

## **GLENVILLE STATE UNIVERSITY POLICIES**

### **ADMINISTRATIVE POLICY 6A**

#### **SOCIAL JUSTICE: SEXUAL HARASSMENT AND TITLE IX SEXUAL HARASSMENT PROCEDURES**

##### **6A.1. General**

1.1. Scope - This policy addresses sexual harassment.

1.2. Authority - WV Code §18B-1-6, §18B-2A-4

1.3. Effective Date- June 16, 2021

1.4. Revision and Renaming of Former Policy. Revises and replaces Glensville State University Administrative Policy 6A [2015][August 5, 2020][October 20, 2020][May 21, 2021 Emergency Policy].

##### **6A.2. Policy**

2.1. Glensville State University is committed to providing an environment that emphasizes the dignity and worth of every member of its community and that is free from sexual harassment. The purpose of the policy and procedure set forth in the Appendix, SEXUAL HARASSMENT POLICY, GRIEVANCE PROCEDURES AND MANDATORY CHILD ABUSE REPORTING REQUIREMENTS, is to define harassment on the basis of sex. It is also to establish the University's administrative procedures for the reporting, investigation and disposition of sexual harassment complaints and other prohibited conduct as defined in the Appendix including, but not limited to, Title IX sexual harassment.

**POLICY 6A APPENDIX**

**SEXUAL HARASSMENT POLICY, GRIEVANCE PROCEDURES  
AND MANDATORY CHILD ABUSE REPORTING REQUIREMENTS**

**CALL 9-1-1 IN AN EMERGENCY OR CONTACT LOCAL LAW ENFORCEMENT IF YOU HAVE  
IMMINENT CONCERNS ABOUT YOUR PERSONAL SAFETY**

The University encourages anyone who experiences or becomes aware of an incident of Prohibited Conduct to *immediately* report the incident to the University. Any person may report conduct prohibited by this policy (whether or not the person reporting is the person alleged to be the victim of the Prohibited Conduct), in person, by mail, by telephone, facsimile or by electronic mail to:

**Tegan McEntire**

Human Resources Director

Title IX Coordinator

Affirmative Action/Equal Opportunity Officer

303 Harry B. Heflin Administration Building

Telephone: (304) 462-6193

FAX: (304) 462-6198

[Tegan.McEntire@glennville.edu](mailto:Tegan.McEntire@glennville.edu)

Mailing Address:

Human Resources Office

Glennville State University

303 Heflin Administration Building

200 High Street

Glennville, WV 26351

In the absence of the Title IX Coordinator or if the report or complaint is against the person named above, reports and/or formal complaints may be filed with:

**Susan Petties**

Academic Success Advisor - Accommodations & Accessibility

Title IX Deputy Coordinator & Investigator

322 Robert F. Kidd Library

Telephone: 304-462-6059

[Susan.Petties@glennville.edu](mailto:Susan.Petties@glennville.edu)

Mailing Address:

Academic Success Center

Glennville State University

200 High Street

Glennville, WV 26351

**Casey Smola**

Administrative Chief of Public Safety

Title IX Deputy Coordinator & Investigator

Jesse R. Lilly Physical Education Health Building – Room 153A

Telephone: 304-462-6450

[Casey.Smola@glennville.edu](mailto:Casey.Smola@glennville.edu)

Mailing Address:

Public Safety Office

Glennville State University

200 High Street

Glennville, WV 26351

Any individual, at any time, may pursue a complaint as applicable with the United State Equal Employment Opportunity Commission, the West Virginia Human Rights Commission or the United States Department of Education Office for Civil Rights (responsible for enforcing Title IX).

**I. Purpose**

A. Glennville State University (University) is committed to providing a safe and non-discriminatory environment for all members of the University community. The University prohibits sexual harassment, sexual misconduct, retaliation by or against any member of the University community (together, Prohibited Conduct).

B. In accordance with Title IX, this is the policy and procedure the University follows when it receives a report alleging conduct prohibited under the jurisdiction of Title IX. These policies and procedures are also used to address all Prohibited Conduct as that term is defined herein. The University uses this policy and procedure to investigate and adjudicate allegations of Prohibited Conduct and to impose disciplinary sanctions against employees and students found responsible for violating the Policy.

C. This Policy applies to students, faculty, staff, and applicants for admission to or employment with the University, visitors or any third party who otherwise has some relationship with the University.

**D. Relationship to Student Conduct Code Policy 36 and Other Handbooks.** Harassment on the basis of sex is prohibited by Glennville State University Board of Governors Policy 36, the Student Conduct Code, and various other employee, student, student athlete and academic program handbooks. These procedures take precedence over and will be used instead of procedures set forth in the Policy 36, the Student Conduct Code, and/or any other procedures set forth in any other employee, student, student athlete, academic program or any other University handbook to address sexual harassment reports or complaints.

## II. General

A. The Title IX Coordinator is responsible for coordinating the University's efforts to comply with its responsibilities under Title IX. The Title IX Coordinator may not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent. The Title IX Coordinator's responsibilities include but are not limited to:

1. Communicating with all members of the University community regarding Title IX, and providing information about the Title IX grievance procedure.
2. Reviewing applicable University policies to ensure institutional compliance with Title IX.
3. Responding to general inquiries regarding Title IX Sexual Harassment.
4. Monitoring the University's compliance with and administration of its own applicable policies, including record keeping, timeframes, and other procedural requirements.
5. Conducting compliance assessments of the effectiveness of Title IX programs, the campus safety and security environment, and compliance with Federal and State law. Assessments may include site visits, record reviews, surveys, reviews of the applicable law(s) and interviews with students and personnel.
6. Conducting and/or providing training regarding Title IX and Prohibited Conduct as defined in this policy.
7. Coordinating the University's response to sexual harassment reports and complaint grievance procedures.
8. The Title IX Coordinator may not serve as an Investigator or decision-maker as defined in this policy and may not make any appeal decisions.
9. Any responsibility outlined in this policy.
10. Any other duties that may be assigned by the President or designee.

B. The President may appoint more than one Title IX Coordinator.

C. All, applicants for admission and employment, students, off-campus program participants, dual credit students, parents or legal guardians of elementary and secondary school students

participating in a University education program or activity, and employees, will be provided with the Notice of Nondiscrimination set forth in University Review Board of Governors Policy 6A, Social Justice. The University will provide all these individuals with information on how to report Title IX Sexual Harassment, file a formal Title IX Sexual Harassment complaint, how the University will respond to a formal complaint by providing all with information where to find this policy and/or any other procedures implemented in accordance with this policy on the University's website where to find the University's Title IX Sexual Harassment complaint policies and resolution procedures, including how to report or, file a complaint of Title IX Sexual Harassment, and how the University will respond by providing the above named individuals this policy or by providing where to find hard copies of this policy.

D. The University will prominently display the name or title, office address, electronic mail address, and telephone number of the Title IX Coordinator(s), as well as the above-referenced notice of nondiscrimination, on its website, and in each applicable handbook, application materials (either on the application or as a separate document) and/or catalog that it makes available to the persons listed above.

E. Waiver of the right to an investigation and adjudication of formal complaints of Title IX Sexual Harassment consistent with this policy will not be required as a condition of enrollment or continuing enrollment; or employment or continuing employment; or enjoyment of any other right.

F. During the Title IX complaint grievance process, the University will treat Complainants and Respondents equitably by providing remedies to a Complainant where a determination of responsibility for Title IX Sexual Harassment has been made against the Respondent, and by following a grievance process that complies with this policy before the imposition of any disciplinary sanctions or other actions that are not supportive measures as defined above, against a Respondent. Remedies will be designed to restore or preserve equal access to the University's education program or activity. Such remedies may include the same individualized services described in section III as "supportive measures"; however, remedies need not be non-disciplinary or non-punitive and need not avoid burdening the Respondent.

G. Individuals accused of Title IX Sexual Harassment are presumed not responsible for any alleged Prohibited Conduct until a determination regarding responsibility is made at the conclusion of the formal grievance process implemented in accordance with this policy.

H. The burden of gathering evidence sufficient to reach a determination regarding responsibility and the burden of proof rests on the University and not on the Complainant or Respondent.

I. The University may use this procedure to investigate violations of other University policies, rules, regulations or procedures including but not limited to those that are discovered during the investigation of and/or are related to the formal Title IX Sexual Harassment complaint.

J. The administrative investigation of reports and complaints in accordance with this policy 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 in accordance with this policy and the results of a law enforcement investigation or adjudication are not determinative of whether an individual is responsible for violating this policy. The grievance procedures set forth in this policy may be carried out prior to, simultaneously with, or following civil or criminal proceedings off campus. The University 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. The University will promptly resume its administrative investigation as soon as notified by the law enforcement agency that it has completed its evidence gathering process. The University will implement appropriate interim steps during the law enforcement agency's investigation period consistent with the Final Rule and any other State or Federal regulations to provide for the safety of the victim(s) and the campus community and the avoidance of retaliation.

### III. Definitions

A. **Actual Knowledge** means notice of sexual harassment or other Prohibited Conduct or allegations of sexual harassment or other Prohibited Conduct to the University's Title IX Coordinator or any official of the University who has authority to institute corrective measures on behalf of the University. Imputation of knowledge based solely on vicarious liability or constructive notice is insufficient to constitute actual knowledge. This standard is not met when the only official of the University with actual knowledge is the accused individual and/or Respondent. The mere ability or obligation to report sexual harassment or to inform an individual about how to report sexual harassment, or having been trained to do so, does not qualify an individual as one who has authority to institute corrective measures on behalf of the University.

B. **Advisor** means any person intended to assist the Complainant or Respondent during the disciplinary process, including but not limited to, a University appointed advisor, faculty member, legal counsel (lawyer) or other person.

C. **Clear and Convincing Evidence** is the standard of proof used to make responsibility determinations under this policy. Clear and convincing evidence means that the evidence is highly and substantially more likely to be true than untrue; the fact finder must be convinced that the contention is highly probable.

D. **Complainant** means an individual who files a formal complaint. For the purposes of Title IX Sexual Harassment, the Complainant must be the individual alleged to be the victim of Prohibited Conduct. A Complainant may be a student, employee or third-party and must be

participating in, or attempting to participate in, a University employment education program or activity at the time of filing a formal complaint.

E. **Consent** means the affirmative, unambiguous, and voluntary agreement to engage in each specific initiated sexual activity that may compose a sexual encounter. Consent is demonstrated through mutually understandable words and/or actions that clearly indicate a willingness to engage freely in sexual activity. A clear verbal “yes” or other outward demonstration of free choice is necessary. Consent cannot be inferred from silence, passivity, lack of resistance, or a lack of active response. Consent must be ongoing throughout a sexual encounter and can be revoked at any time. Consent must be voluntarily given contemporaneous to the initiation of the sexual activity. Consent may not be valid if a person is being subjected to actions or behaviors that elicit emotional or psychological pressure, intimidation, or fear. It cannot be obtained by threat, coercion, or force.

F. **Cross-Examination** means the opportunity to question the opposing Party or any witness who has answered questions posed by the opposing Party or the Review Board. The opportunity to cross-examine usually occurs as soon as the other Party completes his or her initial testimony, called direct testimony. Cross-examiners attempt to get the witness to say something helpful to their side, or to cast doubt on the witness's testimony by eliciting something that reduces the witness's credibility -- for example, that the witness's eyesight is so poor that the witness may not have seen an event clearly.

G. **Deliberate Indifference/Deliberately Indifferent** means the University's response to Title IX Sexual Harassment is clearly unreasonable in light of the known circumstances.

H. **Directly Related Evidence** shall be interpreted using the plain and ordinary meaning of the terms. Directly Related evidence is not the same as Relevant Evidence.

I. **Education Program or Activity** includes locations, events, or circumstances over which the University exercises substantial control over both the accused and the alleged victim of the Prohibited Conduct and the context in which the sexual harassment occurs including, but not limited to: employment, employment benefits, academic and athletic programs. Education program or activity also includes any building owned or controlled by a student organization that is officially recognized by the University.

J. **Formal Complaint** means a document filed by a Complainant or signed by the Title IX Coordinator alleging Title IX Sexual Harassment against a Respondent and requesting that the University investigate the allegation of Title IX Sexual Harassment. At the time of filing a formal complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the recipient with which the formal complaint is filed.

K. **Incapacitation** means the physical and/or mental inability to make informed, rational judgments. States of incapacitation include, without limitation, sleep, blackouts, and flashbacks. Where drugs or alcohol are 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.<sup>1</sup> 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.

L. **Investigator** means one or more individuals designated by the University from the Investigator and Review Board Pool to investigate formal complaints. An Investigator cannot be the same person as the Title IX Coordinator and may not serve on the Review Board or make any appeal decisions for a complaint investigated by the Investigator. References in this policy to the “Investigator” include the plural.

M. **Investigator and Review Board Pool (Pool)** means a standing Pool of University community or external individuals who are trained on the definition of sexual harassment, the scope of the University’s education program or activity, these procedures, and how to be impartial, including how to avoid prejudgment of the facts at issue, conflicts of interest, and bias. The President or designee has the discretion to expand the Investigator and Review Board Pool to include individuals not listed depending upon the circumstances of each case.

N. **No Contact Directive** typically means a mutual administrative directive designed to prevent any direct contact between individuals. A no contact directive prohibits contact, including, but not limited to in-person, through electronic means, or through a third Party (other than through an advisor), but it does not prevent individuals from being in the same place or seeing one another on- or off-campus. The University may, however, restrict a Complainant’s and Respondent’s activities as a separate interim measure and/or a remedy if appropriate and reasonable. A no contact directive will not be used to impose prior restraints on an individual’s ability to discuss any allegations under investigation, for example with a parent, friend, or other source of emotional support, or with an advocacy organization. A one-way No Contact Directive may be appropriate in limited circumstances. A fact-specific inquiry is required into whether a carefully crafted no-contact order restricting the actions of only one party would meet the definition of a supportive measure.

O. **Parent** means natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian.

P. **Party or Parties** are terms used to refer to the Complainant and Respondent individually or collectively.

Q. **Prohibited Conduct** Sexual Harassment; Sexual Exploitation; and Hazing on the basis of sex occurring within a University Education Program of Activity occurring in and outside the United States are Prohibited Conduct addressed using this Sexual Harassment Grievance Procedure

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<sup>1</sup> J Sokolow, Brett A., Lewis, W. Scott, Schuster, Sandra K., *NCHERM II/Smille on Responding 10 Campus Sexual Misconduct*. 2010, p. 49.



(SHGP). Conduct occurring outside the University's control where the complainant has to interact with the respondent in the University's education program or activity, or where the effects of the underlying Prohibited Conduct create a hostile environment in the complainant's workplace or educational environment is also Prohibited Conduct addressed using the SHGP. Retaliation is also prohibited. (See section XX for retaliation procedures).

R. **Respondent** means an individual or recognized student organization or team accused of Prohibited Conduct in an initial report or formal complaint. The University will keep confidential the identity of any individual who has been reported to be the alleged perpetrator of Prohibited Conduct except as may be permitted by the Federal Educational Rights and Privacy Act, the Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, or otherwise as required by law, or to carry out the purposes of 34 CFR part 106, including the requirement to conduct an investigation, hold a live-hearing, or any other judicial proceeding arising under 34 CFR part 106 or other University policy.

S. **Reporting Party** means any individual who reports Prohibited Conduct. A Reporting Party may also be a Complainant.

T. **Relevant Evidence** means evidence that has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. Relevance is determined from a layperson's perspective and relevance determinations are made based on applying logic and common sense. Sexual predisposition or prior sexual behavior is not Relevant Evidence, unless such evidence about the Complainant's prior sexual behavior is offered to prove that someone other than the Respondent committed the alleged Prohibited Conduct 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. Information protected by a legally recognized privilege: any Party's medical, psychological, and similar records unless the Party has given voluntary, written consent; and, as applicable to hearings, Party or witness statements that have not been subjected to cross examination at a live hearing.

U. **Review Board** means three individuals appointed by the President or designee from the Investigator and Review Board Pool who conduct live hearings and make responsibility determinations in allegations of Prohibited Conduct pursuant to these procedures. Chair means the Chair of the Review Board. A Review Board member cannot be the same person as the Title IX Coordinator or the Investigator who investigated the complaint. A Review Board member may not make any decisions on any appeal from a responsibility determination.

V. **Sexual Exploitation** means an act or acts committed through non-consensual abuse or exploitation of another person's sexuality for the purpose of sexual gratification, financial gain, personal benefit or advantage, or any other non-legitimate purpose. Sexual exploitation may constitute Title IX or Title VII Sexual Harassment depending upon the severity and/or pervasiveness. Examples of sexual exploitation include but are not limited to:

1. Video or audio-recording without the individual's Consent of:
  - i. Sexual activity
  - ii. Intimate body parts
  - iii. Nakedness
2. Distributing images or audio with the content above if the person distributing them does not have that person's explicit Consent.
3. "Revenge posting" in which a person threatens to post -- or actually does post -- images, audio, or video of their partner participating in sexual activity.
4. Viewing or allowing another to observe consensual sexual activity of others without the knowledge and Consent of all involved.
5. Exposing someone's genitals without their Consent.
6. Knowingly transmitting a sexually transmitted disease, including HIV, to a student or other individual.
7. Prostituting an individual (e.g. personally gaining money, privilege, or power from the sexual activities of another individual).

W. **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 University's education program or activity without unreasonably burdening the other Party, including measures designed to protect the safety of all Parties or the University's educational environment, or deter sexual harassment. Whether a supportive measure is unreasonably burdensome will be determined on an individual basis. Supportive measures may include counseling, extensions of deadlines or other course-related adjustments, modifications of work or class schedules, removal from a sports team or other extracurricular activity, change in class schedule, 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, changes in course delivery methods, and other similar measures. Supportive measures may include a mutual no contact directive. The University 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 University to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures.

X. **Sexual Harassment** is a form of sex discrimination and is harassment on the basis of sex. Sexual harassment is unwelcome verbal or physical conduct. The University prohibits sexual harassment.

1. **Title VII Sexual Harassment** is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1965 and becomes unlawful where:

i. enduring unwelcome offensive conduct becomes a condition of continued employment (*Quid Pro Quo*) or when it results in an adverse employment decision (such as the victim being fired or demoted).

ii. the unwelcome conduct is severe **or** pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Whether harassment is severe or pervasive enough to be illegal is made on a case-by-case basis. Title VII Sexual Harassment includes all Title IX Sexual Harassment and Sexual Exploitation as defined by this policy. Title VII Sexual Harassment includes unwelcome sexual advances, requests for sexual favors, conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment. Title VII Sexual Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct. Unlawful harassment may occur without economic injury to, or discharge of, the victim. The law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the University, such as a student. Title IX Sexual Harassment in the employment context constitutes Title VII Sexual Harassment.

2. **Title IX Sexual Harassment** is a form of sex discrimination that violates Title IX and Title VII. Title IX Sexual Harassment is conduct within an education program or activity on the basis of sex, which satisfies one or more of the following:

i. Conditioning the provision of an aid, benefit, or service of the University on an individual's participation in unwelcome sexual conduct (*Quid Pro Quo*).

ii. 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 University's education program or activity regardless of the intent to cause harm. Severity, pervasiveness, and objective offensiveness is evaluated in light of the known circumstances and depend on the facts of each situation, and is determined from the perspective of a reasonable person standing in the

shoes of the Complainant. Unwelcome conduct so severe, pervasive, and objectively offensive that it denies a person equal educational opportunity is actionable sexual harassment regardless of the Respondent's intent to cause harm. Sexual exploitation may be Title IX

iii. "Sexual assault", as defined by 20 U.S.C. 1092(f)(6)(A). Sexual assault is any offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation and include all of the following:

- *Sex Offenses-Forcible Sex Offense*. Any sexual act directed against another person, forcibly and/or against that persons will; or not forcibly or against the persons will where the victim is incapable of giving Consent. Forcible sex offenses include the following:
  - *Forcible Rape* - The carnal knowledge of a person, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving Consent because of his/her temporary or permanent mental or physical incapacity (or because of his/her youth).
  - *Forcible Sodomy* - Oral or anal sexual intercourse with another person, forcibly and/or against that persons will; or not forcibly against that persons 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 incapacity.
  - *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 persons will; or not forcibly against the persons 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 in capacity.
  - *Forcible Fondling* - The touching of the private body parts of another person for the purpose of sexual gratification, forcibly and/or against that persons will; or not forcibly or against that persons will where the victim is incapable of giving Consent because of his/her youth or because of his/her temporary mental incapacity.
- *Sex Offenses-Non forcible Unlawful, non-forcible sexual intercourse*.
  - *Incest* - Non-forcible sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
  - *Statutory Rape* - Non-forcible sexual intercourse with a person who is under the statutory age of Consent. **In the State of West Virginia, sixteen is the age of Consent.**

iv. "Dating violence" as defined in 34 U.S.C. 12291(a)(10). Dating violence is violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such

a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship.
- The type of relationship.
- The frequency of interaction between the persons involved in the relationship.

v. “Domestic violence” as defined in 34 U.S.C. 12291(a)(8). Domestic violence is any conduct that would constitute a 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 State of West Virginia, 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 State of West Virginia.

vi. “Stalking” as defined in 34 U.S.C. 12291(a)(30). Stalking is engaging in a course of conduct directed at a specific person that would cause a reasonable person to-

- fear for an individual’s safety or the safety of others; or
- suffer substantial emotional distress.

3. Hazing and stalking as defined in Glenville State University Board of Governors Policy 6 on the basis of sex may also constitute sexual harassment.

#### **IV. Jurisdiction and Dismissal of Formal Complaints**

**A. Title IX Jurisdiction.** Title IX applies to persons in the United States with respect to the University’s education programs or activities. Jurisdiction extends to electronic discrimination and harassment if it occurs within a University education program or activity. Electronic discrimination or harassment includes but is not limited to conduct occurring through e-mails, instant messaging, and web pages, through any online class platform used by the University, blogs or chat rooms. Incidents occurring against persons outside the United States and/or outside a University education program or activity may be considered misconduct under and addressed through other University rules, regulations and/or procedures. Off-campus conduct occurring at private residences, businesses, events, or other locations outside of the University’s substantial control do not fall under the University’s jurisdiction for Title IX complaints.

**1. Mandatory Title IX Dismissal.** The University is required to dismiss a formal Title IX Sexual Harassment complaint with regard to conduct alleged in the complaint for the purposes of Title IX Sexual Harassment and this policy if the conduct:

- i. Alleged in the formal complaint would not constitute Title IX Sexual Harassment even if proven;
- ii. Did not occur in the University's education program or activity; or
- iii. Did not occur against a person in the United States; or
- iv. The Complainant was not participating in or attempting to participate in an education program or activity of the University.

**2. Discretionary Dismissal.** The University may dismiss a formal Prohibited Conduct complaint at any time during the investigation or hearing if:

- i. A Complainant notifies the Title IX Coordinator in writing that the Complainant would like to withdraw the formal complaint or any allegations therein.
- ii. The Respondent is no longer enrolled or employed by the University.
- iii. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the formal complaint or allegations therein. If a complaint is dismissed based upon this reason and a Respondent seeks reemployment or readmission, the complaint will be reinstated and the investigation will resume in accordance with this SHGP at point in the process at time of the withdrawal or employment termination.

**B. Title VII Jurisdiction.** Title VII applies to virtually all employment situations and applies to United States Citizens working abroad. The University is required to address Title VII Sexual Harassment if the University knew or should have known about the harassment; no formal complaint is required.

C. This policy may be applied to conduct occurring outside the context of a University education program or activity if at the University's discretion, the conduct affects a substantial school/university interest.

D. Dismissal for the purposes for the purposes of Title IX does not preclude investigation or adjudication under other University rules and policies including but not limited to investigation for the purposes of Title VII Sexual Harassment and/or under any other policy, procedure or rule including but not limited to Policy 6 and/or any procedures established in accordance with section 18 of that policy.

E. Dismissals under this section may be appealed in accordance with section XVI.

## **V. Special Considerations for Medical Records**

A. The University will not access, consider, disclose, or otherwise use a Party's records 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 University obtains that Party's voluntary, written Consent to do so for a grievance process under this section. If a Party has not reached 18 years of age or is not attending the University must obtain the voluntary, written Consent of a parent.

## **VI. Role and Appointment of Advisors**

A. Both Parties have the right to have an advisor of their choice, including legal counsel at the expense of the Party, present during any step of this grievance procedure including but not limited to the opportunity to be accompanied by an advisor to any related meeting, interview or informal resolution proceeding. If the either Complainant or Respondent are consulting with more than one advisor, each must designate one person as the advisor for purposes of these proceedings. The Parties should select an advisor whose schedule allows attendance at scheduled meetings and hearings.

B. The University will not limit the choice or presence of an advisor for either the Complainant; however, the University may establish restrictions regarding the extent to which the advisors may participate in the proceedings. Any restrictions imposed will apply equally to the advisors of both Parties.

C. The Parties are required to provide the Title IX Coordinator with the name and contact information of any advisor and are encouraged to provide the information at least two business days prior to the advisor participating in any meeting, interview, hearing or informal resolution procedure.

D. Both Parties have the right to have an advisor of their choice, including legal counsel at the expense of the Party, to be present at any live hearing. If a Party does not have an advisor present at the live hearing required by this policy, the University will provide, without fee or charge to that Party, an advisor of the University's choice only for the purpose of conducting Cross-Examination. The University is not obligated to provide either Party with an advisor to represent and/or advise either Party during the entire live hearing. The University provided advisor may, but is not required to be, an attorney even if the opposing Party is represented by an attorney. Advisors not appointed by the University may serve in an advisory capacity or may represent either Party during the live hearing.

E. Advisors are not permitted to respond to questions during interviews or live hearings on behalf of any witness or Party. Each Party and witness is expected to personally respond to questions posed by an Investigator or by any individual authorized to ask questions during a live hearing.

F. Advisors are expected to act in a respectful and non-abusive manner during all steps of the grievance process, including but not limited to during informal resolution proceedings, are expected follow the rules set forth in this policy for each step of the grievance process as well as are required to follow any rules of decorum established by Investigators and/or the Chair of the Review Board during the live hearing. Investigators may remove advisors from any prehearing investigation interview/meeting/informal resolution proceeding and/or may end the at the Investigator's discretion for disruptive behavior, for failure to follow the rules set forth in this policy and/or any other rules established in accordance with this policy. If an Investigator is removed from an interview/meeting/informal resolution proceeding, the Party will be given the option to end the interview/meeting or to proceed without the advisor. Advisors may be removed from a live hearing by the Chair of the Review Board at the Chair's discretion for disruptive behavior and/or for violating any hearing rules established by or in accordance with this policy.

## **VII. Initial Reports, Mandatory Reporters, Confidential Reporting Clery Act, Anonymous Reports and Requests for Confidentiality**

**A. Initial Reports.** Any person may report Prohibited Conduct (whether or not the person reporting is the person alleged to be the victim of the Prohibited Conduct), in person, by mail, by telephone, facsimile 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 or facsimile to the office address, listed for the Title IX Coordinator or by using any online portal created by the University. Any written report submitted by an individual who is the person alleged to have been victimized by the Prohibited Conduct requesting that the University investigate the allegation will be treated as a formal complaint.

**B. Mandatory Reporters.** Any University employee who witnesses Title IX Sexual Harassment or who receives a verbal or written report of Title IX Sexual Harassment is required to notify the Title IX Coordinator unless covered by section VII(C). Failure to report will result in disciplinary action up to and including termination of employment. Employees may also be required to report the incident in accordance with the University's Clery Act reporting policy and/or in accordance with State and University mandatory child sexual abuse reporting laws and policies.

**C. Confidential Reporting Resources.** Students or employees who have experienced sexual harassment or seeking complete confidential assistance without sharing information with or making a report to the University may do so by speaking with a confidential reporting resource. Professional, licensed counselors and pastoral counselors who provide mental health counseling to members of the University community (including those who act in that role under the supervision of a licensed counselor) are not required to report sexual harassment to the University, not even to the Title IX Coordinator, without the individual's permission, unless otherwise required or permitted to do so by law. Personal counseling services are available through the University Counseling Center and online at:



Timothy Underwood  
Main Campus  
University Counseling Center  
Jesse R. Lilly PE Health Building, 2nd Floor -Rm 206  
200 High St., Box 1931  
Glennville, West Virginia 26351  
(304) 462-6432  
[timothy.underwood@glenville.edu](mailto:timothy.underwood@glenville.edu)  
<http://www.ulifeline.org/glenville/>

Individuals may seek off-campus mental health services by contacting:

WVU Medicine United Summit Center  
809 Mineral Rd.  
Glennville, WV 26351  
Telephone: (304) 623-5666 Extension 5850  
Fax: (304) 462-5736

Individuals may seek advocacy, support and other services by contacting:

Hope, Inc.  
P.O. Box 626  
Fairmont, WV, 26555  
*Local Telephone:* (304) 462-5352  
*24 Hour Hotline:* (304) 367-1100  
*Fax:* (304) 367-0362

#### **D. Report to Law Enforcement**

1. Prohibited Conduct may also constitute violations of criminal law. An individual may choose to make a report to the University of file a formal complaint to pursue resolution under this policy and procedure and may also choose to make a report to law enforcement. Any individual may, but is not required, to report an incident alleging criminal conduct. Any individual who wishes to pursue criminal action in addition to, or instead of, making a report under these Procedures should call 9-1-1 in an emergency or contact law enforcement directly:

Glenville State University Department of Public Safety  
PE Health Bldg., Main Floor (beside pool entrance)  
Room 153A  
Glenville, WV 26351  
Telephone: (304) 462-4132  
On Campus Ext.: 6450

West Virginia State Police  
Troop 3  
4640 WV Highway 5E  
Glenville, WV 26351-7624  
Telephone: (304)-462-7101  
Facsimile: (304)-462-8684

City of Glenville Police Department  
Court Street  
Glenville, WV 26351  
Telephone: (304) 462-7411

Gilmer County Sheriff's Office  
10 Howard St - # 102  
Glenville, WV 26351  
Telephone: (304) 462-7441

2. When a criminal complaint alleging an act of sexual assault is reported to campus law enforcement, campus law enforcement will contact the Campus Counseling Center's licensed professional counselor and will provide the complainant with information about: (a) the criminal complaint process; (b) the University's Title IX Sexual Harassment brochure; (c) GSC Policies 6 and 6A; and (d) the University's What to Do if You Are Sexually Assaulted brochure. When contacted by campus law enforcement, the Campus Counseling Center's licensed professional counselor immediately will meet with the person filing the complaint and will provide the individual with information about the University's support services. Campus law enforcement will promptly report any incidents of alleged sexual assault to the Title IX Coordinator.

#### **E. Clery Act Reporting**

1. The Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, 20 USC § 1092(f), (commonly known as the Clery Act; formerly the Campus Security Act) is a federal law that requires the University to disclose campus security information including crime statistics for the campus and surrounding areas. It was first enacted by Congress in 1990 and most recently amended in 2013 by the Violence Against Women Reauthorization Act. Pursuant to the Clery Act, any campus security or law enforcement personnel or any Glenville State University employee who has significant responsibility for student and campus activities (including but not limited to faculty advisers to student groups, coaches and any employee responsible for student activities) who has witnessed or been informed of an alleged incident that constitutes a crime for the purpose of the Clery Act including but not limited to a forcible or non-forcible sex offense as defined by the Clery Act, whether a criminal or formal complaint has been filed, must follow the procedures set forth in Glenville State University Review Board of Governors Policy 50 for making a report for the annual Clery Act crime statistics report. Employees may be obligated to report to law enforcement the fact that an alleged Clery Act Crime has been reported, but the name or other personally identifiable information about the person making the report and/or alleged victim will be provided only with their Consent except as may be required or otherwise permitted by law.

2. The Clery Act requires the University to timely notify/warn students and employees when a Clery Act crime, occurring within Clery geography, poses a serious or on-going threat to the campus community. The issuing of a timely warning notice is decided on a case-by-case basis in light of all of the facts surrounding a crime, including factors such as the nature of the crime, the continuing danger to the campus community and the possible risk of compromising law enforcement efforts. Generally, the warning will specify the type of reported crime, the time and location at which the reported crime occurred, and specific advice to the campus community regarding steps to take to avoid becoming a victim. Reports of violations of this policy may constitute Clery Act crimes requiring a timely warning. The University's Clery Act policy is set forth in Glenville State University Board of Governors Policy 51

3. Upon receipt of a criminal complaint alleging criminal conduct alleging sexual assault,

#### **F. Child Abuse Reporting**

1. *West Virginia Code § 49-2-803* requires certain individuals to report child abuse and neglect. Pursuant to this code section, any individual named as a mandatory child abuse and neglect reporter, "who has reasonable cause to suspect that a child is neglected or abused, including sexual abuse or sexual assault, or observes the child being subjected to conditions that are likely to result in abuse or neglect shall immediately, and not more than 24 hours after suspecting this abuse or neglect, report the circumstances to the Department of Health and Human Resources. In any case where the reporter believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the reporter shall also immediately report to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person required to report [under the code section] who is a member of the staff or volunteer of a public or private institution, school, entity that provides organized activities for children, facility, or agency shall also immediately notify the person in charge of the institution, school, entity that provides organized activities for children, facility, or agency, or a designated agent thereof, who may supplement the report or cause an additional report to be made: *Provided*, That notifying a person in charge, supervisor, or superior does not exempt a person from his or her mandate to report suspected abuse or neglect [to the Department of Health and Human Resources and/or law enforcement]."

2. Mandatory reporters of child abuse and neglect include but are not limited to any law enforcement officer; employee, coach or volunteer of the University that provides organized activities; and clergy. Reports to the Department of Health and Human Resources may be made by calling: 1-800-352-6513. Reports to law enforcement may be made to any agency listed in section VII(D):

3. *West Virginia Code* § 49-2-810 states the following in its entirety: “Any person, official, or institution participating in good faith in any act permitted or required by [Article 2 of Chapter 49] is immune from any civil or criminal liability that otherwise might result by reason of those actions, including individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation or legal intervention pursuant to a good faith report of child abuse or neglect.”

**G. Anonymous Reporting.** Any individual may make an anonymous report of conduct prohibited of this policy to the Title IX Coordinator, University Police, or the United States Department of Education Office for Civil Rights without disclosing their name, without identifying the Respondent, and/or without requesting any action. Because the accused individual is entitled to certain due process including but not limited to the right to confront the individual’s accuser, the University’s ability to address alleged misconduct reported by anonymous sources is significantly limited. The University’s ability to respond to an anonymous report also may be limited depending on the level of information available regarding the incident or individuals involved. *Any employee who receives an anonymous report, must forward it to Title IX Coordinator for review in accordance with the procedures set forth in this policy within one business day of receipt of the report. Employees may also be responsible for making a report under section IV(E).*

**H. Requests for Confidentiality.** The University 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 Prohibited Conduct 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 ensure that the institution meets its obligations under Title IX and other state and federal laws. The institution may be limited in its response and investigation if confidentiality is requested.

## **VIII. Initial Response to Reports**

A. Within two business days of receipt of an initial report, the Title IX Coordinator will contact the person alleged to have been victimized by the Prohibited Conduct to discuss the availability of supportive measures, consider the person’s wishes with respect to supportive measures, advise the individual about the procedures for filing a formal complaint, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint and explain the complaint resolution process. The contact may occur in any number

of ways including but not limited to in person, virtually, email, letter or telephone. The Title IX Coordinator's determination of appropriate supportive measures in a given situation are determined on an individual basis depending upon the facts and circumstances of each situation.

B. If the University does not provide supportive measures to either the individual reported to be the victim of Prohibited Conduct or the accused individual if requested, the Complainant or Respondent, the University will document the reasons why such a response was not clearly unreasonable in light of the known circumstances.

C. If the individual reported to be the victim of Prohibited Conduct does not file and/or withdraws a formal complaint, the Title IX Coordinator at the Title IX Coordinator's discretion may file a formal complaint in accordance with section IX(B).

### **IX. Filing and Withdrawing a Formal Complaint**

A. Formal complaints alleging Prohibited Conduct are filed with the Title IX Coordinator in person, by mail, or by electronic mail, by using the contact information listed for the Title IX Coordinator under section II, and by any additional method designated by the University. At the time of filing a formal Title IX complaint, a Complainant must be participating in or attempting to participate in the education program or activity of the University. Any writing, electronic submission (such as by electronic mail, facsimile or through an online portal provided for this purpose by the University) that contains the Complainant's physical or digital signature, or otherwise indicates that the Complainant is the person filing the formal complaint will be considered a formal complaint.

For Title IX purposes, the Complainant cannot remain anonymous or prevent the Complainant's identity from being disclosed to the Respondent. Complainants are encouraged, but are not required to use any formal complaint form that the University may develop.

B. The University is prohibited from investigating Title IX Sexual Harassment without a formal complaint. If the victim of the alleged Prohibited Conduct is an employee and no formal complaint is filed, the report will be referred to the Human Resources Director for the purposes of determining whether the accused individual(s) is responsible for Title VII Sexual Harassment and/or for violating any other University rules, regulations or policies.

C. Title IX Coordinator Filed Formal Complaints.

1. If the individual reported to be the victim of Prohibited Conduct does not file and/or withdraws a formal complaint, the Title IX Coordinator at the Title IX Coordinator's discretion may file a formal complaint.

2. When making a decision to initiate a formal complaint, the Title IX Coordinator may consider a variety of factors, including, but not limited to a non-deliberately indifferent response to the allegations requires an investigation (for Title IX Sexual Harassment); a pattern of alleged misconduct by a particular Respondent; whether violence or use of a

weapon is alleged, and the wishes of the person alleged to have been victimized by the Prohibited Conduct regarding how the University should respond. If an alleged victim of Prohibited Conduct does not want to proceed with an investigation, the Title IX Coordinator will also evaluate whether the University can honor the request while still providing a safe and non-discriminatory environment for all students.

3. If the Title IX Coordinator signs a formal complaint, the Title IX Coordinator is not a Complainant or otherwise a Party under this policy.

4. Where a grievance process is initiated because the Title IX Coordinator, and not the complainant, signed the formal complaint, the complainant who did not wish to initiate a grievance process remains under no obligation to then participate in the grievance process. The Complainant remains eligible to receive supportive measures protecting the Complainant's equal access to education.

D. The University may consolidate formal complaints as to allegations of Title IX 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 Title IX Sexual Harassment arise out of the same facts or circumstances and are so intertwined that the allegations directly relate to all of the parties. Where a grievance process involves more than one Complainant or more than one Respondent, references in this policy to the singular "Party," "Complainant," or "Respondent" include the plural, as applicable.

E. Within three business days of receipt of the formal complaint and/or filing a complaint if the Title IX Coordinator will assign the formal complaint to an Investigator. The Title IX Coordinator will notify the Complainant and the Respondent simultaneously. Either party may challenge the investigator for bias or conflict of interest by submitting written reasons for the challenge to the Title IX Coordinator. The Title IX Coordinator must receive the written challenge on or before three business days of receiving notice of the assignment of the investigator. The Title IX Coordinator will simultaneously notify the Parties of the decision.

**F. Withdrawing a Formal Complaint.** A Complainant may submit a written request to withdraw a formal complaint at any time to the Title IX Coordinator. The Title IX Coordinator will evaluate the request for discretionary withdrawal under section IV(C). The Title IX Coordinator will notify the Complainant and the Respondent and their advisors, if any, and, if applicable, the Investigator or Review Board members, of the dismissal decision simultaneously in writing four business days from receipt of the withdrawal request. The decision will include the reason(s) for the dismissal and the procedure for appealing the dismissal. If applicable, the Title IX Coordinator will also notify any witnesses who were expected to appear at a scheduled hearing that the hearing has been cancelled but will not include any reasons for the cancellation.

## **X. Emergency Removal and Administrative Leave**

A. A Respondent or any other individual may be removed from the University's education program or activity on an emergency basis, provided that the University undertakes an

individualized safety and risk analysis, and determines that an immediate threat to the physical health or safety of any student or other individual arising from the allegations of sexual harassment justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal. If a student-employee Respondent is removed under this section, the University may also remove the student-employee Respondent from any employment opportunity that is part of the University's education program or activity.

B. Emergency removal may include a no-trespass or other one-way no-contact order.

C. Nothing in this policy precludes the University from placing a non-student employee Respondent on administrative leave, with or without pay, pending the outcome of the grievance procedures.

#### **XI. Prehearing Investigation of Formal Complaints, Review of Evidence, Investigative Report**

A. The Investigator is responsible for conducting the prehearing investigation. The purpose of the prehearing investigation is to gather Directly Related Evidence, to determine the name(s) of Respondent(s) if not known at the time of the filing of the complaint and to determine jurisdiction. The Investigator will conduct a prehearing investigation of a formal complaint even if the Complainant does not know the identity of the Respondent(s) and/or if upon initial review the University does not have jurisdiction to address the complaint under section IV because a pre-hearing investigation might reveal either the Respondent's identity and/or other facts that show that the University has jurisdiction to address the complaint.

B. As part of the prehearing investigation, the Investigator may conduct in-person, telephone or virtual interviews of the Parties and/or witnesses; obtain law enforcement records and/or medical records subject to section V; request the Parties to submit evidence at any time, visit the site(s) of the alleged misconduct; and/or take any other action that could lead to evidence Directly Related to the complaint. The Investigator may not seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.

C. Within five business days of receipt of the formal complaint from the Title IX Coordinator, or from the date the Title IX Coordinator or Investigator discovers the identity of the Respondent if unknown at the time the complaint was filed, the Investigator, will provide a written notice to the Complainant and known Respondent(s) that includes the following:

1. Notice of the University's Title IX formal and informal complaint resolution processes (a copy of this policy and/or any other procedures will satisfy this provision) including notice that the Respondent may submit a response to the allegations to Title IX Coordinator within six business days of receipt of the notice of complaint and allegations.

2. Notice of the allegations/charges potentially constituting Prohibited Conduct, as defined herein, including sufficient details about the alleged Prohibited Conduct known at the time. Sufficient details include but are not limited to, the identities of the Parties involved in the incident and/or any witnesses, if known, date of the alleged conduct and the specific alleged conduct. A copy of the complaint will also be included along with the notice.
3. A statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility will be made at the conclusion of the grievance process and the standard of proof that will be used to determine responsibility.
4. A statement that the Parties may have an advisor of their choice, who may be, but is not required to be, an attorney (at the expense of the Party), present during any portion of the formal process or informal process and that an advisor will be assigned to any Party who does not have one during the live hearing stage only.
5. Notice that the Respondent may submit a response to the allegations to Title IX Coordinator within six business days of receipt of the notice of complaint and allegations
6. A statement that both Parties may present Directly Related Evidence to the Investigator including fact and expert witnesses, and/or any other inculpatory and/or exculpatory evidence and that evidence may include, but is not limited to, witness lists, documents, medical records, photographs and/or recordings. The request will include the date the Investigator must receive the evidence.
7. A statement that each Party and/or their respective advisor will be provided 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 University 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.
8. Notice that if, in the course of an investigation, the University decides to investigate allegations about the Complainant or Respondent that are not included in the initial notice the University will provide notice of the additional allegations to the Parties whose identities are known.
9. Notice that during the prehearing investigation the Parties do not have the right to depose opposing Parties or witnesses, or to compel Parties or witnesses to appear at meetings or any subsequent live hearing.



10. Notice that the ability of either Party to discuss the allegations under investigation or to gather and present Relevant Evidence will not be restricted but that as a supportive measure the Parties may be subject to a mutual directive not to have any direct contact with each other, in person, electronically or through third Parties other than the other Party's advisor.

11. A statement about the availability of supportive measures and how to request them.

12. A statement about whether the informal resolution process as set forth in section XVI of this policy is available for resolving the complaint and if so, the procedure for requesting informal resolution.

13. Notice that attempting to alter statement of a witness or prevent a witness from participating in the investigation or adjudication of a formal complaint or the informal complaint process is prohibited and if proven will result in separate disciplinary action and the procedure for filing a complaint.

14. Notice that retaliation is prohibited and the procedure for filing a retaliation complaint.

15. Notice that providing false statements during any part of the process is a violation of this policy, that any individual found responsible for providing false statements may be subject to separate disciplinary actions up to and including employment termination or expulsion and that a determination regarding responsibility, alone, is not sufficient to conclude that any individual made a materially false statement in bad faith.

16. Advisor consent and/or consent to record forms if no already provided.

17. Any other information at the discretion of the Investigator.

D. Within twenty calendar days of receipt of the formal complaint and after conducting a thorough and impartial investigation, the Investigator will send the Complainant and the Respondent and their advisors, if any, in electronic format or a hard copy, any evidence that is Directly Related to the allegations raised in the formal complaint, including, but not limited to any inculpatory or exculpatory evidence, whether obtained from a Party or other source. The Complainant and the Respondent each may submit a written response to the Directly Related evidence. Any written response must be received by the Investigator on or before eleven calendar days after each Parties' receipt of the evidence. *If the complaint proceeds to a hearing, the Parties are expected to bring the Directly Related evidence provided in this section to the hearing.* The Investigator at the Investigator's discretion may continue the prehearing investigation based upon the information received in the Parties' responses. The Investigator will notify the parties in writing either electronically or by hard copy of the Investigator continue to investigate the complaint based upon the responses of the Parties.

E. If the Investigator does not continue the prehearing investigation, within twelve business days of the expiration of the ten business day time frame set forth in section XI(D), the Investigator will provide the Title IX Coordinator with a prehearing investigation report that fairly summarizes the Relevant Evidence and the section XI(D) responses of the Parties, if any. If a complaint involves multiple Complainants, multiple Respondents, or both, the Investigator may issue a single investigative report. The prehearing investigation report will include a description of the procedural steps taken from the receipt of the formal complaint through the prehearing investigation report including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence and a list of the documents/evidence collected/received by the Investigator. The Investigator has the discretion to determine the relevance of any proffered evidence and to include or exclude certain types of evidence. In general, the Investigator will not consider statements of personal opinion, rather than direct observations or reasonable inferences from the facts, or statements as to any Party's general reputation for any character trait.

F. One calendar day after receipt of the prehearing investigation report, the Title IX Coordinator will send the Complainant and the Respondent and their advisors, if any, an electronic or hard copy of the prehearing investigation report. The Complainant and the Respondent each may submit to the Title IX Coordinator a written response to the prehearing investigation report. Any response must be received by the Title IX Coordinator on or before 5 calendar days after receipt of the prehearing investigation report.

## **XII. Hearings**

A. Review Board Members. Within five working days after the expiration of the ten day time frame set forth in section XI(F), the Title IX Coordinator will select three members from the Pool to serve on the Review Board. The Title IX Coordinator will notify the members in writing of their selection. The Review Board members will select one member as Chair and will notify the Title IX Coordinator in writing of their selection. The Title IX Coordinator will provide the members with an electronic or hard copy of the formal complaint, the prehearing investigation report, the responses of the Parties to the Directly Related Evidence and the responses of the Parties to the prehearing investigation report.

B. Notice and Timing of Hearing. Typically, a hearing will be held within fifty (50) calendar days from the date of the prehearing investigation report. The Title IX Coordinator will provide the Review Board members, Parties and their advisors with a notice of hearing and if applicable, a notice of appointment of advisor, within fifteen working days of receipt of the section XI(G) material. The notice of hearing will include the date of the hearing; the names of the Review Board members; the procedure for challenging a Review Board member for bias or conflict of interest; a list of witnesses that will be asked by the Review Board to appear and testify at the live hearing; information on how to request reasonable hearing accommodations; a request for the Parties to submit a list of witnesses including the due date for the witness list; and any another necessary information.

C. The hearing will be closed to all members of the campus and outside community except those directly involved with the complaint. The hearing may be conducted with all participants physically present in the same geographic location, or at the University's discretion, any or all Parties, witnesses, and other participants may appear at the hearing virtually, with technology enabling participants/witnesses simultaneously to see and hear each other and to see and hear, if applicable, any evidence referred to during the hearing. At the written request of either Party, the University will provide for the hearing to occur with the Parties located in separate rooms with technology enabling the Review Board and Parties to simultaneously see and hear the Party or the witness answering questions. Written requests must be submitted to the Title IX Coordinator on or before ten working days prior to the hearing. The Title IX Coordinator will notify the Chair of the request and is responsible for coordinating the technology with the Office of Technology.

D. The day of the hearing, the Title IX Coordinator will provide the Review Board with evidence collected during the prehearing investigation, including but not limited, to the prehearing report, the responses of the Parties to the evidence, if any, provided in accordance with section XI(D) and the responses of the Parties to the prehearing report, if any, provided in accordance with section XI(F). Each Party will have equal opportunity to refer to the same evidence during the hearing, including but not limited to during Cross-Examination of any witness.

E. If a Party appears at a hearing without an advisor or if an advisor is removed from the hearing by the Chair, the hearing temporarily will be delayed until the Party without an advisor selects an advisor or one is appointed. On or before three business after the day of the delayed hearing, the Party without an advisor must provide the Title IX Coordinator with written notice of how the Party without an advisor wishes to proceed. The Party without an advisor may:

- i. Provide the name and contact information of the Party's new advisor; or
- ii. Request that the Title IX Coordinator appoint an advisor for the sole purpose of conducting Cross-Examination of the opposing Party if Cross-Examination has not occurred; or

The Title IX Coordinator will notify the Chair of the Party without an Advisor's response and will reschedule the hearing within a reasonable time after the advisor issue is resolved.

F. The Chair of the Review Panel has the discretion to determine the specific hearing format.

G. Formal rules of evidence and court procedures are not used and do not apply. Review Board hearings are not court proceedings; the procedures used in civil or criminal trials, motions, or other proceedings before a court or administrative agency do not apply. For example, discovery procedures and requirements for pleadings, do not apply. The Parties and do not have the right to depose opposing Parties or witnesses.

H. The parties and the University do not have subpoena powers and neither can compel Parties or witnesses to appear at any live-hearing.

I. The Chair has the discretion to consider the participation of witnesses whose names were not submitted by the deadline set forth in the Notice of Hearing.

J. Both Parties may present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.

K. Advisors are permitted to ask the other Party all relevant questions and Cross-Examination questions, including questions challenging credibility. All questioning of a Party will be conducted by the other Party's advisor and will never be conducted by a Party personally.

L. Each Party's advisor will have the opportunity to ask the other Party and any witnesses relevant questions and follow-up questions, including relevant questions challenging a party's or witness's credibility. Cross-examination at the live hearing will be conducted orally, directly, and in real time by the Party's advisor, and never by a Party personally.

M. Questioning of any Party or witness will be conducted directly, orally, and in real time.

N. Questioning of any witness, including but not limited to, Cross-Examination of the opposing Party, must at all times occur in a respectful and non-abusive manner.

O. Hearing participants, are expected to treat everyone, including the opposing Party and all witnesses, with respect. Abusive and/or disrespectful behavior and yelling are prohibited. The Review Board Chair may remove any hearing participant at the Review Board's discretion.

P. Only relevant questions may be asked of a Party or witness. A Complainant or Respondent may object to a question as irrelevant. The Review Board Chair also may exclude any question as not relevant without any objection by either Party. Any decisions on relevancy will be made by the Chair prior to any Party or witness answering the question. The Chair will explain any decision to exclude a question as not relevant. A witness should not answer any question until the Chair advises the witness that the witness may or may not answer the question. Advisors are not permitted to challenge the relevancy decisions of the Chair during the hearing. Statements of a Party or witness who is not present for Cross-Examination and medical/treatment records of any Party must be excluded by the Chair.

Q. 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.

R. The University will create an audio-visual or audio recording of the hearing at its expense. An employee from the IT department may attend the hearing for the purposes of assisting with

or making the audio-visual or audio recording. Upon written request to the Title IX Coordinator, the University will make any audiovisual recording, audio recording or transcript available to either Party for review and inspection. The University may create a transcript of the live hearing at its expense. Copies of any audio-visual recording, audio recording or transcript will be made available to either Party upon written request to the Title IX Coordinator and at the expense of the Party making the request. No recordings of the hearing shall be made by any person other than the University. All formal hearing recordings and any evidence provided to the Review Board by the Investigator or by the Parties during the hearing will be maintained by the Title IX Coordinator and will be referred to as the hearing record.

S. If a Party fails to appear at any live hearing after receiving proper notice and without notifying the Review Board Chair, the hearing will proceed and the Review Board will make a decision based on the evidence in accordance with section XIII.

T. During the course of the hearing, the Chair may consult with legal counsel by telephone or in person.

### **XIII. Deliberations and Responsibility Determination**

A. After the presentation of any witnesses and all evidence, the Chair will end the hearing and the Review Board will begin deliberations. During deliberations, the Review Board will review all the presented information, will apply the clear and convincing standard of proof to that information, and make a determination about the relationship of behavior of the Respondent(s) to the policy; the Review Board will determine if there is clear and convincing evidence the Respondent is responsible for the conduct alleged in the complaint and that the conduct violates this policy. If the Review Board determines the Respondent is responsible for Prohibited Conduct, the Review Board will also determine the sanctions and/or remedies. Responsibility is determined by a majority vote of the Review Board. Deliberations are not recorded.

B. When making a responsibility determination, the Review Board:

1. Will objectively evaluate all Relevant Evidence – including both inculpatory and exculpatory evidence.
2. Will not base credibility decisions on a person's status as a Complainant, Respondent, or witness.
3. If a Party or witness does not submit to Cross-Examination at the live hearing, the Review Board is prohibited from relying on any statement of that Party or witness in reaching a determination regarding responsibility; provided, however, that the Review Board may not draw an inference about the determination regarding responsibility

based solely on a Party's or witness' absence from the live hearing or refusal to answer Cross-Examination or other questions.

C. Within ten business days of the close the hearing, the Chair will provide an electronic or hard copy of the written responsibility determination to the Title IX Coordinator. Within one business day of receipt, the Title IX Coordinator will provide an electronic or hard copy of the written responsibility determination to the Parties simultaneously. The written responsibility determination will include:

1. The identification of the allegations potentially constituting Title IX Sexual Harassment as noticed.
2. A description of the procedural steps taken from the receipt of the formal complaint through the determination, including any notifications to the Parties, meeting dates, interviews with Parties and witnesses, site visits, methods used to gather other evidence, date(s) of the hearing and dates of deliberations.
3. Findings of fact supporting the determination and conclusions regarding the application of this policy to the facts.
4. Any disciplinary sanctions the imposed on the Respondent made in accordance with section XVI, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided to the Complainant.
5. A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility.
6. Notice that supportive measures will continue to be offered and/or maintained if previously provided, throughout the appeal period (unless failing to do so would not be clearly unreasonable).
7. The procedure for appealing the responsibility determination and grounds for the Complainant and Respondent to appeal the responsibility determination.
8. Remedies that only impact the Complainant will be provided to the Complainant separately.
9. If more than one formal complaint has been consolidated into one complaint, all Complainants and Respondents receive the same responsibility determination.

D. The Federal Educational Privacy Act (FERPA) generally prohibits the nonconsensual disclosure of personally identifiable information from a student's "education record." However, FERPA permits a school to disclose to the harassed student information about the sanction 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.

E. A responsibility determination becomes final either on the date for filing an appeal passes and no appeal is filed, or if a timely appeal is filed, the date of the written appeal determination required by section XIV(E) whichever comes first. Imposition of sanctions is suspended pending the outcome of the appeal or the expiration of the appeal period if no appeal is filed. Supportive measures that do not burden either party will continue pending the outcome of the appeal.

F. Unless the University community is threatened, any sanctions imposed will not go into effect until the deadline for filing an appeal passes and no appeal is filed or the date of any appeal decision affirming the responsibility determinations and sanctions.

G. The Title IX Coordinator is responsible for effective implementation of any remedies and the imposition of sanctions. The Title IX Coordinator may notify and/or consult with immediate supervisors and/or the President.

#### **XIV. Appeals**

A. The Complainant and the Respondent may appeal the dismissal of a formal complaint or a responsibility determination to the Vice President of Academic Affairs and Provost (Provost). If the Provost is the Respondent, the appeal should be filed with the President and all time lines set forth in this section apply to any appeal filed with the President. Appeals must be received by the appeal decision-maker on or before five business days after receipt of the dismissal order or responsibility determination and must include all supporting documentation appealing party wants the appeal decision-maker to consider when making a decision.

B. Appeals must be based on one or more of the following grounds:

1. A procedural irregularity that affected the outcome of the matter.
2. 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. The new information must be included with the appealing Party's request for appeal. In addition, the appealing Party must show that the new information was not known or otherwise available to the person appealing at the time of the live hearing. The appealing Party also must provide an explanation as to why the evidence was unknown or unavailable and how the evidence could have affected the outcome of the matter.

3. The Investigator, or Review Board member 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 and such bias and/or conflict of interest was not known prior to the dismissal or live-hearing. The appeal must include an explanation of the conflict or interest or bias and why the bias or conflict of interest was not known at the time of the prehearing investigation or hearing and why the conflict or bias affected the outcome.

4. Jurisdiction was properly asserted under Title IX.

5. The severity of the sanction(s) imposed was not appropriate based on the nature of the violation or the circumstances (sanction(s) is too harsh or too lenient)

6. Dissatisfaction with the dismissal notice or responsibility determination alone is not grounds for appeal.

C. The Vice President or President must receive any appeal on or before three business days after the appealing Party's receipt of the dismissal notice or responsibility determination

D. Within two business days of receipt of any Party's appeal, the Provost will provide the other Party with a copy of the appeal and any supporting documentation. The other Party may submit a response to the appeal that may include a statement in support of the determination on responsibility or dismissal of the complaint. Any response to an appeal must be received by the Vice President on or before three business days of the responding Party's receipt of the appeal and supporting documentation.

E. In any appeal, the burden of proof lies with the Party requesting the appeal, as the original determination and sanction(s) are presumed to have been decided reasonably and appropriately. The appeal is not a new review of the underlying matter and is not intended to be a full rehearing of the complaint (de novo). In most cases, appeals are confined to a review of the written documentation or record of the original hearing and pertinent documentation regarding the grounds for appeal. Appeals decisions are to be deferential to the original hearing body; changes to the finding should be made only where there is clear error based on the stated appeal grounds.

F. Within five business days of the expiration of three business day appeal timeframe, the Provost will simultaneously provide the Parties with a written or electronic copy of the appeal decision describing the result of the appeal and the rationale for the result. The Provost may:

1. Affirm the dismissal or responsibility decision
2. Modify the original decision and/or sanctions



3. Void the original decision and order a new hearing.

G. The decision of the Provost is final.

#### **XV. Informal Resolution Procedures**

A. If appropriate and if both Parties agree, at any time prior to the issuance of the prehearing investigation report the University may facilitate an informal resolution process of a formal complaint, that does not involve a full investigation and adjudication. Informal resolution is only available for resolving formal complaints. In cases where no formal complaint has been filed, supportive measures may be offered to individuals reported to be the victim of Prohibited Conduct.

B. Informal resolution may encompass a broad range of conflict resolution strategies, including, but not limited to, arbitration, mediation or administrative disposition of a formal complaint wherein the Respondent(s) accept responsibility. Informal resolution may result in disciplinary measures designed to punish the Respondent.

C. The Complainant or Respondent may withdraw from the informal resolution process and resume the formal grievance process with respect to the formal complaint at any time prior to the Party signing a final written resolution.

D. The University may not offer to facilitate or accept requests from either Party to engage in an informal resolution process to resolve allegations that an employee engaged in Title IX Sexual Harassment with a student.

E. If informal resolution is appropriate and both Parties agree to pursue informal resolution, the Title IX Coordinator will:

1. Provide 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; and any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared.

2. Obtain the Parties' voluntary, written Consent to the informal resolution process.

F. Informal resolution agreements are considered contracts and are binding. An informal resolution agreement entered into by both Parties ends the grievance process.

G. Any individual engaged to facilitate or participate in the informal resolution process including but not limited to a mediator may not be called as a witness during any hearing.

H. Informal resolution agreements will be kept confidential insofar as is permissible by law.

## **XVI. Sanctions**

A. If the Review Board finds the Respondent responsible, the Review Board is responsible for determining the appropriate sanction(s) designed to eliminate the misconduct, prevent its recurrence, and remedy its effects, while supporting the University's educational mission and Title IX obligations. Sanctions or interventions may also serve to promote safety or deter individuals from similar future behavior. The Review Board may consult with the supervisor of an employee Respondent, the Vice-President of Student Affairs for a student Respondent or legal when making a decision on sanctions and remedies as well as to obtain any prior student conduct disciplinary record or work disciplinary record of the Respondent(s). Repeated violations, including of differing conduct prohibited by this or any other University rule regulation policy or procedure, may result in progressively severe sanctions.

B. For students, the sanctions may include disciplinary action up to and including expulsion. A full list of the range of sanctions for students is contained later in this policy. For employees, the sanction may include any form of responsive action or discipline, including training, referral counseling and/or disciplinary action such as warning, reprimand, withholding of a promotion or pay increase, reassignment, temporary suspension without pay or termination. A more detailed list of the range of sanctions for employees is contained later in this policy.

C. Sanctions may be issued individually, or a combination of sanctions may be imposed. The determination of sanctions may be based upon a number of factors, including the harm suffered by the Complainant; any ongoing risk to either the Complainant or the community posed by Respondents; the impact of the violation on the community, its members, or its property; any previous conduct violations; a student's prior student conduct disciplinary record, an employee's prior disciplinary record, and any mitigating or aggravating circumstances including but not limited to use of or display of a weapon, the involvement of multiple perpetrators and/or intentional incapacitation caused by Respondent(s) through the alcohol, drugs, or by other means. Mitigating circumstances may be taken into account to reduce a sanction for Prohibited Conduct. Mitigating factors do not constitute a justification or excuse for the Prohibited Conduct.

D. All disciplinary actions will be determined on a case-by-case basis. Factors that may be considered when determining the type of sanction include but are not limited to the seriousness of the offense, prior disciplinary history.

E. Student Sanctions. The University reserves the right to impose other sanctions in addition to those listed below in response to the specific circumstances of each case.

1. Expulsion: Permanent separation of the student from the University. Permanent notification will appear on the student's transcript. The student may be denied access to University premises, provided that such restrictions are stipulated in the Outcome Letter

and bear a reasonable relationship to the violation. If a student is expelled, the student will not receive a refund of any tuition or fees that have been paid to the University.

2. Suspension: A student suspended from the University may not participate in classes or other University activities and may not be on University property (except by appointment, arranged in advance with the Title IX Coordinator, Provost (or designees), for the period of time specified. Permanent notification will appear on the student's transcript. The student may be denied access to University premises and to all other University activities or privileges for which the student might otherwise be eligible, provided that such restrictions are set forth in the responsibility determination and bear a reasonable relationship to the violation for specific period of time. Suspension extending beyond the semester in which action is taken shall consist of units of full semesters and/ or summer sessions. In no case shall the suspension terminate prior to the end of a semester. Courses taken at another institution during this period of suspension will not be accepted for transfer at the University. Suspended time will not count against any time limits for completion of a degree. If a student is suspended, the student will not receive a refund of any tuition or fees that have been paid to the University. An organization that is suspended shall be required to forfeit its ability to conduct group-sponsored activities or to participate in University-sponsored activities, and any University support for the organization will be withdrawn during the period of suspension. Conditions for resuming active status on campus following suspension may be imposed by the University.

3. Deferred Suspension: The student will be officially suspended from the University for a definite interim time period and given a certain set of expectations, but the suspension will be deferred and does not go into effect as long as the student complies with all requirements during the interim period. In those cases where the student completes all expectations during the interim period, the student's record will show that the sanction was never imposed. In the event that a student fails to comply with a sanction and the Office of Student Conduct has decided to impose a suspension, the student will be notified of the apparent failure to comply and of the intent to suspend, and provided an opportunity to meet and explain the circumstances prior to a final decision.

4. Formal Disciplinary Probation: Probation for a designated period of time in which specific sanctions or restrictions may be imposed. A student on formal disciplinary probation is not in good standing with the University. Loss of good standing may prohibit or impact a responding student from:

- i. representing the University through official events;

- ii. participating in Education or Study Abroad; and/or
  - iii. serving in a leadership position or on a University committee.
5. **Warning:** A notice in writing to the student that the student is violating or has violated Review Board of Governors policies, institutional rules and regulations, or the Student Code, and that any further Prohibited Conduct may result in more severe disciplinary action.
6. **Revocation or Withholding of Diploma and Degree:** If a student has graduated from the University, or has otherwise satisfied the requirements for earning a degree before violations of this policy are discovered and/or before a determination of responsibility is final, the University reserves the right to revoke the diploma and/or degree conferred, or to withhold the conferring of a degree or diploma otherwise earned.
7. **Residence Hall Reassignment:** A responding student who resides in a residence hall is assigned to a different residence hall on campus.
8. **Residence Hall Termination:** A responding student's residence hall agreement is terminated and the responding student is prohibited from residing in any University residence hall on either a permanent or a temporary basis. Specific exclusion from the residence halls may also be imposed.
9. **Assessment and Treatment:** Referral to Counseling Center or approved off-campus agency for assessment and/or treatment. This includes, but is not limited to, services from certified programs who offer: counseling for sex offenders, for sexual awareness and sensitivity, for substance use, for intimate partner violence and for violence risk.
10. **Restrictions on Participation or Use:** Restrictions on participation include the revocation, or the loss for a stated period of time or under a stated set of conditions, of a student's ability to participate in certain University-approved activities, including, but not limited to, sports, clubs, organizations (including but not limited to Greek organizations), or leadership positions with such sports, clubs, and organizations. Restrictions on use include the denial of access to or use of certain University facilities, programs, or equipment for a stated period of time or under a stated set of conditions.
11. **Restitution:** Students may be required to make payment to the University or to other persons, groups, or organizations for personal property loss or damage incurred as a result of a violation of this policy. This may take the form of appropriate service and/or monetary or material replacement of property.
12. **Revocation:** A degree awarded from the University may be revoked for a violation of the Code if the violation was committed before the student graduates.

13. Educational Sanctions: A student may be required to attend a class, program, or lecture or be involved with the community in a way that brings about a new understanding of the community and how their behavior may have impacted others. This is not an exhaustive list but should serve as a reference for the types of educational sanctions that may be imposed.

14. No Contact Order: A no contact order may be issued which is a directive to refrain from any intentional contact, whether direct or indirect, with one or more designated persons or group(s) through any means, including, but not limited to, personal contact, e-mail, telephone, social media or third Parties.

15. Other Sanctions: Other sanctions may be imposed instead of or in addition to those specified. For example, students may be required to complete community service projects or educational classes, may be assessed a fine (if such fines are established by the Review Board of Governors), and/or may be assigned other work or research projects.

G. Employee Sanctions. Title IX Sexual Harassment is considered gross misconduct. Employees found responsible for gross misconduct may be dismissed immediately without progressive discipline. The following sanctions for employees include but are not limited to:

1. Written warning. Formal documentation regarding the infraction/violation and expected corrected or improved behavior will be provided in the form of a written warning.
2. Demotion.
3. Suspension without pay.
4. Dismissal.
5. Any sanction set forth in any University policy governing employee disciplinary matters.

## **XVII. Recognized Student Organizations**

A. When members of a student group, organization, team or individuals acting collusively act in concert in violation of this policy, their conduct may be reviewed as a group or as individuals, and an investigation may proceed against the group as joint Respondents or against one or more involved individuals as appropriate given available information and the circumstances.

B. A student group, organization, or team's officers and membership may be held collectively and individually responsible when violations of this code by the organization or its members take place at organization sponsored events, have received the Consent or encouragement of the organization or of the organization's leaders or officers, or was known or reasonably should

have been known to the membership or its officers. In any such action, individual determinations as to responsibility will be made and sanctions may be assigned collectively and/or individually. The range of sanctions in this policy will be considered, as will be the proportionality of the involvement of each individual.

C. Recognized Student Organization Sanctions. In addition to the sanctions listed in section XV, recognized student organizations and/or teams may:

1. be placed on probation,
2. have their recognized status revoked and be removed from the University's public directory;
3. be prohibited from reserving campus space;
4. be prohibited from hosting or sponsoring events;
5. be prohibited from receiving campus funding and conducting fundraising opportunities; and/or accessing the organization's operational account with the University.

## **XVIII. Time Frames**

A. The University will make every effort to complete the grievance process within a reasonable time frame and in a timely manner while balancing the principles of thoroughness and fundamental fairness with promptness.

B. Circumstances may arise that require the expedition or extension of policy time frames. Such circumstances may include, but are not limited to, the severity or complexity of the allegations; the number of witnesses involved; the absence of a Party, a Party's advisor, or a witness; the effect of a concurrent criminal investigation; the replacement of Review Board member who has been challenged for bias or conflict of interest; the need for language assistance or accommodation of disabilities; intervening University breaks; or other circumstances. The University may delay or expedite the grievance process at any level or may allow the limited extension of time frames for good cause with written notice to the Complainant and the Respondent of the expedited time frame, delay or extension and the reasons for the action.

C. If a deadline in this policy falls on a day the University's offices are closed, the deadline is moved to 8:00 a.m. on the next University business day.

## **XIX. Providing False Information**

A. Knowingly making a false report, filing a false formal complaint, providing false information, or testimony during the prehearing investigation, live hearing or at any stage of the grievance process is prohibited. A determination regarding responsibility, alone, is not sufficient to conclude that any individual made a materially false statement in bad faith.

B. Individuals found responsible for violating this section may be subject to disciplinary action up to and including employment suspension and/or termination and/or academic suspension and/or expulsion.

C. Reports of employee violations of this section are reported to and investigated by the Human Resources Director in accordance with the University's employee disciplinary and/or dishonesty rules, regulations, policies, procedures and/or practices.

## **XX. Retaliation**

A. No University, employee, or student, may intimidate, threaten, coerce, or discriminate against any individual either in person, virtually, electronically or through a third Party for the purpose of interfering with any right or privilege secured by Title IX, Title VII, or this policy, 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 under this policy.

B. Intimidation, threats, coercion, or discrimination, including charges against an individual for 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 this part, constitutes retaliation.

C. The exercise of rights protected under the First Amendment does not constitute prohibited retaliation.

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

E. Complaints alleging retaliation are filed with the Title IX Coordinator and are investigated and adjudicated in accordance with this SHGP.

## **XXI. Intersection of this Policy with Other Laws and Rights**

A. Nothing in this policy shall be read to: (1) restrict any rights that would otherwise be protected from government action by the First Amendment of the U.S. Constitution; or (2) deprive a person of any rights that would otherwise be protected from government action under the Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution; or (3) restrict any other rights guaranteed against government action by the U.S. Constitution.

B. Nothing in this policy may be read in derogation of any individual's rights under Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* or any regulations promulgated thereunder.

C. The University's obligation to comply with Title IX and this policy is not obviated or alleviated by the Federal Educational Rights and Privacy Act.

D. Nothing in this policy may be read in derogation of any legal right of a parent or guardian to act on behalf of a "Complainant," "Respondent," "Party," or other individual, under this policy, including but not limited to filing a formal complaint.

## **XXII. Training Requirements**

A. Title IX Coordinators, Investigators, responsibility decision-makers, appeal decision-maker(s) and any person who facilitates an informal resolution process, as applicable, will receive training on the definition of Title IX Sexual Harassment, the scope of the University's education program or activity, how to conduct an investigation and grievance process, including hearings, appeals, and informal resolution processes, and how to serve impartially, including avoiding prejudgment of the facts at issue, conflicts of interest, and bias.

B. Any decision-maker(s) responsible for making determinations on responsibility will receive training on:

1. Any technology to be used at a live hearing;
2. 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, as set forth herein;
3. Issues of relevance to create an investigative report that fairly summarizes Relevant Evidence, as set forth in section IX.

C. 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.

## **XXIII. Record Keeping**

A. The Title IX Coordinator will maintain for a period of at least 7 years, or longer under applicable Federal and State law:

1. All materials used to train Title IX Coordinators, Investigators, decision-makers, and any person who facilitates an informal resolution process. The University must make these training materials publicly available on its website, or if the University does not



maintain a website the University must make these materials available upon request for inspection by members of the public;

2. Each sexual harassment investigation including any determination regarding responsibility;

3. Any live-hearing audio or audiovisual recording or transcript;

4. Any disciplinary sanctions imposed on the Respondent;

5. Any remedies provided to the Complainant designed to restore or preserve equal access to the recipient's education program or activity;

6. Any appeal and the result;

7. Any informal resolution and the result therefrom;

B. For each report of Title IX Sexual Harassment that is not resolved through the completion of the Title IX complaint resolution process, the University must create, and maintain for a period of seven (7) 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 University 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 University's education program or activity. If the University does not provide a Complainant with supportive measures, then the University must document the reasons why such a response was not clearly unreasonable in light of the known circumstances. The documentation of certain basis or measures does not limit the University in the future from providing additional explanations or detailing additional measures taken. The person responsible for creating the record(s) required by this section is dependent upon the stage of the grievance procedure where the creation of the record is required. For example, if a Complainant withdraws

C. The date of the creation of a record described in this section begins the record's retention period.

D. Maintenance any record set forth in this section does not automatically create a right of access to the record by any Party.

E. The Title IX Coordinator is responsible for maintaining all records.

#### **XXIV. Non-Disclosure Agreements**

A. The Title IX Coordinator may require the Parties and their Advisors to enter into Non-Disclosure Agreements not to disseminate any of the information provided to them in accordance with this procedure.

B. The Non-Disclosure Agreement will not impose prior restraints on an individual's ability to discuss any allegations under investigation, with an Advisor, parent, friend, or other source of emotional support, or with an advocacy organization

#### **XXV. Clery Act Permissible Disclosure of Final Results of Student Disciplinary Proceedings**

A. The University may disclose to the public the final results of any student disciplinary proceedings if the student is found responsible for a forcible or non-forcible sex offense or intimidation. Final determination means a decision or determination made by the Board if not appealed and the decision of any appeal if the responsibility decision is affirmed. The University is permitted to disclose only the name of the student(s), the violation(s) committed and the sanction(s) imposed.

#### **XXVI. External Complaints**

A. Information about how to file external complaints is available by contacting:

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](mailto:OCR_Philadelphia@ed.gov)  
Website: <http://www2.ed.gov/about/offices/list/ocr/index.html>

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/>

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/>

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: <https://pegb.wv.gov>

## **XXVII. Delegation and Amendments**

A. The President or designee may enact administrative procedures to implement this policy.

B. This Policy may be amended to change names, links to information and contact information without resorting to the rulemaking process.

C. Federal and State laws, rules and regulations change. Any portion of this policy may be modified in practice to ensure the due process rights of the Parties and to conform to any current Federal and State law, rules and regulations. Subject to the University's rulemaking rule, the University will change this policy to conform to the most current laws and regulations within a reasonable time of discovering the change.