school's on-campus residence hall. Title IX also protects employees of a recipient from sexual harassment.

D. Investigation of Reports/Oversight by the Coordinator

Glenville State College's Coordinator has the authority to:

1. Accept all complaints and referrals from all Glenville State College locations;
2. Keep accurate records of all complaints and referrals for the required time period according to the College's record retention policy;
3. Conduct investigations to the level required under Title IX and other federal anti-discrimination/harassment/retaliation regulations;
4. Make findings of fact;
5. Identify specific corrective measures to stop, remediate, and prevent discrimination and harassment including sexual harassment;
6. Make recommendations for corrective measures including training, counseling and/or discipline, when appropriate;
7. Refer any recommendation for employee discipline to supervisors for disposition in accordance with College and West Virginia Higher Education Policy Commission policy;
8. Oversee implementation of corrective measures, which may include follow-up to ensure that appropriate action was taken to complete the recommended actions;
9. In some circumstances, investigation and disposition of complaints may be referred to other offices within the College, such as the Sexual Misconduct Board for complaints against students or supervisors in the case of employees, however, ultimate oversight remains with the Coordinator to coordinate and ensure the College's compliance with Title IX and other antidiscrimination/harassment/retaliation laws. To assure College-wide compliance with this policy and with federal and state law, the Coordinator must be advised of all reported incidents of discrimination and harassment and their resolution. The Coordinator will monitor and coordinate the resolution of complaints by other offices with concurrent jurisdiction over Title IX discrimination/harassment/retaliation and/or any other unlawful harassment/discrimination/retaliation.
10. If the Title IX Co-Coordinator is conducting the investigation and/or in the Coordinator's absence, the Co-Coordinator is vested with the same authority as the Coordinator.

E. Procedures for Informal Resolution

Glenville State College encourages informal resolution options when the parties desire to resolve the situation cooperatively, or when inappropriate behavior does not rise to the level of violation of College policy as determined by the Coordinator but nonetheless is adversely affecting the workplace or educational environment. Informal resolution may include an inquiry into the facts, but typically does not rise to the level of an investigation.

Informal resolution includes but is not limited to options such as referral to another campus office or program, mediation, separation of the parties, referral of the parties to counseling programs, or conducting targeted educational and training programs. Situations that are resolved through informal resolution are usually subject to follow-up after a period of time to assure that resolution has been implemented effectively. Steps taken by the Coordinator to help the parties achieve informal resolution will be documented.

Some reports of discrimination or harassment, including but not limited to forcible sex offenses, may not be appropriate for informal resolution.

F. Procedures for Formal Investigation

You do not have to attempt informal resolution prior to filing a formal complaint

In response to reports of discrimination or sexual misconduct in cases where the complainant does not wish to engage in informal resolution, where informal resolution is not appropriate, or in cases where attempts at informal resolution are unsuccessful, the Coordinator may conduct a formal investigation. In such cases, the individual making the report shall be encouraged to file a written complaint using the appropriate form. In cases where there is no written complaint, the Coordinator, may initiate an investigation after making a preliminary inquiry into the facts, and will inform the person(s) who were allegedly harmed by discrimination or harassment of the decision to initiate an investigation.

1. Complaints must be in writing and should be filed with the Coordinator within 30 (thirty) calendar days of the most recent alleged conduct but may be filed up to (300) three hundred calendar days after. In certain circumstances, at the discretion of the Coordinator, complaints filed outside of the 300 day timeframe may be investigated.
2. In order for formal action to be taken, you are required to name the accused.
3. The accused has a due process right to know his/her accuser. If the complainant requests confidentiality, the College will take all reasonable steps to investigate and respond to the complaint consistent with the request for confidentiality or request not to pursue an investigation taking into consideration and consistent with the College's state and federal obligations including but not limited to Title IX. The College will also consider its responsibility to protect the safety and welfare of the campus community.

4. If a complainant insists that his or her name or other identifiable information not be disclosed to the accused or asks that the complaint not be investigated, the College will respond to the Complaint consistent with its state and federal obligations including but not limited to its Title IX obligations. The College's ability to respond, however, may be limited.
5. The College will evaluate the confidentiality request in the context of its responsibility to provide a safe and nondiscriminatory environment for all students. The College may weigh the request for confidentiality against the following factors: the seriousness of the alleged conduct; whether there have been other harassment complaints about the same individual; the College's responsibility to provide a safe working and learning environment and the accused's right to receive information about the allegations if the information is maintained by the school as an "education record" under FERPA.
6. The College cannot ensure confidentiality or that a complaint will not be investigated because of the complainant's confidentiality request.
7. When filing a complaint, the Coordinator strongly encourages the use of the FORM found in the Complaint Packet. However, the Coordinator also will accept a written document which includes: the Complainant's name, contact information and signature, a description of the conduct believed to be discriminatory, harassing and/or retaliatory with approximate date(s) when these actions occurred, and the name(s) and contact/status information (if known) of the respondent(s). The Coordinator may request that the complainant complete the complaint form.
8. Complaint Packets are available in the Coordinator's Office and online at:

<http://www.glenville.edu/mygsc/forms.php>
9. If the Complainant makes a report to the Coordinator in person, the Coordinator will assist the Complainant with completion of the complaint form if requested and will conduct an intake meeting.
10. Upon receipt of a written complaint the Coordinator will review the complaint and determine if the allegations state a potential violation of the College's antidiscrimination/harassment/retaliation policies.
11. If the allegations if substantiated would not constitute a violation of the College's anti-discrimination/harassment/retaliation policies, the Coordinator will notify the complainant and the respondent concurrently that the investigation is closed. The Coordinator will provide the notice within five working days of receipt of the complaint. The decision to close the investigation may be appealed in writing

within four business days of receipt. The appeal is filed with the Coordinator. The appeal and investigation file will be forwarded to the Vice-President of Academic Affairs who is the final decision maker. The Coordinator will notify the non-appealing party of the appeal. The Vice President of Academic Affairs will notify the complainant and the respondent of his/her decision within five working days of receipt of the appeal. The Vice President's decision is final.

12. If the Coordinator determines the allegations if substantiated would constitute a violation of the College's anti-discrimination/harassment/retaliation policies, within ten working days of receipt of a written complaint or report and if the Coordinator has not already met with the complainant, s/he will schedule an intake meeting with the complainant. The purpose of the meeting is to provide the complainant with a general understanding of these procedures and if applicable, to identify forms of support or immediate intervention available to the complainant if applicable and to gather information relevant to the complaint from the complainant. The intake meeting will also involve a discussion of any accommodations that may be appropriate concerning the complainant's academic, employment College housing, and/or College employment arrangements including but not limited to rescheduling of exams, arranging for independent study, changing the complainant's room or residence hall, temporarily changing the complainant's immediate supervisor, breaking a housing contract to allow the complainant to seek off campus housing, and transferring class sections.
13. Within five working days of the intake meeting with the complainant, the Coordinator will provide the accused with written notice of the complaint. The notice will include a copy of the complaint or will otherwise inform the accused of the substance of the allegations and these procedures or information on where the procedures are available, applicable college policies, or notice of where to obtain them, an opportunity for the accused to provide a written response to the complaint using the appropriate response FORM, date, time and place of the intake meeting and instructions on who to contact if the respondent needs to reschedule the intake meeting.
14. The investigation generally shall include interviews with the parties if available, interviews with other witnesses as needed and a review of relevant documents as appropriate. Disclosure of facts to witnesses shall be limited to what is reasonably necessary to conduct a fair and thorough investigation. Participants in an investigation shall be advised that maintaining confidentiality is essential to protect the integrity of the investigation and will be advised to refrain from discussing the pending investigation.
15. A typical investigation should be completed within sixty (60) calendar days of the Coordinator's notice of the allegations, but depending upon the circumstances, may extend beyond sixty (60) days.

16. The Department of Education's Office of Civil Rights has interpreted Title IX to require schools to evaluate evidence of alleged sexual harassment and sex discrimination under a "*preponderance of the evidence*" standard and that is the standard used in these procedures for all discrimination, harassment and retaliation claims. A preponderance of the evidence means that the information shows that it is "*more likely than not*" that the accused student violated these Procedures.
17. Generally, an investigation will result in a written report that will include: the names of the involved parties (including witnesses), date of reported incident, history of the case (when met with parties, witnesses, if a site visit was conducted, etc.), allegations included in the complaint, alleged violations of the College's of rules, regulations or policies including Student Conduct Code violations, standard of proof, interview(s) with the complainant, additional information provided by the complainant (relevant emails, texts, medical documentation, photographs, written statements, etc.); interview(s) with the respondent, additional information provided by the respondent (relevant emails, texts, medical documentation, photographs, written statements, etc.), summary of information provided by respondent, other information (Residence Life information/reports, Sexual Assault Nurse Examiner Exam, Campus Security or Police Report, information from experts), credibility assessment, findings of fact and analysis and conclusion. There are three conclusions that may result from an investigation:
- a. **Substantiated:** Based on the totality of the circumstances and the information obtained pursuant to the investigation, and based on a more likely than not standard of proof (preponderance of the evidence), it is/is not more likely than not that respondent committed the alleged violation(s).
 - b. **Unsubstantiated:** It is not possible to determine whether the allegation(s) is true or untrue. There is insufficient evidence to prove or disprove that the allegation is true.
 - c. **Unfounded:** It is more likely than not that the allegation(s), while made in good faith, is untrue. A finding that the allegations are unfounded does not indicate that the complaint was improper or knowingly false.

The report also may contain recommendation for actions to resolve the complaint, including but not limited to educational programs, counseling/coaching, mediation, remedies for the complainant, and a referral to disciplinary procedures, as appropriate.

The investigation report will be provided to those College administrators, academic leaders, employees and supervisors who are directly responsible for implementing measures to correct and prevent discriminatory or harassing

conditions and/or for conducting disciplinary proceedings or a Sexual Misconduct Board hearing.

18. The report, complaint, response and/or entire investigation file may be used as evidence in other related procedures, such as subsequent complaints, grievances and/or disciplinary actions.
19. ***Notice of Outcome:*** Generally, within ten working days of the completion of the investigation, the complainant and the respondent shall be concurrently informed in writing of the outcome of the investigation, i.e., whether harassment was found to have occurred. The investigation report serves as the notice of outcome for the parties. “Outcome” does not refer to information about disciplinary sanctions unless otherwise noted here. The College may provide the written determination of the final outcome to the complainant and the alleged perpetrator concurrently. Title IX does not require the school to notify the alleged perpetrator of the outcome before it notifies the complainant.

The complainant shall be informed of the findings and of actions taken or recommended to resolve the complaint, if any, that are directly related to the complainant, such as a recommendation that the accused not contact the complainant. The complainant and respondent will be notified if a complaint against a student has been referred to the Sexual Misconduct Board for a hearing. Information included in the final outcome letters to the parties will be governed by state and federal law and, if applicable, the College’s commitment to keeping personnel matters confidential. The complainant shall not be informed of the details of any recommended disciplinary action without the consent of the respondent except as permissible by law. The complainant may be notified generally of referrals for disciplinary action. The College’s commitment to keeping personnel matters confidential will be balanced against the College’s Title IX obligations.

FERPA generally prohibits the nonconsensual disclosure of personally identifiable information from a student’s “education record.” However, FERPA² permits a school to disclose to the harassed student information about the sanction

² In 1994, Congress amended the General Education Provisions Act (GEPA), of which FERPA is a part, to state that nothing in GEPA “shall be construed to affect the applicability of title VI of the Civil Rights Act of 1964, title IX of Education Amendments of 1972, title V of the Rehabilitation Act of 1973, the Age Discrimination Act, or other statutes prohibiting discrimination, to any applicable program.” 20 U.S.C. § 1221(d). The Department interprets this provision to mean that FERPA continues to apply in the context of Title IX enforcement, but if there is a direct conflict between the requirements of FERPA and the requirements of Title IX, such that enforcement of FERPA would interfere with the primary purpose of Title IX to eliminate sex-based discrimination in schools, the requirements of Title IX override any conflicting FERPA provisions.

imposed upon a student who was found to have engaged in harassment when the sanction directly relates to the harassed student. This includes an order that the harasser stay away from the harassed student, or that the harasser is prohibited from attending school for a period of time, or transferred to other classes or another residence hall.

Further, when the conduct involves a crime of violence³ or a non-forcible sex offense, FERPA permits the College to disclose to the alleged victim the final results of a disciplinary proceeding against the alleged perpetrator, regardless of whether the institution concluded that a violation was committed. Additionally, a postsecondary institution may disclose to anyone—not just the alleged victim—the final results of a disciplinary proceeding if it determines that the student is an alleged perpetrator of a crime of violence or a non-forcible sex offense, and, with respect to the allegation made, the student has committed a violation of the institution’s rules or policies.

The College is also subject to additional rules under the Clery Act. This law, which applies to postsecondary institutions that participate in federal student financial aid programs, requires that “both the accuser and the accused must be informed of the outcome⁴ of any institutional disciplinary proceeding brought alleging a sex offense.”⁵ Compliance with this requirement does not constitute a violation of FERPA. Furthermore, the FERPA limitations on redisclosure of information do not apply to information that postsecondary institutions are required to disclose under the Clery Act.⁶

20. The investigation report will be sent to the parties via hand delivery or sent via United States Mail, certified, return receipt requested. The Coordinator will provide the President with the investigation report.
21. Either party may appeal the decision made in the investigation report in writing by submitting a written appeal to the Vice-President of Academic Affairs. The written appeal will include a copy of the investigation report. *The appealing party is required to send a copy of the appeal to the Coordinator and to the respondent.* The Vice President of Academic Affairs may accept, reject or modify the Coordinator’s decision at his/her discretion. If applicable, the Vice

³ Under the FERPA regulations, crimes of violence include arson; assault offenses (aggravated assault, simple assault, intimidation); burglary; criminal homicide (manslaughter by negligence); criminal homicide (murder and non-negligent manslaughter); destruction, damage or vandalism of property; kidnapping/abduction; robbery; and forcible sex offenses. Forcible sex offenses include rape, sodomy, sexual assault with an object, and forcible fondling. Non-forcible sex offenses are incest and statutory rape. 34 C.F.R. Part 99, App. A.

⁴ For purposes of the Clery Act, “outcome” means the institution’s final determination with respect to the alleged sex offense and any sanctions imposed against the accused. 34 C.F.R. § 668.46(b)(11)(vi)(B).

⁵ 34 C.F.R. § 668.46(b)(11)(vi)(B). Under the Clery Act, forcible sex offenses are defined as any sexual act directed against another person forcibly or against that person’s will, or not forcibly or against the person’s will where the person is incapable of giving consent. Forcible sex offenses for the purposes of FERPA include forcible rape, forcible sodomy, sexual assault with an object, and forcible fondling. Nonforcible sex offenses include incest and statutory rape. 34 C.F.R. Part 668, Subpt. D, App. A.

⁶ 34 C.F.R. § 99.33(c).

President will appoint a appoint someone who has received Title IX training to present the complaint to the Sexual Misconduct Board or will refer the complaint to other College personnel for disposition pursuant to appropriate college disciplinary procedures and/or employee or student handbooks. The VicePresident or his/her designee will issue a decision concurrently to the complainant, respondent and Coordinator within seven working days of receipt of the appeal.

22. If the respondent is not an employee or student the appeal and if applicable any sanctions will be handled pursuant College and HEPC policy and all relevant state and federal law.
23. Regardless of the method of resolution or the outcome of the investigation or appeal, complainant is at all times free to pursue a complaint with the Equal Employment Opportunity Commission, the West Virginia Human Rights Commission, the United States Department of Education (Office for Civil Rights), the United States Department of Labor (Office of Federal Contract Compliance Programs), or by consulting legal counsel her or his own expense.

G. Options for Resolution

Individuals making reports of discrimination or sexual misconduct shall be informed about options for resolving potential violations of the policies which prohibit discrimination or sexual misconduct. These options include informal dispute resolution, referral to other College offices or programs, formal investigation by the Coordinator and availability of resources outside the College process. The College shall respond, to the greatest extent possible, to reports of discrimination, retaliation and harassment (including sex offenses) brought anonymously or brought by third parties not directly impacted by the alleged discrimination, retaliation or harassment (including sex offenses). However, the response to such reports may be limited if information contained in the report cannot be verified by independent facts.

Complainants shall be informed, either verbally or in writing through this policy, about the range of possible outcomes of the report, including interim protections, remedies for the individual harmed by the discrimination or sexual misconduct, and disciplinary actions that might be taken against the

accused as a result of the report, including information about the procedures leading to such outcomes.

H. Alcohol or Drug Use

Alcohol and/or drug use by the accused and/or the victim are not defenses to discrimination or harassment (including acts of sexual violence) complaints. Use of drugs or alcohol may, however, affect the alleged victim's and/or accused's memory which may impact the investigation and final outcome of a complaint.

I. Other Related Misconduct and Non-College Conduct

The Coordinator is empowered to hear allegations of, and to recommend sanctions for, discrimination, harassment, retaliation *and* any other standards of conduct directly related to the alleged discrimination, harassment or retaliation. Such related misconduct may include, without limitation, unprofessional conduct, violations of interim directive(s), filing a false claim, and/or any other misconduct that occurred in the course of the alleged discrimination, harassment or retaliation even if the harassment/discrimination/retaliation allegations are not substantiated.

J. Time

Time limits set forth in these procedures are approximate and may be extended depending upon the circumstances of each complaint.

K. Retaliation

It is a violation of Glenville State College Policies 6 and 13 and various state and federal laws to retaliate against any person making a discrimination, harassment or retaliation complaint or against any person cooperating in the investigation of the same (including but not limited to witnesses). For these purposes, "retaliation" includes but is not limited to intimidation, threats, harassment, and other adverse action threatened or taken against any individual reporting an incident or participating in the hearing or investigation process. Retaliation should be reported promptly to the Coordinator using these procedures and the appropriate form and may result in disciplinary action independent of the sanction or measures imposed in response to the underlying allegations.

L. Representatives

Both the individual reporting the conduct and the accused may have a representative present and/or may choose to be represented by legal counsel at his/her own expense at any stage of these procedures. The Coordinator may disallow a particular advisor, at his/her discretion, in cases where such advisor might be a witness or where such advisor's presence would be obstructive to the process or for other good cause. If an individual intends to be represented by

legal counsel or have a representative present, that party must notify the Coordinator in writing, two business days prior to any scheduled hearing or meeting. Representatives are subject to all of the procedures set forth herein including but not limited to any confidentiality provisions. The College may have counsel present at any stage of these procedures and may seek advice from legal counsel on questions of law and procedure.

M. Privacy/Confidentiality

In order to comply with Federal Education Rights and Privacy Act (FERPA), Title IX, other state and federal laws and to provide an orderly process for the presentation and consideration of relevant information without undue intimidation or pressure, the investigation process is not open to the general public. Accordingly, documents prepared during the investigation process may not be publicly disclosed, except, as may be authorized/required by law, or per the terms of these procedures and/or if necessary to provide for the defense of the College.

The Title IX/AA/EEO Coordinator attempts to balance the needs of the parties for privacy with the institutional responsibility of ensuring a safe educational environment and workplace. Confidentiality is an aspiration, but is not always possible or appropriate. An individual's requests regarding the confidentiality of reports of discrimination, or harassment including but not limited to sex offenses will be considered in determining an appropriate response; however, such requests will be considered in the dual contexts of the institution's legal obligation to ensure a working and learning environment that is free from discrimination or sexual misconduct and the due process rights of the accused to be informed of the allegations and their source. Some level of disclosure may be necessary to ensure a complete and fair investigation and to insure that the institution meets its obligations under Title IX. The institution may be limited in its response and investigation if confidentiality is requested.

The College shall protect the privacy of individuals involved in a report to the extent allowed by state and federal law and College policy. Disclosure of information will be made in accordance with state and federal law. A report of discrimination or a sex offense may result in the gathering of extremely sensitive information about individuals in the College community. The College may be required to disclose personal information in accordance with the West Virginia Freedom of Information Act.

In order to provide due process to the accused and for the College to fulfill its obligations under Title IX and other state and federal laws, the accused and the complainant will be provided with a copy of the investigation report. The investigation report will serve as the notice of outcome to both parties. Information to be included in the investigation report and public disclosure of that report is governed by other sections of these Complaint Procedures and by state and federal law

N. Complaints Filed by Individuals Under the Age of 18

Before beginning an investigation, the College will inform and obtain consent from the parents of any individual who files a complaint who is under the age of 18.

O. Geographic Jurisdiction and Title IX

Title IX protects students from sexual harassment in a school's education programs and activities. This means that Title IX protects students in connection with all the academic, educational, extracurricular, athletic, and other programs of the school, whether those programs take place in a school's facilities, on a school bus or van, at a class or training program sponsored by the school at another location, or elsewhere. For example, Title IX protects a student who is sexually assaulted by a fellow student during a school-sponsored field trip.

These procedures apply to any allegation of a sex offense regardless of where the alleged incident occurred. Sex offenses include forcible rape, forcible sodomy, sexual assault with an object, forcible fondling, incest, and statutory rape. Although there is no geographical limitation to invoking these procedures, sexual misconduct that is alleged to have occurred at a significant distance from the College may be more difficult to investigate. In addition, with respect to *any* complaint: (a) by a person who is not a member of the College community; and (b) relating to non-college Conduct, the College reserves the right to determine, in its sole discretion, whether the conduct described in the complaint constitutes a sufficient risk to the College community to warrant processing the complaint.

P. Criminal Conduct

Acts of sex discrimination or sexual harassment, including but not limited to acts of sexual violence, may also constitute acts of criminal conduct. Any individual may report an incident alleging criminal conduct by calling 9-1-1 in an emergency or by contacting the Glenville State College Department of Public Safety at: (304) 462-6450. The Glenville State College Department of Public Safety and/or other law enforcement authorities may be notified if a complaint contains allegations of criminal conduct.

Pursuant to the federal law known as the *Jeanne Clery Act* (20 USC § 1092(f)), as amended, any campus security or law enforcement personnel or any Glenville State College employee who has significant responsibility for student and campus activities (including but not limited to faculty advisers to student groups, coaches and a student activities director) who has witnessed or been informed of an alleged incident that constitutes a crime for the purpose of the *Jeanne Clery Act* including but not limited to a forcible or nonforcible sex offense or a hate crime, whether a criminal or administrative complaint has been filed, must:

- a. follow (Institution Name) procedures for making a report for the annual crime statistics report; and

- b. notify the Title IX/AA/EEO Coordinator so that any applicable administrative, investigative or other resolution procedures may be initiated.

Employees may be obligated to report to law enforcement the fact that an alleged *Jeanne Clery Act* crime has been reported, but the name or other personally identifiable information about the complainant will be provided only with the consent of the complainant, except as may be required or otherwise permitted by law.

The administrative investigation of complaints filed with the Title IX/AA/EEO Coordinator is different from a law enforcement investigation. The technical rules of evidence and procedure do not apply. A law enforcement investigation will not take the place of an investigation or disposition of a complaint filed with the Title IX/AA/EEO Coordinator and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for discriminatory/harassing/retaliatory conduct. An investigation by the Title IX/AA/EEO Coordinator may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. Glenville State College will cooperate fully with law enforcement and other agencies in the enforcement of criminal law on campus or that affects the campus community and such cooperation may require the institution to temporarily suspend the fact-finding aspect of the administrative investigation while the law enforcement agency is in the process of gathering information. Suspensions of investigations typically last from three to ten days but may be extended depending upon the circumstances of each case. Glenville State College will promptly resume its administrative investigation as soon as notified by the law enforcement agency that it has completed the evidence gathering process.

Q. Cooperation with Investigation

It is expected that individuals filing complaints will actively provide information that will support his/her complaint in the time and manner deemed necessary and appropriate by the College to conduct the investigation. Failure to cooperate with the investigation process in a timely manner may impair College's ability to address the complaint.

R. Records Retention

The office of the Coordinator is responsible for maintaining records relating to discrimination or sexual misconduct reports, investigations, and resolutions. Records shall be maintained in accordance with College records policies, generally six years after the date the complaint is resolved. Records may be maintained for a longer period of time at the discretion of the Title Coordinator in cases where the parties have a continuing affiliation with the College. All records pertaining to pending litigation or a request for records shall be maintained in accordance with instructions from College legal counsel. Requests for information should be directed to President pursuant to Glenville State College Policy 48.

Medical information, if any, will be protected insofar as is required by law including but not limited to the Health Information Portability and Accountability Act if applicable.

S. Anonymous Complaints

Anonymous complaints will be accepted, however, the College may be limited in its options in investigating and/or resolving anonymous complaints because of the unique challenges they present. There is no way to assess the author's veracity and no ability to obtain additional information from the complainant if the complaint is unclear or confusing. However, if the anonymous complaint contains sufficiently detailed information which, if true, would constitute: (a) a crime, then the complaint will be forwarded to the Glenville State College Department of Public Safety for appropriate action; (b) or a violation of this policy, the complaint will be investigated to the best of the Coordinator's ability given the anonymous nature of the complaint. A record will be kept of all anonymous complaints.

T. Filing a False Complaint and/or Providing False Information

Knowingly providing false information in either a complaint, during the investigation of a complaint, disciplinary proceeding or hearing by anyone is prohibited and is considered misconduct subject to disciplinary action up to and including termination of employment and/or expulsion.

U. Interim Measures Pending Resolution of the Complaint

When the Coordinator receives a complaint or notice of sexual harassment or sex discrimination allegations, the Coordinator will undertake an appropriate inquiry and take such prompt and effective action as is reasonably practicable under the circumstances to support and protect the complainant, the campus community and to avoid retaliation against the victim(s) before the final outcome of the investigation or full implementation of these Procedures. Interim measures may be implemented without prior notice to the accused whenever there is reason to believe, based on available facts, that the continued presence of the student poses a substantial threat to himself/herself, to others, to college property, or to the stability and continuance of normal college functions.

If the allegation constitutes a sex offense as defined by the Clery Act, the College institution *will* change the victim's academic and living situations after an alleged act of sexual violence if those changes are requested by the victim and are reasonably available. Options may include the release of the victim from his/her housing contract so that the victim may seek off campus housing, room reassignment or assignment to a different residence hall.

The Coordinator may impose a "no-contact" order, which typically will include a directive that the parties refrain from having contact with one another, directly or through proxies, whether in person or via electronic means, pending the investigation and, if applicable, the hearing. The Coordinator also may take any further protective action that he or she deems appropriate concerning the interaction of the parties pending the hearing, if any, including, without

limitation, directing appropriate College officials to alter the students' academic, College housing, and/or College employment arrangements.

When taking steps to separate the complainant and the accused, the Coordinator will seek to minimize unnecessary or unreasonable burdens on either party; provided, however, that every reasonable effort will be made to allow the complainant to continue in his or her academic, College housing, and/or College employment arrangements. Violation(s) of the Coordinator's directive and/or protective actions will constitute related offenses that may lead to additional disciplinary action. Where the accused student is a degree candidate, the conferral of a degree may be deferred until proper resolution of any Sexual Misconduct charges, provided that, if applicable, a hearing will be scheduled for the earliest practicable date that may reasonably accommodate the parties and their witnesses.

Within five days of receipt of notice of any interim measures imposed per Section III.G, an accused student may appeal the interim measures, in writing, to the President. The interim measures will remain in effect pending the outcome of any appeal. The President will provide the Complainant with a copy of any appeal filed pursuant to this section via certified mail, return receipt or in person. The Complainant may submit a response to the appeal within three business days after receipt. The President may accept, reject or modify the interim measures imposed by the Coordinator. The President will notify the parties of his decision in writing within five working days of receipt. The President's decision is final.

Interim measures that may be implemented include but are not limited to:

1. Temporary suspension of the accused's eligibility for enrollment or attendance, as well as denial of the student's access to College facilities or property including but not limited to College housing;
2. Temporary suspension or limitation of the accused's eligibility to enjoy certain privileges, or participate in or attend certain events (or certain kinds of events) without the suspension of enrollment status. This action may prohibit a student's presence on College property or in certain facilities (including but not limited to College housing), or impose conditions that must be met in order for that student to enjoy certain privileges, participate in activities, or attend events;
3. Issuance of a no-contact order;
4. Transcript holds;
5. Delay/hold the conferring of a degree;
6. Temporary employment suspension;
7. Supervisor change; and
8. Immediate removal from the alleged victim's classes and/or residence hall

The Coordinator will notify the accused student and the Complainant, in writing, of any interim measures one working day after implementation.

V. Sanctions

Sanctions for individuals found responsible for discrimination, harassment or retaliation include but are not limited to:

1. Employment termination or suspension;
2. Suspension or expulsion;
3. Residence hall probation;
4. Residence Hall separation;
5. Disciplinary probation;
6. Any sanction set forth in the Student Conduct Code or Employee Handbooks;
7. Demotion

One or any combination of sanctions may be implemented depending upon the circumstances of each case.

When recommending and/or implementing sanctions, the Coordinator and/or appropriate disciplinary authority may take into consideration the prior disciplinary history of the accused.

W. Definitions

The following definitions apply to these procedures:

1. **Gender Discrimination or Gender Harassment:** Defined in Policy 13.
2. **Sexual Harassment:** For the purposes of these Procedures Sexual Harassment is defined in Policy 13.
3. **Complaint:** A description of facts that allege violation of the College's antidiscrimination/harassment/retaliation policies. The Title IX Coordinator may request that a complaint be made in writing using the appropriate form.
4. **Complainant:** An individual who alleges that she or he has been subjected to discriminatory/harassing/retaliatory practices. A third-party complainant is a person who brings a complaint on behalf of another member(s) of the campus community who has allegedly been the subject of discrimination/harassment/retaliation. Complainants may be individuals or groups of individuals who have been impacted by discrimination, harassment or retaliation.
5. **Force:** Physical force, violence, threat, intimidation or coercion.
6. **Non-Consensual Sexual Contact:** Sexual contact that occurs without effective consent and may occur with or without force.
7. **Effective Consent:** Words or actions that show a knowing and voluntary agreement to engage in mutually agreed-upon sexual activity. Effective 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. Effective consent is also absent when the activity in question exceeds the scope of effective consent previously

- given. Additionally, effective consent cannot be given by anyone under the legal age of consent as set by state law. See, “statutory rape” in these definitions.
8. **Incapacitation:** The physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where alcohol (or other drug) is involved, one does not have to be intoxicated, drunk or high 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.³ The question is whether the accused student knew, or a sober, reasonable person in the position of the accused student should have known, that the complainant was incapacitated. Because Incapacitation may be difficult to discern, you are strongly encouraged to err on the side of caution; i.e., when in doubt, assume that another person is incapacitated and therefore unable to give effective consent.
 9. **Respondent(s):** Person or persons who are members of the campus community who are accused of discrimination, harassment or retaliation. Respondents may be individuals, groups, programs, student organizations, academic or administrative units, or the institution.
 10. **Sexual Contact:** The deliberate touching or penetration of a person's intimate parts (including genitalia, groin, breast or buttocks, or clothing covering any of those areas) with inanimate objects or body parts, or using force to cause a person to touch his or her own or another person's intimate parts with animate or inanimate objects.
 11. **Forcible Rape:** The carnal knowledge of a person, forcibly and/or against the person's will (without effective consent); or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her temporary or permanent mental or physical incapacitation (or because of his/her youth).
 12. **Forcible Sodomy:** Oral or anal sexual intercourse with another person, forcibly and/or against that person's will (without effective consent); or not forcibly against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacitation.
 13. **Sexual Assault With An Object:** The use of an object or instrument to unlawfully penetrate, however slightly, the genital or anal opening of the body of another person, forcibly and/or against that person's will; or not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental or physical incapacitation.
 14. **Forcible Fondling:** The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that person's will; or, not forcibly or against the person's will where the victim is incapable of giving consent because of his/her youth or because of his/her temporary or permanent mental incapacitation.
 15. **Incest:** Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.

³ J Sokolow, Brett A., Lewis, W. Scott, Schuster, Sandra K., *NCHERM II/Smille on Responding 10 Campus Sexual Misconduct*. 2010, p. 49.

16. **Statutory Rape:** Non-forcible sexual intercourse with a person who is under the statutory age of consent⁸.
17. **Witnesses:** Persons who have information about the alleged sexual misconduct that will tend to prove, disprove, or otherwise provide information relative to an investigation of a complaint.
18. **Investigation:** A fact finding inquiry by the Coordinator that attempts to determine whether behavior in violation of policy prohibiting discrimination, harassment or retaliation occurred, and to make recommendations for resolution of discriminatory, harassing or retaliatory conditions.
19. **Discrimination:** For the purposes of this procedure, discrimination is defined in Policy 6.
20. **Harassment:** For the purposes of this procedure harassment is defined in Policy 6.
21. **Student Sexual Misconduct Board (Board):** The standing group whose purpose is to conduct a hearing on sexual misconduct complaints against students that are substantiated and referred to it by the Coordinator. Board members will receive annual training in their responsibilities. The members of the Board are listed in the Student Handbook, which is available in the Office of Student Life and online as well as are listed in the Faculty and Classified Staff Handbook available in the Coordinator's office.

⁸ Pursuant to West Virginia Code §61-8B-5, Sexual assault in the third degree:

(a) A person is guilty of sexual assault in the third degree when...:

...(2) The person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant...

22. **Sexual Misconduct:** A broad term encompassing a wide range of sex based offenses including but not limited to sexual harassment, sexual exploitation, forcible sex offenses such as rape, forcible fondling, nonconsensual contact and abuse and nonforcible sex offenses such as statutory rape and incest. Sexual misconduct is included in the general term sexual harassment.
23. **Student Organization:** Any student organization that is properly registered and recognized by the Student Affairs Office at the time of the alleged incident *and* at the time of the complaint.
24. **Clery Act:** The Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 D.S.C. Section 1092(f);34 C.F.R. Part 668.46.
25. **Clery Act Crime:** Any crime required to be reported in the annual crime statistics report by the Clery Act⁹.
26. **FERPA:** The Family Educational Rights and Privacy Act, 20 U.S.C. Section 1232g; 34 C.F.R. Part 99.
27. **Chair:** Chair of the Sexual Misconduct Board.
28. **College:** Glenville State College

29. **Coordinator:** The Title IX/Equal Employment Opportunity/Affirmative Action Coordinator and Americans with Disabilities Act Compliance Officer.
30. **Co-Coordinator:** The Title IX Co-Coordinator.
31. **Force:** Physical force, violence, threat, intimidation or coercion.
32. **Glennville State College Board of Governors (“BOG”):** The governing board of the College.
33. **President:** The College’s Chief Executive Officer. The President Office is located in the Harry B. Heflin Administration Building, Second Floor.
34. **Parties:** The Complainant(s) and Respondent(s) collectively. Includes the individual presenting a complaint to the Board in the case of Sexual Misconduct Board Hearing Procedures
35. **“Days”:** Unless otherwise designated means business days and does not ever include days the College is closed for business for any reason.
36. **Non-College Conduct:** Conduct that occurred other than on College owned or leased property, on off-campus, public property immediately adjacent to campus (sidewalks, streets, etc.) at any College sanctioned function or at the permanent or temporary local residence of a College student, faculty member, employee, or visitor.

X. College Policies

⁹ Clery Act crimes will be defined by the Clery Act. As of the effective date of these procedures, the criminal offenses for which we are required to disclose statistics per the Clery Act are murder/nonnegligent manslaughter, negligent manslaughter, sex offenses (forcible and non-forcible), robbery, aggravated assault, burglary, motor vehicle theft, arson, liquor law violations, drug abuse violations and weapons: carrying, possessing, etc.

We are also required to report statistics for bias-related (hate) crimes for the following offenses: murder/non-negligent manslaughter, sex offenses (forcible and non-forcible), robbery, aggravated assault, burglary, motor vehicle theft, arson, larceny-theft, vandalism, intimidation, simple assault, and damage/destruction/vandalism of property.

1. College policies are available in the Coordinator’s office and online at:

<http://www.glennville.edu/about/bog/policies.php>

2. West Virginia Higher Education Policy Commission policies are available in the Coordinator’s office and online at:

[http://wvhepcnew.wvnet.edu/index.php?option=com_content&task=view&id=26
&Itemid=0](http://wvhepcnew.wvnet.edu/index.php?option=com_content&task=view&id=26&Itemid=0)

3. The Student Handbook is available in the Office of Student Life and online at:

<http://www.glennville.edu/fac-staff.php>

4. All employee handbooks are available in the Coordinator's office and online at:

<http://www.glenville.edu/fac-staff.php>

Y. Additional Information

The United States Department of Education Office of Civil Rights is responsible for enforcing Title IX. Additional information about Title IX and the Office of Civil Rights' complaint procedure is available from:

Office of Civil Rights
U.S. Department of Education
100 Penn Square East, Suite 515
Philadelphia, PA 19107-3323
Telephone: 215-656-8541
FAX: 215-656-8605;
TDD: 877-521-2172
Email: OCR_Philadelphia@ed.gov
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

Additional information about federal anti-discrimination/harassment/retaliation laws and complaint procedures may be directed to the Coordinator or to:

United States Equal Employment Opportunity Commission
801 Market Street, Suite 1300
Philadelphia, PA 19107-3127
Telephone: 866-408-8075. Fax:
215-440-2606
TTY: 800-669-6820
Website: <http://www.eeoc.gov/>

A complainant is at all times free to file a complaint with the OCR.

Additional information about State anti-discrimination/harassment and retaliation laws and complaint procedures is available from:

The West Virginia Human Rights Commission
1321 Plaza East – Room 108A
Charleston, WV 25301
Telephone: 304-558-2616
Toll Free: 888-676-5546
FAX: 304-558-0085
Website: <http://www.wvf.state.wv.us/wvhrc/>

Information about the state employee Complaint procedure is available from:

West Virginia Public Employees Grievance
Board 1596 Kanawha Blvd., East Charleston,
WV 25311.

Telephone: (304) 558-3361
Toll Free: 866-747-6743
Facsimile: (304) 558-1106
Website: www.pegb.wv.gov.

Z. Application/Authority and Amendments

The College's policies prohibiting discrimination, harassment, retaliation, sexual harassment and sex discrimination Complaint Procedures and Sexual Misconduct Board Procedures, define and prohibit discrimination, harassment, retaliation, sexual harassment and sex discrimination including acts of sexual violence on the basis of federal and state law as interpreted by the courts and the agencies responsible for enforcing the laws. To assure continued compliance with Title IX and/or any other state or federal anti-discrimination/harassment/retaliation laws, if state or federal statutory provisions, regulatory guidance, or court interpretations or guidance provided by any authorized regulating agency change, or conflict with College policy and/or procedure, the College's policy and/or procedure will be deemed amended as of the time of the decision, ruling, legislative enactment or guidance.

These procedures may be modified to protect the due process rights of the parties.

These Procedures were created pursuant to Title IX of the Education Amendments of 1972, other state and federal antidiscrimination/harassment/retaliation laws and Glenville State College Policies 6 and 13 and per the later Glenville State College Policies and may be amended by the President or the President's designee at any time.

EFFECTIVE DATE: _____

Signature (President or Designee)

Print Name

