The university respects and encourages the dignity and professionalism of its employees and students and is firmly committed to maintaining a learning and working environment that is free from any form of discrimination. Harassment in any form based on gender, race, color, age, national origin, disability, religion, or any other characteristic protected by state or federal laws is prohibited, as are all forms of sexual intimidation and exploitation. In keeping with this commitment, the university will not tolerate any unlawful harassment of its employees or students at the university by anyone, including any faculty member, staff member, student, visitor, vendor, contractor, or any other individuals providing services at the university. Harassment that interferes with an individual’s work, or academic performance, or that creates an intimidating, hostile, or offensive working environment, will not be tolerated. All members of the university community are expected to follow and enforce the university’s policy against harassment. All supervisory personnel are considered representatives of the university, and as such, are responsible for addressing all forms of harassment, and shall notify immediately, the appropriate university leadership and/or the Office of Human Resources of any alleged infractions. Complaints of harassment will be promptly and thoroughly investigated and appropriate action, including disciplinary measures, will be taken when warranted. Faculty, students, and staff have the right at any time to raise the issue of harassment without fear of retaliation. Any complaint of sexual harassment is to be reported to the Title IX Coordinator. Ohio Valley University is committed to following the regulations provided in the Title IX Final Rule.

TITLE IX (**FINAL RULE**) PROCEDURES:

A notice to Title IX Coordinator or official with authority to institute corrective measures automatically triggers the school’s response obligations.

DEFINITION OF SEXUAL HARASSMENT FOR TITLE IX PURPOSES:

Sexual harassment defined broadly: Any of three types of misconduct on the basis of sex which would jeopardize equal access to education that Title IX is designed to protect. Any unreasonable conduct that a reasonable person would find so severe, pervasive, and objectively offensive that it denies a person equal educational access; any instance of sexual assault (dating violence; domestic violence; sexual assault; and, stalking [as defined in Clery]), dating violence, domestic violence, or stalking as defined in VAWA.

DEFINITIONS OF OFFENSES:

Title IX Sexual Harassment

* Sexual assault: is an act in which a person intentionally sexually touches another person without that person's consent, or coerces or physically forces a person to engage in a sexual act against their will.
* Dating violence: violence committed by a person--

(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and

(B) where the existence of such a relationship shall be determined based on a consideration of the following factors:

(i) The length of the relationship.

(ii) The type of relationship.

(iii) The frequency of interaction between the persons involved in the relationship.”

* Domestic violence: any abuse—including physical, emotional, sexual, or financial—between intimate partners, often living in the same household.
* Stalking: intentionally and repeatedly follow or harass another person and who makes a credible threat, either expressed or implied, with the intent to place that person in reasonable fear of death or serious bodily harm

The offenses apply to all the school’s education programs or activities, whether on campus or off campus. Also, any building owned by the school or controlled by a student organization officially recognized by the institution (i.e., fraternity & sorority houses).

An employee must be designated as the Title IX Coordinator (TIXC). The institution must notify not only students and employees, but also potential students and employees. Contact information for this person must be provided to all these parties; must also be prominently displayed on website. Any person may report sex discrimination or sexual harassment via any means of communication. Reports may be made at any time by using telephone number, email, or mail sent to the attention of the Title IX Coordinator.

Schools must respond promptly; offer supportive measures to the alleged victim (complainant). TIXC (Title IX Coordinator) must contact the alleged victim confidentially to advise of supportive measures with or without filing a formal complaint, and explain to the complainant the process for filing a report. The grievance process must be followed before imposing any disciplinary sanctions or other actions that are not supportive measures, against a respondent. Rights must not be restricted. Schools must investigate allegations in any formal complaint, which can be filed by a complainant, or signed by TIXC. Complainant’s wishes with respect to whether or not the school investigates should be respected unless the TIXC determines that signing a formal complaint to initiate an investigation over wishes of complainant is not clearly unreasonable in light of known circumstances. If allegations are determined to not meet the definition of sexual harassment in the Final Rule, or did not occur in the school’s education program or activity, the school must dismiss the allegations for purposes of Title IX, but still may address the allegations according to the school’s code of conduct.

DEFINITIONS:

Complainant: individual alleged to be the victim

* Any third party as well as complainant may report sexual harassment
* Parents and guardians do not become complainants or respondents, but may act on behalf of the parties

Respondent: individual who has been reported to be the perpetrator of conduct that could constitute sexual harassment.

Formal complaint: document filed by a complainant or signed by the TIXC alleging sexual harassment and requesting that the school investigate the allegation of sexual harassment.

Supportive measures: individualized services reasonably available that are non-punitive, non-disciplinary, not unreasonably burdensome to the other party while designed to ensure equal educational access, protect safety, or deter sexual harassment. Provide remedies to complainant whenever a respondent is found responsible.

GRIEVANCE PROCESS for resolving formal complaints of sexual harassment:

* Treat complainants equitably by providing remedies any time a respondent is found responsible. Treat respondents equitably by not imposing disciplinary sanctions without following the grievance process.
* Remedies, required to be provided to complainant when respondent is found responsible, must be designed to maintain equal access to education and may include individualized services described as supportive measures. Remedies need not be non-disciplinary or non-punitive and need not avoid burdening the respondent.
* Require objective evaluation of all relevant evidence, inculpatory and exculpatory, and avoid credibility determinations based on a person’s status as a complainant, respondent, or witness.
* Require Title IX personnel (Coordinator, investigators, decision-makers, people who facilitate informal resolution process) to be free from conflicts of interest or bias for or against complainant or respondent.
* Title IX personnel must be trained on all aspects of process.
* Decision-makers must be trained on technology to be used in hearing process.
* Decision-makers and investigators must be trained on issues of relevance, including how to supply rape shield protections provided only for complainants.
* Include presumption that respondent is not responsible until determination is made at conclusion of grievance process.
* Recipients must post materials used to train Title IX personnel on website or make materials available for public to inspect.
* Provide reasonably prompt time frames for conclusion of grievance process, including appeals and informal resolutions, with allowance for short-term, good cause delays or extensions of the time frames.
* Describe the range, or list the possible remedies a school may provide a complainant and disciplinary sanctions a school might impose on a respondent, following determinations of responsibility.
* State whether the school has chosen to use the preponderance of evidence standard, or the clear and convincing evidence standard, for all formal complaints of sexual harassment (including where employees and faculty are respondents)
* Describe the school’s appeal procedures, and the range of supportive measures available to complainants and respondents.
* A school’s grievance process must not use, rely on, or seek disclosure of information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
* Any provisions, rules, or practices other than those required by the Final Rule that a school adopts as part of its grievance process for handling complaints of sexual harassment, must apply equally to both parties.

INVESTIGATIONS – School must investigate allegations in any formal complaint and send written notice to both parties of allegations upon receipt of a formal complaint.

* Burden of gathering evidence and burden of proof must remain on schools, not on the parties.
* Schools must provide equal opportunity for parties to present fact and expert witnesses and other inculpatory and exculpatory evidence.
* Schools must not restrict the ability of the parties to discuss the allegations or gather evidence.
* Parties must have the same opportunity to select an advisor of the party’s choice who may be, but need not be, an attorney.
* Schools must send the parties, and their advisors, evidence directly related to the allegations, in electronic format or hard copy, with 10 days for the parties to inspect, review, and respond to the evidence.
* Schools must send the parties, and their advisors, an investigative report that fairly summarizes relevant evidence, in electronic format or hard copy, with at least 10 days for the parties to respond.
* Schools must dismiss allegations of conduct that do not meet the Final Rule’s definition of sexual harassment or did not occur in a school’s education program or activity against a person in the US. Such dismissal is only for Title IX purposes. Does not preclude the school from addressing the conduct in any manner the school deems appropriate.
* Schools may, in their discretion, dismiss a formal complaint or allegations if the complainant informs the TIXC in writing that the complainant desires to withdraw the formal complaint or allegations therein, if the respondent is no longer enrolled or employed by the school, or if specific circumstances prevent the school from gathering sufficient evidence to reach a determination.
* Schools must give the parties written notice of a dismissal and the reasons for the dismissal.
* Schools may consolidate formal complaints where the allegations arise out of the same facts.
* Final Rule protects the privacy of a party’s medical, psychological, and similar treatment records by stating that schools cannot access or use such records unless the school obtains the party’s voluntary, written consent to do so.

HEARINGS: Provisions for “live hearing with cross-examination” requirement for post-secondary institutions.

* At the live hearing, the decision-makers must permit each party’s advisor to ask the other party and any witnesses all relevant questions and follow-up questions, including those challenging credibility.
* Such cross-examination at the live hearing must be conducted directly, orally, and in real time by the party’s advisor of choice and never by a party personally.
* At the request of either party, the recipient must provide for the entire live hearing (including cross-examination) with the parties located in separate rooms with technology enabling the parties to see and hear each other.
* Only relevant cross-examination and other questions may be asked of a party or witness. Before a complainant, respondent, or witness answers a cross-examination or other question, the decision-maker must first determine whether the question is relevant and explain to the party’s advisor asking cross-examination questions any decision on behalf of that party.
* If a party does not have an advisory present at the live hearing, the school must provide, without fee or charge to that party, an advisor of the school’s choice who may be, but is not required to be, an attorney to conduct cross-examination on behalf of that party.
* If a party or witness does not submit to cross-examination at the live hearing, the decision-maker must not rely on any statement of that party or witness in reaching a determination regarding responsibility; provided, however, that the decision-maker cannot draw an inference about the determination regarding responsibility based solely on a party’s or witness’s absence from the live hearing or refusal to answer cross-examination or other questions.
* Live hearings may be conducted with all parties physically present in the same geographic location or, at the school’s discretion, any or all parties, witnesses and other participants may appear the live hearing virtually.
* Schools must create an audio or audiovisual recording, or transcript, of any live hearing.
* Rape shield protections for complainants, deeming irrelevant questions and evidence about a complainant’s prior sexual behavior unless offered to prove that someone other than the respondent committed the alleged misconduct or offered to prove consent.

STANDARD OF EVIDENCE AND WRITTEN DETERMINATION: School’s grievance process is to state whether the standard of evidence to determine responsibility is *preponderance of evidence* or *clear and convincing evidence* standard. The same standard must be used for all formal complaints of sexual harassment whether respondent is student or employee.

* The decision-maker (who cannot be the same as TIXC or investigator) must issue written determination regarding responsibility with findings of fact, conclusions about whether the alleged conduct occurred, rationale for the result as to each allegation, any disciplinary sanctions imposed on the respondent, and whether remedies will be provided to the complainant.
* The written determination must be sent simultaneously to the parties along with information about how to file an appeal.

APPEALS: The Final Rule states that a school must offer both parties an appeal from a determination regarding responsibility, and from a school’s dismissal of a formal complaint or any allegations therein, on the following bases: *procedural irregularity* that affected the outcome of the matter, *newly discovered evidence* that could affect the outcome of the matter, and/or *Title IX personnel had a conflict of interest or bias*, that affected the outcome of the mater.

* A school may offer an appeal equally to both parties on additional bases

INFORMAL RESOLUTION: The Final Rule allows a school, in its discretion, to choose to offer and facilitate informal resolution options, such as mediation or restorative justice, so long as both parties give voluntary, informed, written consent to attempt informal resolution. Any person who facilitates an informal resolution must be well-trained. The Final Rule adds:

* A school may not require as a condition of enrollment or continuing enrollment, or employment or continuing employment, or enjoyment of any other right, waiver of the right to a formal investigation and adjudication of formal complaints of sexual harassment. Similarly, a school may not require the parties to participate in an informal resolution process and may not offer an informal resolution process unless a formal complaint is filed.
* At any time prior to agreeing to a resolution, any party has the right to withdraw from the informal resolution process and resume the grievance process with respect to the formal complaint.
* ***Schools must not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student.***

RETALIATION PROHIBITED: Final Rule expressly prohibits retaliation.

* Charging an individual with code of conduct violations that do not involve sexual harassment, for the purpose of interfering with any right of privilege secured by Title IX constitutes retaliation.
* The school must keep confidential the identity of complainants, respondents, and witnesses, except as may be permitted by FERPA, as required by law, or as necessary to carry out a Title IX proceeding.
* Complainants alleging retaliation may be filed according to a school’s prompt and equitable grievance procedures.
* The exercise of rights protected under the First Amendment does not constitute retaliation.
* Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a Title IX grievance proceeding does not constitute retaliation; however, a determination regarding responsibility, alone, is not sufficient to conclude that any party made a bad faith materially false statement.

Every employee is considered a mandatory reporter. The persons who will serve as investigators, advisors, decision-makers, and informal resolution mediators will be chosen from our faculty and staff personnel, who have just returned to our campus. These persons will be chosen and trained in the immediate future.