



GLENVILLE STATE COLLEGE SEXUAL MISCONDUCT BOARD HEARING PROCEDURES

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 sex discrimination, sexual harassment and retaliation complaint procedures set forth in any other College publication for complaints filed against students and/or student organizations including but not limited to the *Student Handbook* (replaces the *Student Conduct Code* procedures for addressing acts of unlawful sex discrimination and sexual harassment and retaliation based upon prior protected action related to sexual harassment and sex discrimination including but not limited to acts of sexual violence).

In order to comply with Title IX of the Education Amendments of 1972 and other state and federal laws, the Complaint Procedures and Sexual Misconduct Board Hearing Procedures apply to all complaints under investigation at the time of the effective date of both, all complaints filed thereafter and any complaints under investigation within the twelve calendar months immediately preceding the effective date of both.

I. Introduction

- A. Definitions – All definitions set forth in the Complaint Procedure - Discrimination/Harassment/Retaliation (Complaint Procedure) and Glenville State College Policies 6 and 13 or any other College Policy apply to proceedings conducted before the Sexual Misconduct Board (Board). “Parties” for the purposes of the Sexual Misconduct Board Procedures means the complainant(s),

respondent(s) and the person appointed by the Vice-President of Academic Affairs to present the complaint to the Board.

- B. Time. Time limits set forth in these procedures may be extended for good cause at the discretion of the Coordinator, Chair of the Sexual Misconduct Board (Chair), Vice-President or President.
- C. Other Related Misconduct. In accordance with these Sexual Misconduct Board Procedures, the Board is empowered to hear allegations of, and to impose sanctions for, Sexual Misconduct *and* any violations of the *Student Conduct Code* directly related to the alleged Sexual Misconduct. For other related misconduct that is related to the alleged Sexual Misconduct, these Procedures govern, not the *Student Code of Conduct*. Such related misconduct may include, without limitation, violations of the Coordinator's interim directive(s), retaliation, alcohol and/or drug violations, filing a false claim, and/or violations of any other Student Conduct Code provisions that occurred in the course of the alleged Sexual Misconduct.
- D. 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 suspension and expulsion.
- E. Opportunity to Present Witnesses: All parties will be given the opportunity to present and question witnesses and to present evidence to the Board.
- F. Representatives/Legal Counsel. The complainant and the respondent may have a representative present during the hearing and/or may choose to be represented by legal counsel at his/her own expense at any stage of these procedures. If an individual intends to be represented by legal counsel or have a representative present, that party must notify the Chair of the Sexual Misconduct Board in writing, two business days prior to any scheduled hearing or meeting. Representatives are subject to all of the procedures set forth herein and in the Complaint procedures including but not limited to any confidentiality provisions. The Chair, Board or Coordinator may have counsel present at any stage of these Procedures and may seek advice from Counsel on questions of law and procedure.
- G. Sanctions. Any Respondent found responsible for sexual harassment or sex discrimination will be subject to disciplinary action. **When considering a disciplinary action, the Board may consider the prior disciplinary history of the Respondent.** The Board may impose one or more disciplinary actions at its discretion. Possible sanctions include:
 - 1. Expulsion - Expulsion is permanent disciplinary separation from the College involving denial of all student privileges. Expulsion is the termination of all student status, including any remaining right or privilege

to receive some benefit, recognition or certification. Expulsion shall be effective on the date of notice of the expulsion, or later if so stated in the notice. When a student is expelled, a notation will appear on the academic transcript and the Registrar will administratively withdraw the student from classes and place a grade of "W" on the transcript. Students separated from the College by expulsion may not enter College premises or College-related premises without securing prior approval from the Dean of Student Affairs or designee.

2. Suspension - Suspension is temporary disciplinary separation from the College involving denial of student privileges. Suspension is the exclusion from all institutional activities for a definite stated period of time up to one (1) academic year, and any condition on resumption of activities, if any, also may be imposed. Suspension shall be effective on the date of notice of the suspension or later if so stated in the notice, shall be entered into the student's permanent record, and shall prescribe the date and conditions upon which the student may petition for readmission. When a student is suspended, a notation will appear on the academic transcript and the Registrar will administratively withdraw the student from classes and place a grade of "W" on the transcript. Conditions for readmission may include, but are not limited to, disciplinary probation for a specified length of time; non-residence on campus; restricted visitation to specified campus facilities; and written statement from an accredited mental health professional or medical doctor verifying the capability of the student to function successfully at the College. Students separated from the College by suspension may not enter College premises or College-related premises without securing prior approval from the Dean of Student Affairs or designee.

NOTE: A sanction of suspension or expulsion imposed by any public college or university in West Virginia may apply to the person sanctioned not only at the institution where the sanction was imposed, but may also be effective at other public colleges and universities in the State. A student who is expelled from any public college or university in West Virginia may not be considered for admission to Glenville State College until one (1) year has elapsed after the student has been expelled.

3. Residence Hall Probation - Residence Hall Probation is a warning that further violation of residence hall rules and regulations or any other college policy may result in Residence Hall Separation or expulsion.
4. Residence Hall Separation - Residence Hall separation involves removal from the campus residence hall community for conduct that clearly demonstrated an inability to function appropriately in the residence hall living situation. Such separation may be permanent or for a specified number of semesters. Such separation prohibits accessibility to all or

designated residence halls and may prohibit access to associated dining facilities. Visitation will not be permitted without securing prior approval from the hearing officer or panel. In no case will separation be less than the remainder of the semester in which it takes place.

5. Disciplinary Probation – Disciplinary Probation is the exclusion from participation in certain institutional activities, property or facilities for a definite stated period of time, and may be conditioned upon compliance with policies, rules and regulations, or specified required activity during the period of probation. Probation is a period of review and observation during which a student has been officially notified that his/her conduct, although not serious enough to warrant suspension, was very inappropriate. Subsequent violations of College rules, regulations or policies could result in a more severe sanction. Disciplinary Probation is a status that may involve restrictions, conditions or terms imposed for a definite period of time. Restrictions, conditions, or terms of probation may include, but are not limited to: ineligibility to participate in campus activities or events, periodic contact with a designated member of the campus community; restrictions on accessibility to College facilities and/or housing areas, and change of housing assignment. Restrictions, conditions, and terms will be imposed for a specific length of time not to exceed the length of the probationary period. Failure to comply with the terms and conditions of the probation or additional behavior in violation of this code during the probationary period will likely result in more serious disciplinary action.
6. Mandatory referral for counseling - Mandatory counseling referrals may be made to the Campus Health Center.
7. Termination of the Privileges of a Recognized Student Organization - Termination of the Privileges of a Recognized Student Organization is the loss of any or all campus privileges of that organization. Imposition of this sanction does not preclude disciplinary charges against individual members of the organization.
8. Termination of the Recognition of a Recognized Student Organization - Termination of the Recognition of a Recognized Student Organization is the discontinuation of the recognition of that organization on campus. This means the organization can no longer function. Imposition of this sanction does not preclude disciplinary charges against individual members of the organization.
9. Any other sanction set forth in the Student Conduct Code. or Employee Handbooks.

- H. Family Education Rights and Privacy Act (FERPA) - In order to comply with 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 hearing process is not open to the general public. Documents prepared in anticipation of the hearing, testimony, or other information introduced at the hearing, and any recording or transcript of the hearing, and if applicable, the complaint investigation file will be disclosed by the College in accordance with these Procedures, state and federal law and/or if necessary to provide for the defense of the College.
- I. Failure to Appear. If a party does not appear at the hearing, the Board will not be precluded from proceeding and determining the complaint on the basis of the investigation report and/or any other available information presented during the hearing.
- J. Alternate Means of Testifying. Due process requires that the Respondent be able to confront his/her accuser(s). This includes the complainant. However, alternate means of testifying (such as video conferencing) for any witness offered by either party may be arranged upon written request as provided for in these procedures. Any party's failure to appear and/or testify may hinder the College's ability to address the complaint. Alternate means of testifying may include but is not limited to video conferencing from another location on campus to the hearing room.
- II. **General Hearing Procedures**-The hearing will not follow a courtroom model, and formal rules of evidence will not be observed. During the hearing the Respondent and the College's representative (person presenting the Investigation Report) will be given the opportunity to present and question witnesses and to present evidence to the Board. In accordance with Title IX, the Complainant has the option of presenting witnesses and submitting evidence to the Board but is not required to do so.

The Chair will determine the order of the witnesses and resolve any questions of procedure arising during the hearing including but not limited to the admissibility of evidence. The Chair will make all decisions regarding alternate means of testifying.

The Chair will notify witnesses of the hearing date using the contact information provided by the parties.

Members of the Board should review in advance of the hearing all the written materials provided to them by the Chair. The Complainant and the Respondent or their representatives (but not both) may question the witnesses and all may be present during the questioning of other witnesses. The Chair is authorized to disallow or reframe questions that are irrelevant or redundant.

After all witnesses have been questioned, each party may make a closing statement

and request a short recess to prepare it. After the parties present verbal closing statements, the Chair will adjourn/close the hearing so that the Board may consider the evidence and make a decision on responsibility and any disciplinary action if applicable. The deliberations of the Board on responsibility and sanctions are confidential and not open to either party

The Chair will arrange for the hearing to be recorded. The complainant and/or respondent may submit a written request for a copy of the recording to the Chair. Hearing recordings are confidential insofar as is permissible by law.

With the exception of the Respondent, the Complainant and the College's representative, witnesses will not be present in the hearing room unless testifying.

A. Notice of Hearing: Within seven calendar days of receipt of the investigation report from the Vice-President, the Chair will send the complainant, respondent and the individual presenting the complaint a Notice of Hearing. The Notice of Hearing will include the following:

1. Copy of the investigation report if one has not already been provided (the investigation report will serve as the written notice of charges to the Respondent);
2. Date time and place of the hearing;
3. Name of person appointed by the Vice-President of Academic Affairs who will present the complaint to the Board;
4. Names of the Board members;
5. Notice of right to challenge Board members or the person appointed by the Vice-President of Academic Affairs to present the complaint to the Board for bias. A party wishing to challenge the participation of any Board member must notify the President in writing within four working days of receipt of the Notice of Hearing. The written notice must state specific reason(s) for the objection and the member's alleged bias. If the President determines the challenge has merit, s/he will appoint a new Board member and will provide both parties with written notice of the new participants. Failure to challenge the Board members within the time allowed will constitute a waiver of any objection to the composition of the Board.
6. Date by which each party and the individual presenting the complaint must provide the chair a list of witnesses, contact information for witnesses and copies of documents each will present during the hearing. Prior to the hearing, the Chair will notify the witnesses of the date and time of the hearing and will provide all parties with a complete witness list and copies of documents that will be presented during the hearing by each party.
7. Date by which requests for alternate means of testifying must be submitted to the Chair. The Chair will provide the other parties with a copy of the request. The Chair may grant or deny the request at his/her discretion and will notify the parties of his decision at least five calendar days prior to the hearing. The

Chair's decision is final. Requests for alternate means of testifying if granted may alter the date of the hearing depending upon the nature of the request.

- B. Standard of Proof and Decision: 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. A preponderance of the evidence standard is a "*more likely than not*" standard. If the Board, based upon careful review of all information presented, by a majority vote concludes that it IS more likely than not that the conduct as set forth more fully in the investigation report occurred and that College policy was violated, the Board will accept the Investigation Report. If the burden of proof is not met, the Board will reject the investigation report.

The decision will be made by the Board by majority vote. If the Board accepts the investigation report, the Board Chair will submit a written request to the Judicial Officer for the Respondent's disciplinary record and will provide copies of the Respondent's disciplinary record to the other members of the Board for use in determining a sanction(s). Votes on sanction(s) are determined by a majority vote.

Within ten working days of the close of the hearing, the Board will issue a written decision *concurrently* to *both* the Respondent and the complainant. The contents of the Board's final decision and subsequent disclosure will be governed by state and federal law and any provisions governing the notice of a final outcome of an investigation as set forth in the Discrimination, Harassment, Sexual Harassment, Sex Discrimination Retaliation Complaint Procedures. Decisions will be sent via hand delivery or certified mail, return receipt requested. If the Board finds the Respondent responsible for related misconduct, the complainant will not receive notice of any action taken by the Board on the related misconduct.

- C. Appeal: Any party may appeal the Board's Decision within five calendar days of receipt to the President in writing. The appeal must include the Decision, the Coordinator's investigation report, and reason for the appeal. The President will send a copy of the appeal to the Title IX Coordinator and the non-appealing party. The President or President's designee, will review the entire hearing record, including but not limited to the recording, and may accept, reject or modify the Board's decision. The President will issue a decision concurrently to both the accused and the complainant within six working days of receipt of the appeal. The President's decision is final.

Except as required to explain the basis of new evidence, reasons for an appeal shall be limited to review of the record of the initial hearing and supporting documents for one or more of the following purposes:

1. To determine whether jurisdiction as established by Glenville State College Policy 13 and/or the Student Conduct Code (if other related misconduct was addressed by the Board) was properly asserted;
2. To determine whether the original hearing was conducted fairly in light of the charges and evidence presented and in conformity with prescribed procedures giving the appealing party a reasonable opportunity to prepare and present evidence and a rebuttal of the allegations set forth in the complaint and/or to present evidence that Glenville State College Policy 13 was violated.
3. To determine whether the decision reached regarding the Respondent was based on a preponderance of the evidence standard, that is, whether the facts in the case were or were not sufficient to establish that sexual harassment/discrimination occurred and if applicable if the related misconduct occurred.
4. To determine whether the sanction(s) imposed were appropriate for the violation;
5. To consider new evidence, sufficient to alter a decision or other relevant facts not brought out in the original hearing, because such evidence and/or facts were not known to the person appealing at the time of the original hearing. New evidence does NOT mean witnesses, including the Respondent, who were otherwise known but who did not testify at the hearing.

D. Effective Date of Sanction. Disciplinary actions imposed by the Board are effective immediately upon the Respondent's Receipt.

E. Transcript Notation in Cases of Suspension or Expulsion. If the Board imposes a sanction of suspension or expulsion, and the suspension or expulsion is upheld following an appeal and/or is not appealed, the President will notify the College Registrar to place a notation on the student's transcript reading "Disciplinary Suspension" or "Disciplinary Expulsion".

III. Interim Measures. Any interim measures implemented by the Coordinator during the investigation process remain in effect pending the outcome of the Board's hearing.

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

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

The College's policies prohibiting sex discrimination, sexual harassment, retaliation, harassment and discrimination and Complaint Procedures and these 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 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.

EFFECTIVE DATE: _____

Signature (President or Designee)

Print Name