

GLENVILLE STATE UNIVERSITY POLICIES

ADMINISTRATIVE POLICY 6A

SOCIAL JUSTICE: SEXUAL HARASSMENT AND TITLE IX SEXUAL HARASSMENT PROCEDURES

6A.1. Goals

1.1. Scope: This policy addresses sexual harassment.

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

1.3. [5, 2020][October 20, 2020][May 21, 2021 Emergency Policy].

b

Glennville State University is committed to providing an environment that emphasizes the dignity and
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 AENDIX

~~SEX~~ 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:

Dr. MEd
Human Resources Director
Title IX Coordinator

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

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. B

A. Glennville State University (University) is committed to providing a safe and non

II. Gb

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

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 file of of o f v P D

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. DE

A. Actual Knowledge means notice of sexual harassment or other Prohibited Conduct and allegations of sexual knowl

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. ~~Factors~~ Review who ~~Activity~~ Reviibal

informed judgments.¹ 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

(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.

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 person to view content which is prohibited by the policy.

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

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

1092(f)(6)(A).

iii. "Sexual assault", as defined by 20 U.S.C. 1092(f)(6)(A). Sexual assault is any

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

- f The length of the relationship.
- f The type of relationship.
- f 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

- f fear for an individual's safety or the safety of others; or
- f 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 Jñ d Dñ 6 Fñ Cñ

A. E IXJñ 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. Mñ E IXDñ 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. ~~D~~ ~~b~~ **D** ~~b~~ 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. ~~E~~ ~~V~~ ~~J~~ ~~B~~ 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.

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

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
<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. ~~Re~~ ~~o~~ Law ~~En~~

1. Prohibited Conduct may also constitute violations of criminal law. An individual may choose to make a report to the University or 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

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

1. The Jeanne Clery Disclosure of Campus Security Police and Campus Crime Statistics Act, 20 USC § 1092(f), (commonly known Clery assault

2. The Clery Act requires the University to timely notify/warn students and employees
~~employees~~

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. ~~Any~~ ~~an~~ ~~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. ~~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.

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of ways including but not limited to in

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.

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

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 calendar from 03/15/2015 to 03/15/2015 (Page 14)

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.

X. Hig

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

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.

XI. Decision

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)

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.

XV

3. Void the original decision and order decision

X B

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, suspension, or termination.

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;

13. Educational Sanctions: A student may be required to attend a class, program, or

have been known to the membership or its officers. In any

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.

X

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.

X

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.

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.

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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

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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.

X Eb Cpn

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
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>

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- 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