

## **Ohio Virtual Academy-Title IX Policy and Grievance Procedure (August 2020 update)**

### **Title IX Statement**

Title IX of the Education Amendments of 1972, 20 U.S.C. Section 1681 et seq. prohibits discrimination on the basis of sex, including sexual harassment as defined herein, in any program, service or activity, including but not limited to, educational programs, extracurricular activities, student services, academic counseling, discipline, classroom assignment, including admission to these programs and activities. Title IX also prohibits sex discrimination in employment, including by any third-party employer engaged by Ohio Virtual Academy to employ its workforce as well as any third-party employing individuals providing management services related to OHVA employees. Retaliation against any person who reports or opposes improper discrimination or retaliation is likewise prohibited under Title IX. Ohio Virtual Academy (OHVA) shall fully comply with Title IX and its accompanying regulations. Further, K12 Virtual Schools LLC is expected to fully comply with Title IX and its accompanying regulations.

This policy applies to prohibited conduct in any academic, educational, extra-curricular, or other OHVA programs, activities, and events whether occurring at school, during the OHVA's Educational Program and process including, but not limited to the On-Line Learning System ("OLS"), Class Connects, email, telephone, in-person or virtual conferences with students, employees and staff and third-party contractors/vendors who provide services to OHVA, on any premises or equipment owned, leased or used by OHVA, in a motor vehicle owned or leased by the OHVA or being used for a school-related purpose or at any OHVA-related event, activity or function; traveling by any means to or from school or an OHVA-related event, activity, or function; and in any location where the conduct has a sufficient connection to or with OHVA, OHVA employees, , third-party contractors/vendors, OHVA students or OHVA property that adversely and significantly interferes with or endangers the good order of OHVA's educational program or environment, the proper functioning of the educational program, OHVA-related event, activity or function.

The Board prohibits Sexual Harassment that occurs within its education programs and activities. When OHVA has actual knowledge of Sexual Harassment in its education program or activity against a person in the United States, it shall promptly respond in a manner that is not deliberately indifferent. Pursuant to its Title IX obligations, the Board is committed to eliminating Sexual Harassment and will take appropriate action when an individual is determined responsible for violating this policy. Board employees, students, third-party vendors and contractors, guests, and other members of the OHVA community who commit Sexual Harassment are subject to the full range of disciplinary sanctions set forth in this policy. Persons who have experienced Sexual Harassment will be provided ongoing remedies as reasonably necessary to restore or preserve access to OHVA's education programs and activities.

Ohio Virtual Academy expects anyone who believes a Title IX violation may have occurred to report their concerns to the Title IX Coordinator or as otherwise provided in this policy.

**Ohio Virtual Academy's Title IX Coordinator also holds the position of Grants and Federal Programs Coordinator and is employed by K12 Virtual Schools LLC or an affiliated entity. The current individual holding this position is:**

**Shana Van Grimbergen**

*Grants and Federal Programs Coordinator*

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Any student or employee who is assigned to work at or on behalf of OHVA and who believes he or she has been or is the victim of sexual harassment should immediately report the situation to a teacher, counselor, social worker, principal, the Head of School or the Title IX Coordinator. Any OHVA employee or administrator who observes, has knowledge of, or learns that a student has been or is the victim of sexual harassment shall immediately report the situation to a principal, the Head of School or a Title IX Coordinator. Complaints against a principal should be reported to or filed with the Head of School or a Title IX Coordinator. Complaints against the Head of School should be reported to or filed with the Title IX Coordinator.

Any person may report sexual harassment (whether or not the person reporting is the person alleged to be the victim of conduct that could constitute sexual harassment) in person, by mail, telephone or 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.

### **Definitions**

"Complainant" means the person who is alleged to be the victim of conduct that could constitute sexual harassment.

"Respondent" means the person who has been reported to be the perpetrator of the conduct that could constitute sexual harassment.

"Third parties" include, but are not limited to, parents or guardians, third-party contracted employees and staff members assigned to work at or on behalf of OHVA, guests and/or visitors, visiting speakers, learning coaches, volunteers, third-party contractors or vendors doing business with or seeking to do business with OHVA and other individuals who come into contact with students at school-related events, activities, or functions (whether on or off school property) or during OHVA's educational program as described in the school's Title IX policy.

"Sexual Harassment" is defined as conduct on the basis of sex that satisfies one or more of the following:

1. An OHVA employee who conditions the provision of an aid, benefit, or service of the school on an individual's participation in unwelcome sexual conduct (i.e., *quid pro quo* sexual harassment);

2. 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 school's education programs or activities; or
3. Sexual assault (as defined in the Cleary Act, 20 U.S.C. 1092(f)(6)(a)(v)), dating violence, domestic violence or stalking (as defined in the Violence Against Women Act, 34 U.S.C.12291).

“Formal Complaint” is defined as a document filed by the Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that OHVA investigate the allegation(s) of sexual harassment.

### **Grievance Procedure**

This Grievance Procedure is intended to treat Complainants and Respondents equitably including providing supportive measures to the Complainant and Respondent, as appropriate, and following this Grievance Process before imposition of any disciplinary sanctions or other actions, other than supportive measures, against the Respondent. The Grievance Procedure seek to ensure objective evaluation of all relevant evidence, including inculpatory and exculpatory evidence. Individuals involved in the Grievance Procedure – including the Title IX Coordinators, investigators, decision-makers, facilitators of informal resolution efforts and those involved in the appeal process – must be properly trained and not have any bias or conflict of interest for or against complainants or respondents generally or an individual complainant or Respondent. If a determination of responsibility for Sexual Harassment is made against the Respondent, OHVA will provide remedies to the Complainant. The remedies will be designed to restore or preserve equal access to OHVA's education program or activity. Potential remedies include, but are not limited to, individualized services that constitute supportive measures. Remedies may also be disciplinary or punitive in nature and may burden the Respondent.

### **Reporting and Filing a Formal Complaint**

All OHVA employees, OHVA Board members and K12 employees performing contracted services to OHVA are required to promptly report allegations of sex discrimination or Sexual Harassment to a Title IX Coordinator. Because the Board is considered to have actual knowledge of Sexual Harassment or allegations of Sexual Harassment if any OHVA employee has such knowledge, and because the Board must take specific actions when it has notice of Sexual Harassment or allegations of Sexual Harassment, an OHVA employee who has independent knowledge of or receives a report involving allegations of sex discrimination and/or Sexual Harassment must notify the/a Title IX Coordinator within two (2) days of learning the information or receiving the report. The OHVA employee must also comply with mandatory reporting responsibilities pursuant to R.C. 2151.412 and other applicable laws. If an OHVA employee fails to report an incident of Sexual Harassment of which the employee is aware, the employee may be subject to disciplinary action, up to and including termination.

Students, other members of the OHVA community and Third Parties are encouraged, to report allegations of sex discrimination or Sexual Harassment promptly to a Title IX Coordinator or to any OHVA employee or administrator, who in turn will notify a Title IX Coordinator. If a report involves allegations of sex discrimination or Sexual Harassment by or involving the Title IX Coordinator, the person making the report should submit it to the Head of School, or another Board employee who, in turn, will notify the Head of School of the report. The Head of School will then serve in place of the Title IX Coordinator for purposes of addressing that report of sex discrimination or Sexual Harassment.

Reports can be made orally or in writing and should be as specific as possible. The person making the report should identify the alleged victim/Complainant, perpetrator(s)/Respondent(s) and witness(es), and describe in detail what occurred, including date(s), time(s) and location(s). Upon receipt of a report, the Title IX Coordinator must promptly contact the Complainant to discuss the availability of supportive measures, consider the Complainant's wishes with respect to supportive measures, inform the Complainant of the availability of supportive measures with or without the filing of a formal complaint, and explain to the Complainant the process for filing a formal complaint.

A Formal Complaint must be filed by a Complainant prior to OHVA proceeding with an investigation under its Title IX Grievance Procedure. A Title IX Coordinator may sign a Formal Complaint, with or without the Complainant's consent. A Formal Complaint may be filed by a Complainant in person, by mail or electronic mail.

Any incidents of sex discrimination or Sexual Harassment that comes to the school's attention through means other than a Formal Complaint will be promptly addressed by the Title IX Coordinator. Supportive measures will be considered and offered to both parties and the Title IX Coordinator shall provide information to the Complainant about how to file a Formal Complaint, or if the Title IX Coordinator chooses, he or she can file a Formal Complaint to begin the Grievance Procedure.

### **Mandatory and Discretionary Dismissals**

Ohio Virtual Academy shall investigate the allegations in a Formal Complaint, unless the conduct alleged in the Formal Complaint:

- Would not constitute Sexual Harassment (as defined by this policy) even if proved;
- Did not occur in OHVA's educational program or activity; or
- Did not occur against a person in the United States.

If one of the preceding circumstances exist, the Title IX Coordinator shall dismiss the Formal Complaint. If the Title IX Coordinator dismisses the Formal Complaint due to one of the preceding reasons, OHVA administration may still investigate and take action with respect to such alleged misconduct pursuant to other Board policies.

The Title IX Coordinator may dismiss a Formal Complaint, or the allegations contained therein, if at any point during the investigation:

- Complainant notifies the Title IX Coordinator in writing that the Complainant wishes to withdraw the Formal Complaint or some of its allegations;
- Respondent is no longer enrolled as a student in OHVA or is no longer employed by OHVA; or
- Specific circumstances prevent OHVA from gathering evidence sufficient to reach a determination about the allegations.

If the Title IX Coordinator dismisses a Formal Complaint, or any allegations therein, pursuant to the above, the Title IX Coordinator will promptly send a written notice of dismissal and a description of the reason(s) to the parties. Both parties have the right to appeal the dismissal as described in more detail below under “Right to Appeal.”

### **Informal Resolution Process**

If appropriate, as determined by the Title IX Coordinator, the Title IX Coordinator may offer to the parties an informal resolution process. If the parties mutually and voluntarily agree to participate in an informal resolution process, the Title IX Coordinator shall designate a trained individual to facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. The informal resolution process may be used at any time prior to the decision-maker(s) reaching a determination regarding responsibility. Prior to the informal resolution process commencing, both parties will receive written notice of the charges and allegations and will be advised of the requirements and circumstances related to the informal resolution process. The Complainant will not be required to resolve the problem directly with the Respondent, and either party has the right to end the informal process at any time thereby reinstating the formal process for investigating the complaint. Ohio Virtual Academy prohibits the informal resolution process for complaints involving a student and any OHVA employee or OHVA administrator. The formal resolution process should be used for these complaints. The informal process is expected to be completed within thirty (30) days after the Formal Complaint is filed. During the pendency of the informal resolution process, the investigation and adjudication processes that would otherwise occur will be stayed and all related deadlines will be suspended.

### **Investigation of Formal Complaint**

The Title IX Coordinator or investigator selected by the Title IX Coordinator will conduct a prompt and full investigation of the allegations contained in a Formal Complaint. An investigation will afford both the Complainant and the Respondent a full and fair opportunity to be heard, submit documentation and evidence supporting or rebutting the allegation(s), and identify witnesses. All parties involved in the investigation will be provided with a copy of the Title IX Grievance Procedure.

At the beginning of the investigation, the Title IX Coordinator shall provide written notice to the parties containing:

- A copy of OHVA's Policy and Grievance Procedure under Title IX;
- Whether there is an opportunity to engage in informal resolution;
- The actual allegations and facts that would constitute sexual harassment under Title IX, if proven;
- A statement that the Respondent is presumed innocent until a determination is made;
- A statement that the parties are entitled to an advisor of their choice;
- A statement that the parties can request to inspect and review certain evidence; and
- Information regarding the Student Code of Conduct and any policy concerning making false statements.

Investigations will be conducted by the Title IX Coordinator or an investigator, such as a principal or other administrator who has been properly trained in Title IX procedures and does not have a conflict of interest or bias towards or against either party, generally or specifically.

Prior to and during the investigation process, the Title IX Coordinator or other properly trained individual will meet independently with the Complainant and the Respondent and discuss any supportive measures to be implemented before or during the investigation.

### **Retaliation Prohibited**

At the beginning of the investigation, the Title IX Coordinator or investigator will explain that Title IX includes protections against retaliation. Ohio Virtual Academy will take steps to prevent retaliation and Ohio Virtual Academy will strongly react to any retaliatory actions, including any acts of retaliatory harassment, should they occur. No student, parent/guardian, OHVA employee or OHVA administrator, or member of the public shall be retaliated against for filing a complaint or participating in the investigation of a complaint.

### **Respondent Presumed Innocent**

The Respondent is presumed not be responsible for the alleged conduct until a determination regarding responsibility is made at the conclusion of the grievance process.

### **Investigation Procedure and Timeline**

Investigations must begin promptly, proceed impartially, and treat all parties equitably. This includes providing both parties an opportunity to present witnesses and other evidence. The investigation should be concluded within thirty (30) calendar days but no more than sixty (60) days after a Formal Complaint is filed, unless there is good cause to continue the investigation beyond sixty (60) days (e.g. law enforcement activities, absence of a party or witness, absence of

a party's advisor of choice or the need to provide language assistance or accommodations of disabilities).

### **Supportive Measures**

Upon request of a party, or on its own initiative, Ohio Virtual Academy may implement supportive measures prior to or during the investigation of a formal complaint. Supportive measures are free, individualized services designed to restore or preserve equal access to education, protect safety, or deter the sexual harassment. Supportive measures support a student and are not punitive or disciplinary with respect to another student. They do not unreasonably burden any other person.

A party can submit requests for supportive measures, either verbally or in writing, to the investigator and/or to the Title IX Coordinator. (The investigator will notify the Title IX Coordinator of any request for supportive measures and the Title IX Coordinator will be responsible to implement supportive measures). Supportive measures include, but are not limited to, counseling, extensions of time, modifications of work or class schedules, appropriate emotional and/or academic support, restrictions on contact between the parties, leaves of absences, and increased monitoring and support. In fairly assessing the need for either party to receive interim measures, Ohio Virtual Academy will not rely on fixed rules or any assumptions that favor one party over another. Supportive measures will be made available to both parties, as appropriate. In imposing supportive measures, the Title IX Coordinator will make every effort to avoid depriving any student of his/her education. OHVA will take steps to ensure that any supportive measure minimizes the burden on the parties, and that the Title IX Coordinator will communicate with the parties to ensure any supportive measures are necessary and effective based on the parties' needs.

### **Determination of Responsibility**

- The investigator's findings will be documented in a preliminary report and shared with the Complainant, Respondent and their advisors, if any. The parties will have at least ten (10) calendar days to review the preliminary report and submit a response in writing. Prior to finalizing the investigation report, the investigator shall consider the parties' written responses to the preliminary report, if any. The investigation report will then be finalized and forwarded to the decision-maker, the parties and their advisors, if any. The decision-maker cannot be the investigator, Title IX Coordinator or have any conflict of interest or bias in favor of or against either party.
- The decision-maker, prior to any final decision, shall afford the parties an additional (10) calendar days to submit relevant, written questions to the opposing party or any witnesses. The decision-maker shall ask any relevant questions, record the response(s) and provide the responses to the parties (and their advisors, if any) prior to making a final determination. If the decision-maker deems a question irrelevant, he/she shall state in writing why the question is not relevant and provide the reason(s) to the parties (and advisors, if any) before the final decision is made.

The decision-maker shall issue a written determination regarding responsibility and deliver it to the Title IX Coordinator who shall simultaneously submit it to both parties and advisors,

if any. To reach this determination, the decision-maker must apply the preponderance of the evidence standard. Further, the written determination must include:

- The portion of Ohio Virtual Academy's policy(ies) that was violated;
- A description of the procedural steps that were taken by OHVA to arrive at the decision;
- A findings of fact section;
- A section that draws conclusions after applying the facts to the portion of OHVA's policy that applies;
- A statement and rationale for the ultimate determination of responsibility;
- Any disciplinary sanctions that the decision-maker is recommending that OHVA impose on the Respondent;
- A statement and rationale for any recommended remedies for the Complainant, addressing how those remedies will restore or preserve equal access; and
- A statement of OHVA's procedures, a statement that the parties have a right to appeal the initial determination regarding responsibility and the permissible basis for the appeal.

### **Right to Appeal**

Both parties shall be provided notice of right to appeal the final determination based on: (1) a procedural irregularity affected the outcome of the matter; (2) new evidence has been discovered that was not reasonably available at the time of the determination on responsibility or dismissal; or (3) a conflict of interest on the part of the Title IX Coordinator, an investigator who compiled evidence, or a decision-maker, and the conflict of interest affected the outcome.

If a party intends to file an appeal, they must submit the appeal in writing to the Ohio Virtual Academy's Board of Trustees no later than ten (10) calendar days following the date of the final decision by providing such appeal to the Head of School. However, OHVA's Board of Trustees shall be deemed to have received the appeal as of the date of its next regular board meeting after the appeal has been provided to the Head of School.

The opposing party shall be provided with a copy of the written appeal and given an opportunity to submit a response which was be submitted to the Head of School at least ten (10) calendar days prior to the next regular board meeting.

Ohio Virtual Academy's Board of Trustees, or a Title IX Appeal Committee selected by OHVA's Board of Trustees, shall review the written appeal and any response and issue a written determination within twenty (20) calendar days of the receipt of the appeal, which will be delivered to both parties.

OHVA's Board of Trustees or Title IX Appeal Committee's decision shall be final.

### **Sanctions**

The Title IX Coordinator shall notify the Head of School of the decision-makers' recommendations with respect to disciplinary action for the Respondent and/or remedies to be offered to the Complainant. The Head of School shall review the recommendations and proceed



to determine whether such recommendations can or should be implemented based on the decision-makers' determination regarding responsibility. Nothing herein shall prevent the Head of School from imposing any remedy, including disciplinary sanction, while the appeal is pending.

### ***Training***

Individuals involved in the Grievance Procedure – Title IX Coordinators, investigators, decision-makers or facilitators of informal, voluntary resolution efforts must be trained.

The training materials cannot rely on sex stereotypes, must promote impartial investigations and adjudications and must be posted on OHVA's website.

All OHVA employees and OHVA administrators shall be trained on how to identify and report sexual harassment.

### ***Privileges***

No information protected by a legal privilege, such as the attorney-client privilege or the doctor-patient privilege, can be used during an investigation unless the person holding that privilege has waived it.

Neither a party nor Ohio Virtual Academy is allowed to seek, permit questions about, or allow the introduction of evidence that is protected by a recognized privilege.

### ***Changes to Grievance Procedure***

Ohio Virtual Academy reserves the right to change, modify, amend or repeal all or any part of this Grievance Procedure.