



University of Dallas Policy CRI-I

CIVIL RIGHTS PROCEDURE – INVESTIGATION OF FORMAL COMPLAINTS

1. **Purpose** – This Procedure provides the exclusive process for investigating Formal Complaints of violations of the University Civil Rights Policy, including, but not limited to, Sexual Harassment, Sexual Assault, Dating Violence and Stalking.
2. **Definitions** – Relevant terms for implementation of this Procedure are set forth in University Policy CRT – Civil Rights Policy – Relevant Terms.
3. **Initial Response to a Formal Complaint** – Upon receiving a Formal Complaint alleging a violation of the University Civil Rights Policy, the Civil Rights Coordinator will initiate the investigation process.
 - 3.1. The Civil Rights Coordinator will assign an Investigator to conduct an investigation and prepare a formal written report regarding the incident.
 - 3.1.1. The Civil Rights Coordinator may be the Investigator.
 - 3.1.2. The Civil Rights Coordinator and the Investigator may assign additional persons to assist in the investigation.
 - 3.1.3. If a Complainant requests that no investigation be conducted, the Civil Rights Coordinator will evaluate whether the request may be granted, in accordance with University Policy CRR.
 - 3.2. If a party believes that the Investigator should be replaced because the Investigator has a conflict of interest or is biased for or against the party, either individually or because of the party’s status as a Complainant or Respondent, the party may submit a written request to the Civil Rights Coordinator, within three (3) days of notice that the person has been assigned as the Investigator, that the Investigator be replaced.
 - 3.2.1. The Civil Rights Coordinator will evaluate the request to replace the Investigator and will make a decision regarding the request.
4. **Investigation of a Formal Complaint** – The Investigator shall conduct an investigation of the Formal Complaint.
 - 4.1. **Notice of Investigation** – The Investigator shall notify the Complainant and Respondent in writing that an investigation of the Formal Complaint has been opened (“notice of investigation”).

- 4.1.1. The notice must include sufficient details known at the time and provide the Respondent with sufficient time to prepare a response before any initial interview.
 - 4.1.1.1. Sufficient details include (1) the identities of the parties involved in the incident, if known, (2) the conduct allegedly constituting Prohibited Conduct, and the date and location of the alleged incident, if known.
 - 4.1.1.2. The notice must include a statement that the Respondent is presumed not responsible for the alleged conduct and that a determination regarding responsibility is made at the conclusion of the investigation and hearing process.
 - 4.1.1.3. The notice must include a statement that the parties may have an advisor of their choice, who may be, but is not required to be, an attorney.
 - 4.1.1.4. The notice must include a statement that the parties will be provided with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint.
 - 4.1.1.5. The notice must include a statement that the University's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the investigation and hearing process.
- 4.2. **Amending Notice** – If, in the course of an investigation, the Investigator decides to investigate allegations about the Complainant or Respondent that are not included in the notice of investigation, the Investigator must provide notice of the additional allegations to the parties whose identities are known.
- 4.3. **Consolidating Complaints** – The Civil Rights Coordinator may consolidate Formal Complaints as to allegations of Prohibited Conduct 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 Prohibited Conduct arise out of the same facts or circumstances.
 - 4.3.1. Where an investigation or hearing process involves more than one Complainant or more than one Respondent, references to the singular “party,” “Complainant,” or “Respondent” include the plural, as applicable.

- 4.4. **Time Frame** – The investigation and hearing of a Formal Complaint, or resolution through informal resolution, will be concluded within a reasonable period of time.
- 4.4.1. Most investigations and hearings, or informal resolution, as applicable, will be completed within ninety (90) from the notice of investigation. The investigation or hearing may be delayed or the deadline extended for good cause with written notice of the delay or extension and the reasons for the action to the Complainant and Respondent.
- 4.4.1.1. Good cause may include, but is not limited to, considerations such as the absence of a party, a party's Advisor, or a witness; concurrent law enforcement activity; or the need for language assistance or accommodations of disabilities.
- 4.5. **Conduct of Investigation** – When investigating a Formal Complaint, the University must:
- 4.5.1. **Burden** – Ensure that the burden of proof and the burden of gathering evidence sufficient to reach a determination regarding responsibility rests on the University and not on the parties.
- 4.5.1.1. The Investigator will attempt to interview the Complainant, the Respondent, and any witnesses as appropriate.
- 4.5.1.2. The Investigator will gather any other information considered to be relevant, and will also review any information submitted by the Complainant, the Respondent and/or any witnesses.
- 4.5.1.3. The University cannot 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 the party's voluntary, written consent to do so for the investigation and hearing process.
- 4.5.2. **Evidence** – The parties must have an equal opportunity to provide and review relevant evidence. That is, the University must:

- 4.5.2.1. Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
 - 4.5.2.2. Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
 - 4.5.2.3. Provide the parties with an equal opportunity to inspect and review any evidence obtained as part of the investigation that is directly related to the allegations raised in the Formal Complaint, including the evidence upon which the University does not intend to rely in reaching a determination regarding responsibility and inculpatory and exculpatory evidence whether obtained from a party or other source, so that each party can meaningfully respond to the evidence prior to the conclusion of the investigation.
- 4.5.3. **Advisor** – Provide the parties with the same opportunities to have others present during any investigation or hearing proceedings.
- 4.5.3.1. This includes the opportunity to be accompanied to any related meeting or proceeding by the Advisor of their choice, who may be, but is not required to be, an attorney.
 - 4.5.3.2. The University may not limit the choice or presence of an Advisor for either the Complainant or Respondent in any meeting or grievance proceeding.
 - 4.5.3.3. The University may establish restrictions regarding the extent to which the Advisor may participate in the proceedings, so long as the restrictions apply equally to both parties.
- 4.5.4. **Notice of Meetings** – Provide, to a party whose participation is invited or expected, written notice of the date, time, location, participants, and purpose of all hearings, investigative interviews, or other meetings, with sufficient time for the party to prepare to participate.
- 4.5.5. **Other Violations** – If violations of any other University policies, including the Student Code of Conduct, Employee Handbook or Faculty Handbook are identified during the investigation, the Investigator will consult with appropriate University officials to

determine on a case-by-case basis whether and how to investigate other potential violations. Consideration will be given to the type of violation and whether the actions occurred during the same incident or as separate incidents.

4.6. **Investigation Report** – At the conclusion of the investigation, the Investigator shall create an investigation report that fairly summarizes relevant evidence.

4.6.1. **Before Completion of Report** – Prior to completion of the investigation report, the investigator must send to each party and the party’s advisor, if any, the evidence subject to inspection and review in an electronic format or a hard copy, and the parties must have at least ten (10) days to submit a written response, which the Investigator will consider prior to completion of the investigation report.

4.6.1.1. If, before issuance of the investigation report, the Investigator gathers or receives additional evidence that is directly related to the allegations in the Formal Complaint, the Investigator must send it to the parties and the parties must have at least ten (10) days to submit a written response.

4.6.2. **Completion of Report** – After completing the investigation report, the Investigator shall send it to each party and the party’s advisor, if any, in an electronic format or a hard copy.

4.6.2.1. The Investigator shall also provide a copy of the investigation report to the Civil Rights Coordinator.

5. **Dismissal** – In some situations, some or all allegations of Prohibited Conduct in a Formal Complaint may be dismissed without a final determination.

5.1. **Conditions** – The Civil Rights Coordinator may dismiss a Formal Complaint or any allegations therein if, at any time during the investigation or hearing:

5.1.1. The Complainant notifies the Civil Rights Coordinator in writing that the Complainant would like to withdraw the Formal Complaint or any allegations therein;

5.1.2. The Respondent is not affiliated with the University or is no longer enrolled or employed by the University (except where dismissal is prohibited under Section 6.5.5 of Policy CRI);

- 5.1.3. Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein;
- 5.1.4. At the time of filing the formal complaint, the Complainant is not participating in or attempting to participate in the education program or activity of the University; or
- 5.1.5. The Civil Rights Coordinator concludes that the Formal Complaint, or some of the allegations therein, does not constitute a violation of the University Civil Rights Policy.
- 5.1.6. **Mandatory Dismissal under Title IX Regulations** – Certain allegations must be dismissed under Title IX regulations, but may still constitute actionable violations of University policy, including the Civil Rights Policy. See Section 6.0 of this Procedure.
- 5.2. **Reopening** – An investigation that is dismissed may be reopened if circumstances change or new information becomes available.
- 5.3. **Notice of Dismissal** – Upon dismissal, the Investigator must promptly send written notice of the dismissal and reason(s) therefor simultaneously to the parties.
- 6. **Mandatory Dismissal Under Title IX Regulations** – The administrative regulations implementing Title IX require dismissal under certain circumstances. However, if the mandatory dismissal requirement applies, the University is not precluded from taking action under the University’s policies or codes of conduct. (see 34 C.F.R. § 106.45(b)(3)).
 - 6.1. When notifying parties of a mandatory dismissal under the Title IX regulations, the Investigator will make clear whether investigation of the Formal Complaint is proceeding and, if so, under the Civil Rights Policy or other policy or code of the University. This may include, but is not limited to, allegations of Sexual Harassment in violation of the Civil Rights Policy that are not encompassed under the Title IX regulations.
 - 6.2. **Definitions for this Section** – The following definitions apply to this section of this Procedure:
 - 6.2.1. **“A person in the United States”** means incidents of Sexual Harassment under Title IX that occur against persons in the United States. It does not include incidents occurring against persons outside the United States.
 - 6.2.2. **“Education Program or Activity under Title IX”** includes locations, events, or circumstances over which the University

exercised substantial control over both the Respondent and the context in which the Sexual Harassment under Title IX occurs, and also includes any building owned or controlled by a student organization that is officially recognized by the University.

6.2.3. “Sexual Assault under Title IV” means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.¹

6.2.4. “Sexual Harassment under Title IX” means conduct on the basis of sex that satisfies one or more of the following:

6.2.4.1. An Employee of the University conditioning the provision of an aid, benefit, or service of the recipient on an individual’s participation in unwelcome sexual conduct;

6.2.4.2. 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 University’s Education Program or Activity; or

6.2.4.3. Sexual Assault under Title IV, Dating Violence, Domestic Violence, or Stalking.

6.3. The Title IX regulations mandate dismissal of a Formal Complaint as to allegations that

6.3.1. Would not constitute Sexual Harassment under Title IX;

6.3.2. Did not occur in the University’s Education Program or Activity under Title IX; or

6.3.3. Did not occur against a person in the United States.

¹ See Uniform Crime Reporting Program, National Incident-Based Reporting System, NIBRS Offense Definitions, available at https://ucr.fbi.gov/nibrs/2018/resource-pages/nibrs_offense_definitions-2018.pdf.