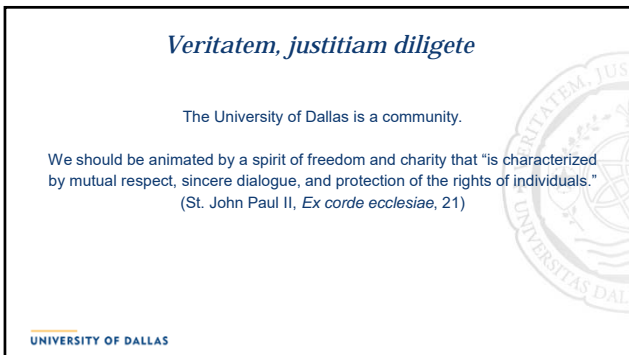




Civil Rights Policy
 Team Training (August 2020)
 UNIVERSITY OF DALLAS



Introduction
 Opportunities for Excellence
 UNIVERSITY OF DALLAS



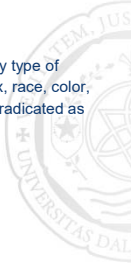
Veritatem, justitiam diligete

The University of Dallas is a community.

We should be animated by a spirit of freedom and charity that "is characterized by mutual respect, sincere dialogue, and protection of the rights of individuals."
 (St. John Paul II, *Ex corde ecclesiae*, 21)

UNIVERSITY OF DALLAS

"With respect to the fundamental rights of the person, every type of discrimination, whether social or cultural, whether based on sex, race, color, social condition, language or religion, is to be overcome and eradicated as contrary to God's intent." (*Gaudium et spes*, 29)



UNIVERSITY OF DALLAS

Civil Rights Policy

The University's Commitment

- The University will not discriminate against any Employee, applicant for employment, Student or applicant for admission on the basis of race, ethnicity, national origin, sex, pregnancy, disability, veteran status, age, or religion, or any other protected category under applicable federal, state or local law, except as otherwise permitted by law. (CRP 4.0)
- Any member of the University community who acts to deny, deprive, or limit educational opportunities, employment, residential or social access, benefits or opportunities of any member of the campus community, guests or visitors on the basis of their actual or perceived membership in any protected category is in violation of this Policy and may be subject to appropriate sanctions in accordance with related University Policy. (CRP 5.1)
- The University will provide reasonable accommodations to qualified individuals with disabilities in order to provide meaningful access to the programs and activities of the University. (CRP 6.0)



UNIVERSITY OF DALLAS

Civil Rights Policy

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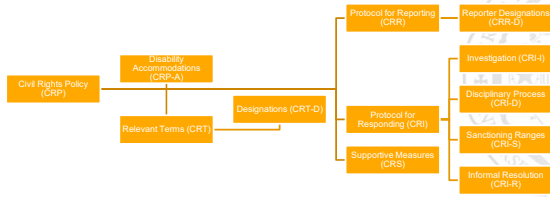
UNIVERSITY OF DALLAS

Civil Rights Policy The University's Commitment

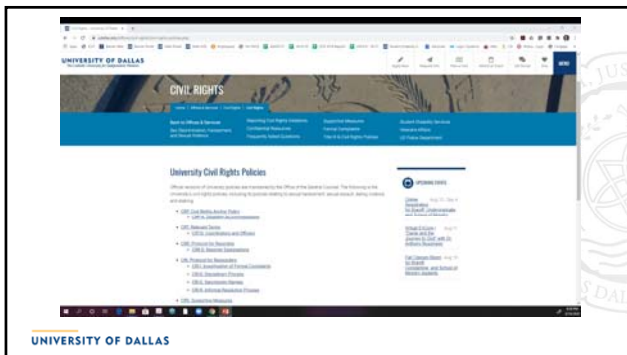
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UNIVERSITY OF DALLAS

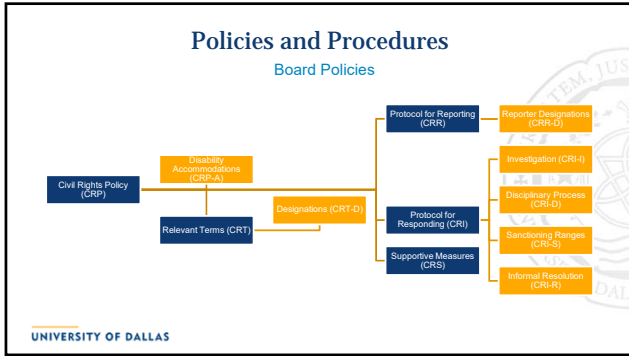
Policies and Procedures

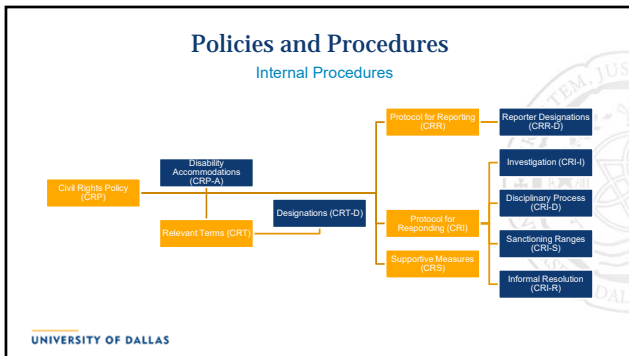


UNIVERSITY OF DALLAS



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Prohibited Conduct

“**Prohibited Conduct**” refers to any form of discrimination, Harassment, Retaliation, or failure to accommodate prohibited by University Policy CRP, including against any Employee, applicant for employment, Student or applicant for admission on the basis of **face, ethnicity, national origin, sex** (see, in particular, Section 5.0 *infra*), **pregnancy, disability, veteran status, age or religion, or any other protected category** under applicable federal, state or local law, except as otherwise permitted by law.

UNIVERSITY OF DALLAS

Harassment

Protected Class or Category

"Harassment" means a form of discrimination based on a person's membership or perceived membership in a protected category that includes physical, verbal, or nonverbal conduct that is sufficiently severe or pervasive, and objectively offensive, such that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational, employment, social, or residential programs.

UNIVERSITY OF DALLAS

Harassment

Any Harassing Conduct

"Harassment" means a form of discrimination based on a person's membership or perceived membership in a protected category that includes physical, verbal, or nonverbal conduct that is sufficiently severe or pervasive, and objectively offensive, such that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational, employment, social, or residential programs.

UNIVERSITY OF DALLAS

Harassment

Severe or Pervasive

"Harassment" means a form of discrimination based on a person's membership or perceived membership in a protected category that includes physical, verbal, or nonverbal conduct that is sufficiently severe or pervasive, and objectively offensive, such that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational, employment, social, or residential programs.

UNIVERSITY OF DALLAS

Harassment

Objectively Offensive

"Harassment" means a form of discrimination based on a person's membership or perceived membership in a protected category that includes physical, verbal, or nonverbal conduct that is sufficiently severe or pervasive, and objectively offensive, such that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational, employment, social, or residential programs.

UNIVERSITY OF DALLAS

Harassment

Equal Opportunity

"Harassment" means a form of discrimination based on a person's membership or perceived membership in a protected category that includes physical, verbal, or nonverbal conduct that is sufficiently severe or pervasive, and objectively offensive, such that it unreasonably interferes with, denies, or limits someone's ability to participate in or benefit from the University's educational, employment, social, or residential programs.

UNIVERSITY OF DALLAS



UNIVERSITY OF DALLAS

Coordinators

- **“Civil Rights Coordinator”** means the University official or officials designated to receive and investigate reports of Prohibited Conduct. The Civil Rights Coordinator(s) are designated by the President. (CRT 4.3)
- **“Title IX Coordinator”** refers to the University official who has been designated to coordinate efforts to comply with and implement the University Civil Rights Policy insofar as it prohibits sex discrimination, Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking. The Title IX Coordinator is designated by the President and is the Civil Rights Coordinator for receiving and investigating reports of sex discrimination, including but not limited to Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking. (4.24)
- **“Deputy Title IX Coordinator”** means a University official designated to assist the Title IX Coordinator in receiving and investigating complaints of sex discrimination, Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking. The President may designate one or more Deputy Title IX Coordinators.

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Introduction to Sexual Offenses

- Harassment-based Offenses
- Relationship-based Offenses
- Sexual Violence

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Harassment-Based Offenses

Sexual Harassment, Stalking, and Sexual Exploitation

“Sexual Harassment” means a form of sex discrimination that includes unwelcome sex-based verbal, written, or physical conduct that:

- In the employment context, unreasonably interferes with the victim’s work performance or creates an intimidating, hostile, or offensive work environment.
- In the education context, is sufficiently severe, pervasive, or persistent that the conduct interferes with a Student’s ability to participate in, or benefit from, educational programs or activities of the University.

Examples of this type of activity may include, but are not limited to:

- Pressuring another to engage in sexual behavior for some educational or employment benefits (*quid pro quo* sexual harassment);
- Persistent unwelcome efforts to develop a romantic or sexual relationship;
- Unwelcome commentary about an individual’s body or sexual activity;
- Unwanted sexual attention;
- Repeatedly engaging in sexually-oriented conversations, comments, or horseplay, including the use of language or the telling of jokes or anecdotes of a sexual nature in the workplace, office, or classroom, even if such conduct is not objected to by those present; or
- Gratuitous use of sexually-oriented materials, not directly related to the subject matter of a class, course, or meeting, even if not objected to by those present.

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Harassment-Based Offenses

Sexual Harassment, Stalking, and Sexual Exploitation

“Stalking” means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for their safety and/or the safety of others; or (2) suffer substantial emotional distress.

- A “course of conduct” means two or more acts in which the stalker, directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about a person, or interferes with a person’s property.
- “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- A “reasonable person” means a reasonable person under similar circumstances and with similar identities to the victim.

UNIVERSITY OF DALLAS

Harassment-Based Offenses

Sexual Harassment, Stalking, and Sexual Exploitation

“Sexual Exploitation” refers to conduct in which an individual takes non-consensual or abusive sexual advantage of another, and that behavior does not otherwise fall within the definitions of Sexual Harassment or Sexual Assault.

- Examples of Sexual Exploitation include, but are not limited to:
- Sexual voyeurism, such as watching a person undressing using the bathroom, or engaging in sexual acts, without the consent of the person observed.
 - Taking pictures or video or audio recording of another in a sexual act, or in any other private activity, without the consent of all involved in the activity, or exceeding the boundaries of such consent (such as allowing another person to hide in a closet and observe sexual activity, or disseminating sexual pictures without the photographed person’s consent).
 - Prostitution.
 - Engaging in sexual activity with another person while knowingly infected with human immunodeficiency virus (HIV), a sexually transmitted disease (STD) or sexually transmitted infection (STI) without informing the other person of the infection.
 - Administering alcohol or drugs (such as “date rape” drugs) to another person without his or her knowledge or consent (assuming the act, for instance, rape, is not completed).
 - Exposing one’s genitals in non-consensual circumstances (including in an electronic format).

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Relationship-Based Offenses

Dating and Domestic Violence

"Dating Violence" refers to violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim. The existence of such relationship shall be determined based on the perception of the alleged victim; however, consideration shall also be given to: (1) the length of the relationship, (2) the type of relationship, and (3) the frequency and nature of interaction between the persons involved in the relationship. Dating Violence includes but is not limited to sexual or physical abuse or the threat of such abuse.

- "who is or has been"
- "of a romantic or intimate nature"

UNIVERSITY OF DALLAS

Relationship-Based Offenses

Dating and Domestic Violence

- "Domestic Violence" refers to the following types of violence:
- 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 jurisdiction in which the crime of violence occurred; or
 - By any other person against an adult or youth victim who is protected from the person's acts under the domestic or family violence laws of the jurisdiction in which the crime of violence occurred.

UNIVERSITY OF DALLAS

Sexual Violence / Sexual Assault


"Sexual Assault" means sexual contact that occurs without another's consent, including in situations where a person is incapable of giving consent. Sexual Assault encompasses Rape, Fondling, Incest and Statutory Rape.

- "Rape" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the other person, including instances where the other person is incapable of giving consent.
- "Fondling" means the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the other person, including instances where the other person is incapable of giving valid consent.

UNIVERSITY OF DALLAS

Consent

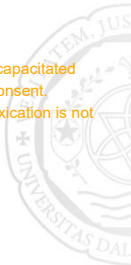
- Knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.



UNIVERSITY OF DALLAS

Consent

- **Knowing**, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity.
- A person who is incapacitated cannot give valid consent.
- The accused's intoxication is not an excuse.



UNIVERSITY OF DALLAS

Consent

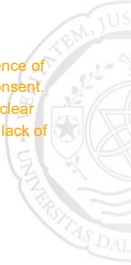
- Knowing, **voluntary**, and clear permission by word or action to engage in mutually agreed upon sexual activity.
- No force and
- No coercion



UNIVERSITY OF DALLAS

Consent

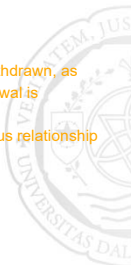
- Knowing, voluntary, and **clear permission** by word or action to engage in mutually agreed upon sexual activity.
- **Silence or the absence of resistance is not consent.**
- **But resistance is a clear demonstration of a lack of consent.**



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Consent


- Knowing, voluntary, and clear **permission** by word or action to engage in mutually agreed upon sexual activity.
- **Consent can be withdrawn, as long as the withdrawal is communicated**
- **A current or previous relationship is not consent**



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Consent

- Knowing, voluntary, and clear permission **by word or action** to engage in mutually agreed upon sexual activity.
- **The existence of consent is based on the totality of the circumstances.**



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Consent

- Knowing, voluntary, and clear permission by word or action to engage in **mutually agreed upon** sexual activity.
- Consent to some sexual contact (such as consensual fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).

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Importance of Consent

- Consent is not a matter of saying your classmates car was really only worth \$5 anyway.
- Or that you think he would have sold it for \$5 if he had been sober.
- Or that your friend shouldn't cancel the race.
- Or even that there is, after all, something a bit off about buying two tacos and a burrito, but no drink.

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God willed that man should be 'left in the hand of his own counsel,' so that he might of his own accord seek his Creator and freely attain his full and blessed perfection by cleaving to him.

– *Gaudium et spes*

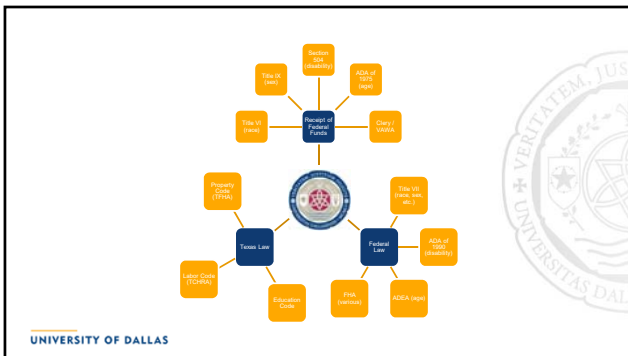
UNIVERSITY OF DALLAS



Legal Background

Title VI, Title IX, etc.

UNIVERSITY OF DALLAS



Federal Funding Agreements

Equal Opportunity in All Programs and Activities

- No person / No otherwise qualified individual with a disability in the United States shall,
 - on the basis of sex, [Title XI]
 - on the ground of race, color, or national origin, [Title VI]
 - on the basis of age, [Age Discrimination Act of 1975]
 - solely by reason of her or his disability, [Section 504]
- be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

UNIVERSITY OF DALLAS

Employment Law
State and Federal

<p>Protected Classes</p> <ul style="list-style-type: none"> • Title VII (race, color, religion, sex, and national origin) • Americans with Disabilities Act • Pregnancy Discrimination Act • Age Discrimination in Employment Act • Texas Labor Code (race, color, disability, religion, sex, national origin, and age) 	<p>Adverse Employment Actions</p> <ul style="list-style-type: none"> • Failure to hire • Termination • Failure to promote • Demotion
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UNIVERSITY OF DALLAS

Housing
State and Federal

<p>Fair Housing Act / Texas Fair Housing Act</p> <ul style="list-style-type: none"> • Race • Color • National Origin • Religion • Sex • Familial Status • Disability 	<p>Adverse Actions</p> <ul style="list-style-type: none"> • Failure to rent • Different conditions or terms • Harassment • Failure to accommodate (e.g., disability) • etc. (mostly not relevant to university housing)
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UNIVERSITY OF DALLAS

Higher Education
Clery and the Violence Against Women Act

<p>Clery</p> <ul style="list-style-type: none"> • Annual Security Report • Crime Log • Timely Warnings • Crime Statistics 	<p>VAWA</p> <ul style="list-style-type: none"> • Added sexual assault, dating violence, domestic violence, and stalking to Clery reporting • Requires policies and procedures for responding to the VAWA crimes • Requires training and prevention efforts
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UNIVERSITY OF DALLAS

UNIVERSITY OF DALLAS
OFFICE OF CIVIL RIGHTS AND TITLE IX
1000 East University Avenue, Suite 2000, Dallas, TX 75208

THE UNIVERSITY COMMENTARY

The University of Dallas is committed to providing a safe and equitable educational environment for all students, faculty, and staff. This policy is designed to address the University's obligations under Title IX of the Education Amendments of 1972, which prohibits sex-based discrimination in education. The University's commitment to equity and inclusion is a core value, and this policy reflects that commitment. The University will not tolerate any form of sex-based discrimination, including sexual harassment, sexual assault, and sexual violence. The University will take prompt and effective action to address any such incidents and will provide support and resources to all affected individuals. The University's policies and procedures are designed to ensure a fair and equitable process for all parties involved in any investigation. The University's commitment to equity and inclusion is a core value, and this policy reflects that commitment. The University will not tolerate any form of sex-based discrimination, including sexual harassment, sexual assault, and sexual violence. The University will take prompt and effective action to address any such incidents and will provide support and resources to all affected individuals. The University's policies and procedures are designed to ensure a fair and equitable process for all parties involved in any investigation.



UNIVERSITY OF DALLAS

Higher Education
Texas Education Code

SB 212 (Reporting)

- Requirement that all employees (other than designated confidential employees) report sexual harassment, sexual assault, dating violence, and stalking to the Title IX Coordinator
- Mandatory termination and possible criminal penalties for violations

HB 1735 (Policy)

- Board adopted policy on sexual harassment, sexual assault, dating violence, and stalking
- Process requirements
- Training
- Prevention
- Confidentiality

HB 449 (Transcripts)

- Notation when ineligible to reenroll for disciplinary reason
- Must complete disciplinary processes (even if student withdraws)

UNIVERSITY OF DALLAS

Retaliation
State and Federal

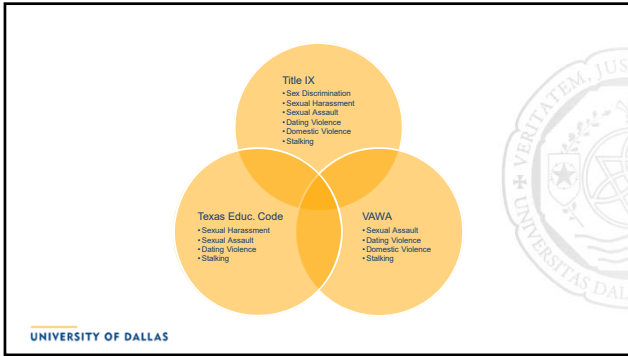
Protected Activities

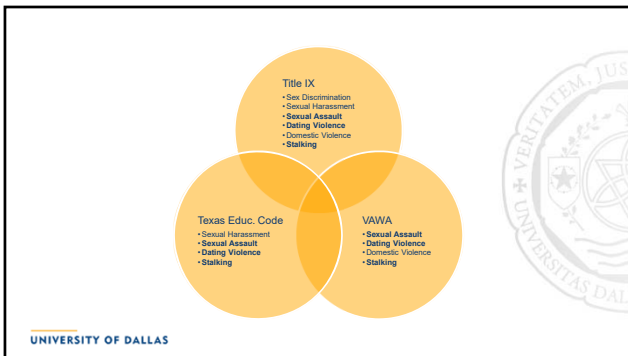
- Reporting under the UD Civil Rights Policy
- Participating in processes under the Civil Rights Policy
- Reporting to federal or state civil rights agencies (e.g., EEOC, OCR)
- Participating in processes with civil rights agencies

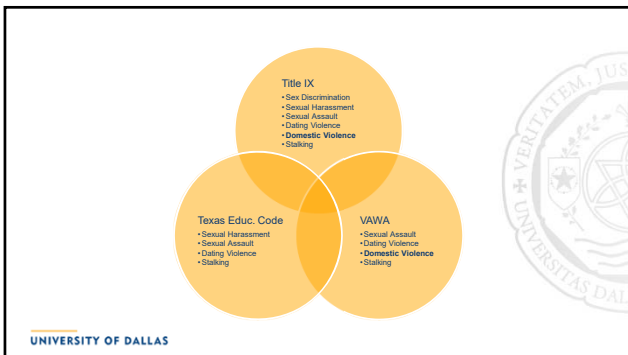
Adverse Actions

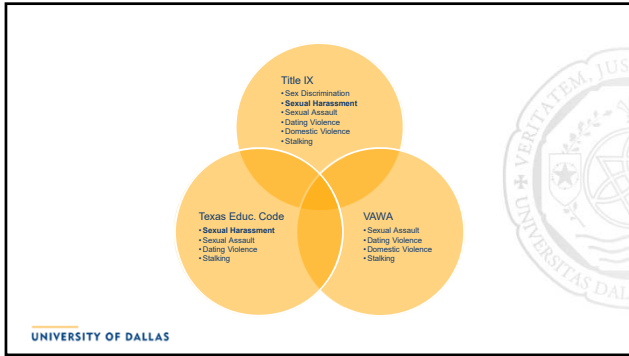
- Any action that "might deter a reasonable person from engaging in protected activity."

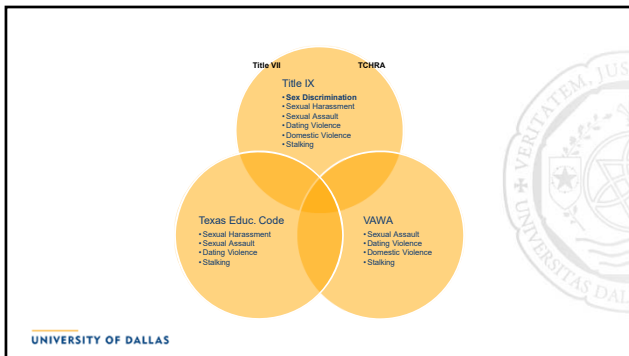
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A Unified Civil Rights Policy

Advantages and Disadvantages

- More equitable (Similar types of offenses have a similar process)
- Easier to implement (consistent definitions and process, as much as possible)
- Sometimes the statutes might permit greater latitude as to certain procedures (VAWA requires annual training, but Title VI does not)
- Sometimes the statutes and regulations cannot be fully harmonized

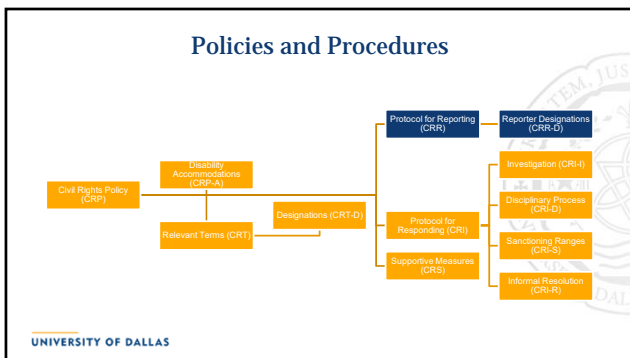
UNIVERSITY OF DALLAS



Reporting

Mandatory and Confidential Reporting

UNIVERSITY OF DALLAS



Mandatory Reporting

All Employees, other than a Confidential Reporter, are required to promptly report to the appropriate Civil Rights Coordinator any incident the Employee witnesses or receives information about that the Employee reasonably believes constitutes a violation of the University Civil Rights Policy, including, but not limited to, Sexual Harassment, Sexual Assault, Dating Violence, and Stalking. The Employee must report such an incident regardless of when or where the incident occurred. (CRR 6.0)

UNIVERSITY OF DALLAS

Civil Rights Coordinators

Joshua Skinner, J.D.
Civil Rights Coordinator
Director, Office of Civil
Rights and Title IX
Braniff, 132
(972) 721-5056
jaskinner@udallas.edu

LaCoya Williams, M.S.
Deputy Coordinator
Associate Director,
Human Resources
Cardinal Farrell Hall,
First Floor
(972) 721-4063
williams2@udallas.edu

Monica Heckman, M.E.S.
Deputy Coordinator
Lead Athletics Trainer
Ed Maher Athletic Center
(972) 721-5010
mheckman@udallas.edu

UNIVERSITY OF DALLAS

Content of Report

A report from an Employee, other than a Confidential Employee, must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident. (6.1)

UNIVERSITY OF DALLAS

Content of Report

A report from an Employee, other than a Confidential Employee, must include all information concerning the incident known to the reporting person that is relevant to the investigation and, if applicable, redress of the incident, including whether an alleged victim has expressed a desire for confidentiality in reporting the incident. (6.1)

Employees are not expected to investigate. They do not need to ask for more information. Generally should not. Their role is to see how they can help. And then report what they know to a Coordinator.

UNIVERSITY OF DALLAS

Texas Senate Bill 212

Pursuant to Texas law, an employee (other than a Confidential Employee) who, in the course and scope of employment, witnesses or receives information regarding the occurrence of an incident that the employee believes constitutes Sexual Harassment, Sexual Assault, Dating Violence or Stalking and is alleged to have been committed by or against a person who was a Student enrolled at or an employee of the University at the time of the incident must promptly report the incident to the Title IX Coordinator or a deputy Title IX Coordinator. (6.3)

UNIVERSITY OF DALLAS

- Criminal penalties for failure to report to a Title IX coordinator; and
- Mandatory termination of employment.
- No requirement that the incident involve the University or that the other person be connected to the University.

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UNIVERSITY OF DALLAS

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Reporting by a Coordinator

Imminent Danger

- The Civil Rights Coordinator or deputy Civil Rights Coordinator, as applicable, will immediately report to the President of the University a reported incident if the Civil Rights Coordinator or deputy Civil Rights Coordinator has cause to believe that the safety of any person is in imminent danger as a result of the incident. (CRR 5.3)

UNIVERSITY OF DALLAS

When is reporting not required?

● Confidential Reporters

"Confidential Reporter" – Refers to designated University Employees who are relieved of the obligation to report individualized information about a reported or witnessed incident of Prohibited Conduct to the Civil Rights Coordinator and to whom Students may speak confidentially. (CRT 4.7)

An Employee is not required to make a report to the Civil Rights Coordinator concerning:

- an incident in which the Employee was a victim of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking;
- an incident in which the Employee received information due to a disclosure made at ... public awareness event sponsored by the University or by a student organization affiliated with the University; or
- ... incident in which the Employee has either learned of the incident during the course of the University's review or process or has confirmed with the person or office overseeing the review or process that the incident has been previously reported. (CRR 6.2)

UNIVERSITY OF DALLAS

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UNIVERSITY OF DALLAS

Confidential Reporters

Confidential Reporters on the University campus typically include the following when working within the scope of their license or ordination:

- CRR 7.1.1
- CRR-D 5.0

- Licensed Mental Health Counselors.
- Licensed Medical Professionals.
- Vowed Religious (priests, deacons, and religious sisters and brothers), including the University Chaplain, when providing pastoral services.
- The Director of Campus Ministry and any member of the Campus Ministry staff.
- As to reports from a specific person, Confidential Reporters includes an Advisor selected by that person or by the University to conduct cross-examination on behalf of that person. Advisors are only available during an investigation or disciplinary process under the Civil Rights Policy and are only available to the parties to that investigation or disciplinary process.

UNIVERSITY OF DALLAS

When may a Confidential Reporter report?

- A Confidential Reporter may not disclose any communication made by a Student to the Employee **unless** the Student **consents** to the disclosure or the Employee is **required** to make the disclosure under state or federal law. (CRR 7.2)



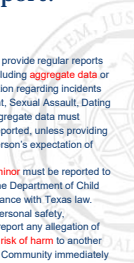
UNIVERSITY OF DALLAS

What must a Confidential Reporter report?

Unless prohibited by law (including canon law), Confidential Reporters must disclose confidential communications in the following circumstances:

- CRR 7.3

- A Confidential Reporter must provide regular reports to the Title IX Coordinator including **aggregate data** or other non-identifying information regarding incidents of alleged Sexual Harassment, Sexual Assault, Dating Violence, or Stalking. The aggregate data must include the type of incident reported, unless providing that data would violate the person's expectation of privacy.
- Reports alleging **abuse of a minor** must be reported to local law enforcement or to the Department of Child Protective Services in accordance with Texas law.
- In the interest of public and personal safety, Confidential Reporters must report any allegation of conduct that poses **imminent risk of harm** to another individual or to the University Community immediately to the University Police or to other local law enforcement.



UNIVERSITY OF DALLAS

Confidentiality

Lack of Formal Complaint

- An alleged victim may request that their identity not be disclosed or that a Complaint not be formally pursued by the University. The University will take all reasonable steps to comply with a request for confidentiality so long as doing so will not prevent the University from responding to the Complaint effectively.



UNIVERSITY OF DALLAS

Confidentiality

With or Without a Formal Complaint

Whose identity is confidential?

- An alleged victim of sexual harassment, sexual assault, dating violence, or stalking
- A person who reports... or participated in the investigation; and
- A person accused, but the report is investigated and found unsubstantiated or without merit.

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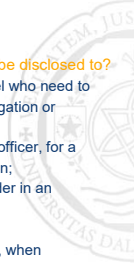
Confidentiality

With or Without a Formal Complaint

Who may the identity be disclosed to?

- University personnel who need to know for the investigation or hearings;
- A law enforcement officer, for a criminal investigation;
- A health care provider in an emergency;
- The accused; and
- Potential witnesses, when necessary for the investigation.

UNIVERSITY OF DALLAS



Amnesty

- A person acting in good faith who reports or otherwise participates in the reporting, investigative, or disciplinary process of an alleged violation of the University Civil Rights Policy may not be subjected to any disciplinary action by the University for any violation by the person of the University's code of conduct reasonably related to the incident unless suspension or expulsion from the University is a possible punishment. (CRR 4.2.2)

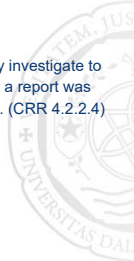
UNIVERSITY OF DALLAS



Amnesty

- A person acting in **good faith** who reports or otherwise participates in the reporting, investigative, or disciplinary process of an alleged violation of the University Civil Rights Policy may not be subjected to any disciplinary action by the University for any violation by the person of the University's code of conduct reasonably related to the incident unless suspension or expulsion from the University is a possible punishment. (CRR 4.2.2)
- The University may investigate to determine whether a report was made in good faith. (CRR 4.2.2.4)

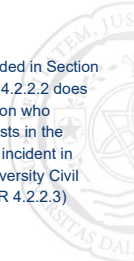
UNIVERSITY OF DALLAS



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- The amnesty provided in Section 4.2.2, 4.2.2.1, and 4.2.2.2 does not apply to a person who perpetrates or assists in the perpetration of the incident in violation of the University Civil Rights Policy. (CRR 4.2.2.3)

UNIVERSITY OF DALLAS



Amnesty

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UNIVERSITY OF DALLAS



Amnesty

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- Underage drinking
- Open house hours violation

UNIVERSITY OF DALLAS



Amnesty

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- Violence
- Drug-dealing

UNIVERSITY OF DALLAS

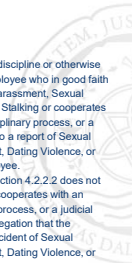


Amnesty

Under the Texas Education Code

- In addition, the University will not take any disciplinary action against a Student enrolled at the University who in good faith reports to the University being the victim of, or a witness to, an incident of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking for a violation of the University's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the University's disciplinary process regarding the incident, if any. (CRR 4.2.2.1)
- Also, the University will not discipline or otherwise discriminate against an Employee who in good faith makes a report of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking or cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to a report of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking made by the Employee.
- The amnesty provided in Section 4.2.2.2 does not apply to an Employee who cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the Employee perpetrated an incident of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking.

UNIVERSITY OF DALLAS



Amnesty

Under the Texas Education Code

- In addition, the University will not take any disciplinary action against a Student enrolled at the University who in good faith reports to the University being the victim of, or a witness to, an incident of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking for a violation of the University's code of conduct occurring at or near the time of the incident, regardless of the location at which the incident occurred or the outcome of the University's disciplinary process regarding the incident, if any.
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- The amnesty provided in Section 4.2.2.2 does not apply to an Employee who cooperates with an investigation, a disciplinary process, or a judicial proceeding relating to an allegation that the Employee perpetrated an incident of Sexual Harassment, Sexual Assault, Dating Violence, or Stalking. (CRR 4.2.2.3.1)

UNIVERSITY OF DALLAS

Anti-Retaliation

- The University takes reports of violations of the University Civil Rights Policy very seriously and will not tolerate Retaliation against those who make reports or participate in the investigation or adjudication process. (CRP 5.1.1)
- Any actual or threatened Retaliation, or any act of intimidation to prevent or otherwise obstruct the reporting of a violation of the University Civil Rights Policy or the participation in proceedings related to a report of such violations, may be considered a separate violation of the University Civil Rights Policy and may result in disciplinary sanctions. (CRP 5.1.2)

UNIVERSITY OF DALLAS

Crime Reporting

Clery / VAWA

- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- Reports of on-campus crime must be reported to UDDP
- General information (type of offense/date/location)

UNIVERSITY OF DALLAS

Public Disclosure

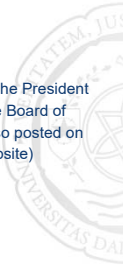
Federal and State

Clery / VAWA

- Daily Crime Log
- Annual Security Report
- Log and ASR are posted on the University's website

SB 212


- Quarterly report to the President
- Annual report to the Board of Trustees (that is also posted on the University's website)



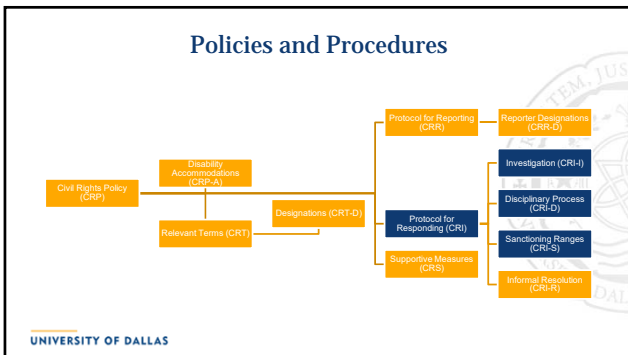
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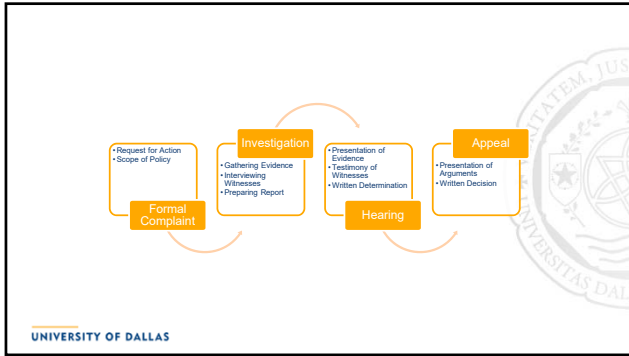
Formal Process

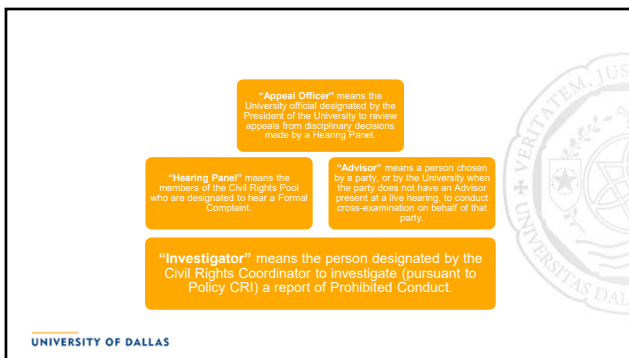
Overview

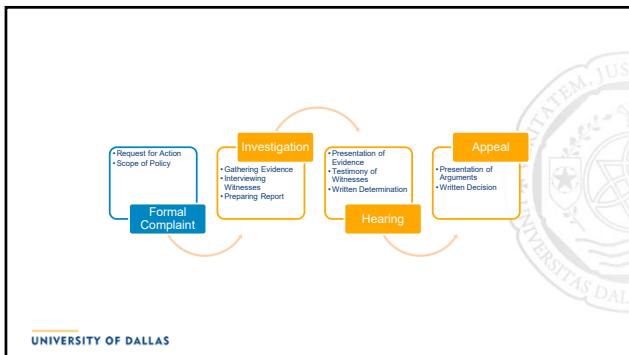


UNIVERSITY OF DALLAS









Formal Complaints

"Formal Complaint" is a document filed by a Complainant or signed by the Civil Rights Coordinator alleging Prohibited Conduct by a Respondent and requesting that the University investigate the allegations of Prohibited Conduct.

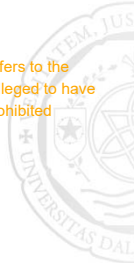


UNIVERSITY OF DALLAS

Formal Complaints

"Formal Complaint" is a document filed by a Complainant or signed by the Civil Rights Coordinator alleging Prohibited Conduct by a Respondent and requesting that the University investigate the allegations of Prohibited Conduct.

- "Complainant" refers to the individual who is alleged to have been subject to Prohibited Conduct.



UNIVERSITY OF DALLAS

Formal Complaints

"Formal Complaint" is a document filed by a Complainant or signed by the Civil Rights Coordinator alleging Prohibited Conduct by a Respondent and requesting that the University investigate the allegations of Prohibited Conduct.

- "Respondent" refers to a party who has been accused of Prohibited Conduct.



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Formal Complaints

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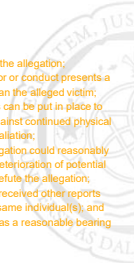


Formal Complaints

"Formal Complaint" is a document filed by a Complainant or signed by the Civil Rights Coordinator alleging Prohibited Conduct by a Respondent and requesting that the University investigate the allegations of Prohibited Conduct.

1. The seriousness / nature of the allegation;
2. Whether the alleged behavior or conduct presents a threat to individuals other than the alleged victim;
3. Whether effective measures can be put in place to protect the alleged victim against continued physical or psychological harm or retaliation;
4. Whether delaying an investigation could reasonably result in the destruction or deterioration of potential evidence to corroborate or refute the allegation;
5. Whether the University has received other reports allegedly committed by the same individual(s); and
6. Any other information that has a reasonable bearing on the decision. (CRR 8.2)

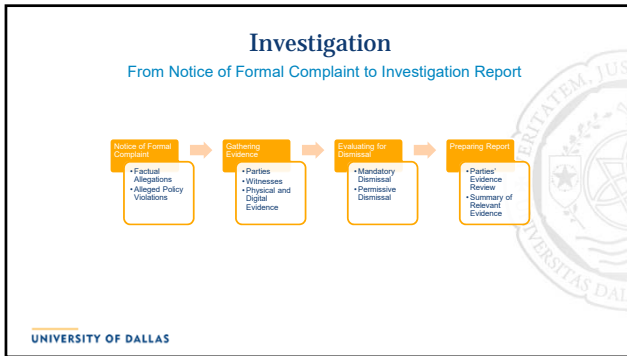
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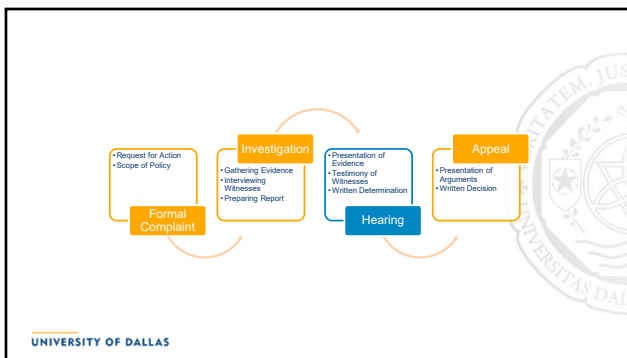


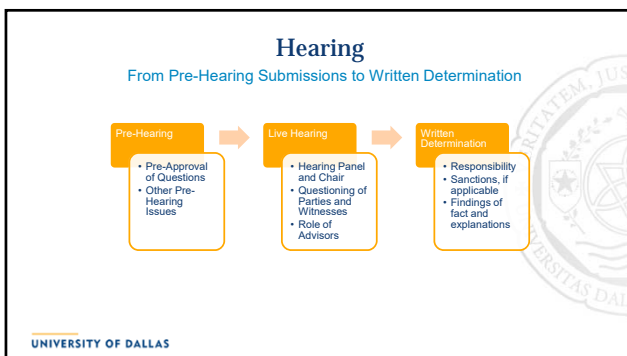


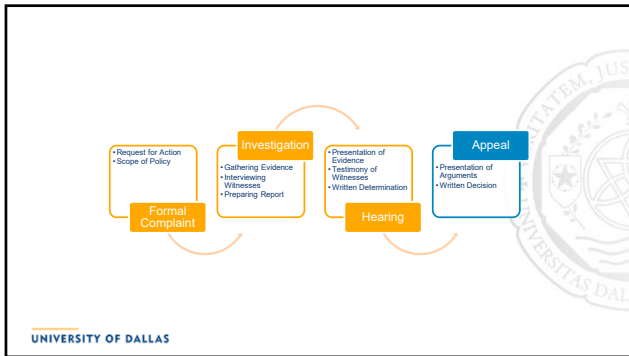
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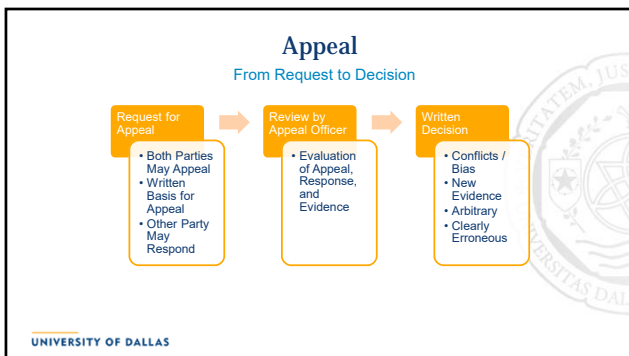








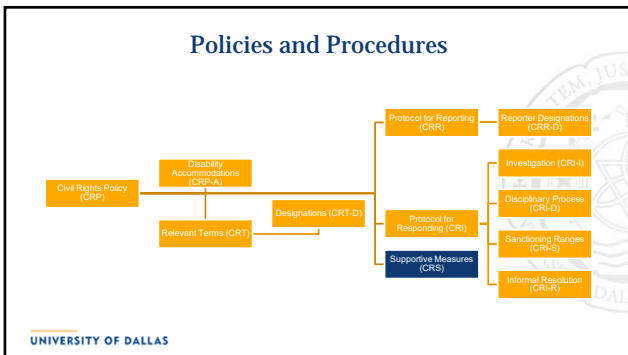








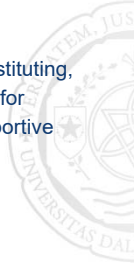




Role of Coordinators

The Civil Rights Coordinator is responsible for instituting, altering, and revoking supportive measures, and for coordinating the effective implementation of supportive measures.

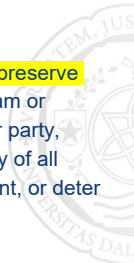
UNIVERSITY OF DALLAS



Purpose

Supportive measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter civil rights violations.

UNIVERSITY OF DALLAS



Typical Supportive Measures

- Supportive measures may include, but are not limited to,
- counseling,
 - extensions of deadlines or other course-related adjustments,
 - modifications of work or class schedules,
 - campus escort services,
 - mutual restrictions on contact between the parties,
 - changes in work or housing locations,
 - leaves of absence,
 - increased security and monitoring of certain areas of the campus, and
 - other similar measures.

UNIVERSITY OF DALLAS



Purpose

Supportive measures are designed to restore or preserve equal access to the University's education program or activity **without unreasonably burdening** the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter civil rights violations.

UNIVERSITY OF DALLAS

What is an unreasonable burden?

Jane Doe just came into the Office of Civil Rights and Title IX and reported that, just before Spring Break 2020, she was sexually assaulted by John Roe. She has been struggling with what happened throughout the stay-at-home orders. She is ready to return to classes, but she just learned that she is enrolled in the same section of Literary Tradition IV as John. She is not sure that she can handle being in class with him. She says that the Literary Tradition IV section was the best one for her schedule with a professor she has been looking forward to take and so does not want to switch sections. Can John be required to move to another section? Either way, what other options are there?

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Does this help?

- Supportive measures may include allowing a student who is an alleged victim or an alleged perpetrator of an incident of sexual harassment, sexual assault, dating violence or stalking to drop a course without academic penalty if the other party involved in the reported incident is enrolled in the same course. (CRS 4.2.2; Tex. Educ. Code 51.282(e))

UNIVERSITY OF DALLAS

Possible Solutions

Changing a respondent's class schedule, or forbidding the respondent from communicating with the complainant, may be an appropriate supportive measure for a complainant if such measures do not "unreasonably burden" the respondent, and such measures do not violate the presumption of non-responsibility. (85 Fed. Reg. 30,267 (May 19, 2020))

- How would we know if the measures "unreasonably burden" the respondent?
- How do we know if the measures do not violate the presumption of non-responsibility?

UNIVERSITY OF DALLAS

More on Burdens, Reasonable and Unreasonable

- Changing a respondent's class schedule or changing a respondent's housing or dining hall assignment may be a permissible supportive measure depending on the circumstances. (85 Fed. Reg. 30,231 (May 19, 2020))
- By contrast, removing a respondent from the entirety of the recipient's education programs and activities, or removing a respondent from one or more of the recipient's education programs or activities (such as removal from a team, club, or extracurricular activity), likely would constitute an unreasonable burden on the respondent.

UNIVERSITY OF DALLAS

Purpose

Supportive measures are designed to restore or preserve equal access to the University's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the University's educational environment, or deter civil rights violations.

UNIVERSITY OF DALLAS

Supportive Measures

Supportive measures means **non-disciplinary, non-punitive** individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

- No-contact order
- Supervising the respondent
- Educating the respondent (85 Fed. Reg. 30,267 (May 19, 2020))

UNIVERSITY OF DALLAS

Supportive Measures

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent before or after the filing of a formal complaint or where no formal complaint has been filed.

- Supportive Measures may include allowing a Student who is an alleged victim **or an alleged perpetrator** of an incident of Sexual Harassment, Sexual Assault, Dating Violence or Stalking to drop a course without academic penalty if the other party involved in the reported incident is enrolled in the same course.

UNIVERSITY OF DALLAS

Supportive Measures

Supportive measures means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the complainant or the respondent **before or after the filing of a formal complaint or where no formal complaint has been filed.**

- The institution must make such accommodations or provide such protective measures if the victim requests them and if they are reasonably available, **regardless of whether the victim chooses to report the crime to campus police or local law enforcement.** (VAWA)

UNIVERSITY OF DALLAS

When are interim disciplinary actions appropriate?

The University may remove a Respondent from the University's education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any Student or other individual arising from the allegations justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.

- Class(es)
- Housing
- Athletics
- Etc.

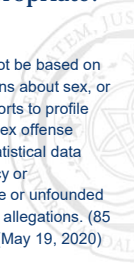


UNIVERSITY OF DALLAS

When are interim disciplinary actions appropriate?

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- The analysis cannot be based on general assumptions about sex, or research that purports to profile characteristics of sex offense perpetrators, or statistical data about the frequency or infrequency of false or unfounded sexual misconduct allegations. (85 Fed. Reg. 30,233 (May 19, 2020))



UNIVERSITY OF DALLAS

Who makes the assessment?

The University may remove a Respondent from the University's education program or activity on an emergency basis, provided that the University undertakes an individualized safety and risk analysis, determines that an immediate threat to the physical health or safety of any Student or other individual arising from the allegations justifies removal, and provides the Respondent with notice and an opportunity to challenge the decision immediately following the removal.



UNIVERSITY OF DALLAS

Risk Assessment No. 1

Jane Doe alleges that John Roe sexually assaulted her over the weekend. She alleges that she did not want to have sex with him, but felt that she had to or he would become angry with her. When he hears about Jane's allegations from one of his friends, he becomes very angry, states that he is going to go beat up Jane, and starts heading off in the direction of Jane's dorm.

UNIVERSITY OF DALLAS

Risk Assessment No. 2

Jane Doe alleges that John Roe sexually assaulted her over the weekend. She alleges that she did not want to have sex with him, but felt that she had to or he would become angry with her. When he hears about Jane's allegations from one of his friends, he becomes very angry, states that he is going to teach her a lesson, and storms off.

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Risk Assessment No. 3

Jane Doe alleges that John Roe sexually assaulted her over the weekend. She alleges that she did not want to have sex with him, but felt that she had to or he would become angry with her. When he hears about Jane's allegations from one of his friends, he looks embarrassed and ashamed. He makes a comment to the effect, "what's the point then?," and wanders off.

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Risk Assessment No. 4

Jane Doe alleges that John Roe sexually assaulted her over the weekend. She alleges that she did not want to have sex with him, but felt that she had to or he would become angry with her. Jane and John are both on the cross country team and have practices together with the rest of the team most days. Jane states that she no longer feels safe around John and wants him removed from the cross country team while he is under investigation.

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Other Forms of Misconduct

- We disagree that a recipient's assessment that a respondent poses a threat of obstructing the sexual harassment investigation, or destroying relevant evidence, justifies an emergency removal under this provision, because the provision is intended to ensure that recipients have authority and discretion to address health and safety emergencies arising out of sexual harassment allegations, not to address all forms of misconduct that a respondent might commit during a grievance process. (85 Fed. Reg. 30,225 (May 19, 2020))

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Risk Assessment No. 4 (alternate solution)

Supportive Measures

- If a complainant and respondent are both members of the same athletic team, a carefully crafted unilateral no-contact order could restrict a respondent from communicating directly with the complainant so that even when the parties practice on the same field together or attend the same team functions together, the respondent is not permitted to directly communicate with the complainant.
- Further, the recipient may counsel the respondent ..., and instruct the team coaches, trainers, and staff to monitor the respondent, to help enforce the no-contact order and deter any sexual harassment or retaliation by the respondent against the complainant. (85 Fed. Reg. 30,231 (May 19, 2020))

UNIVERSITY OF DALLAS

Employees

The University may place an employee respondent who is a full-time employee or non-student on administrative leave during the pendency of a complaint process for a formal complaint.

- **Formal complaint is required**
- Full-time employee or non-student employee
- Administrative leave can be with or without pay (and benefits)

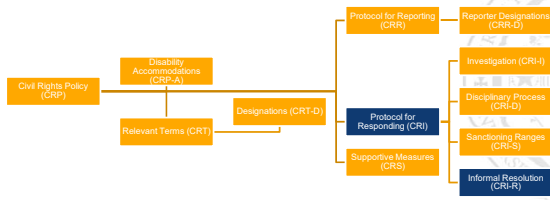
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Informal Resolution

Availability and Limits

UNIVERSITY OF DALLAS

Policies and Procedures



UNIVERSITY OF DALLAS

The Complainant *must* file a Formal Complaint

- A recipient (the University) may not **offer** an informal resolution process unless a formal complaint is filed. 34 C.F.R. § 106.45(b)(9)

Because an informal resolution *may* result in disciplinary or punitive measures agreed to by a respondent, ... a recipient may not offer informal resolution unless a formal complaint is filed. This ensures that the parties understand the allegations at issue and the right to have the allegations resolved through the formal grievance process, and the right to voluntarily consent to participate in informal resolution. (85 Fed. Reg. 30,401 (May 19, 2020))

UNIVERSITY OF DALLAS

No Binding Arbitration Clauses

- A recipient 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 an investigation and adjudication of formal complaints ... consistent with this section. 34 C.F.R. § 106.45(b)(9)

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No Court-Ordered Mediation

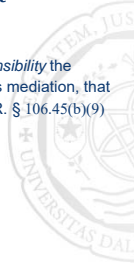
- A recipient may not require the parties to participate in an informal resolution process under this section. 34 C.F.R. § 106.45(b)(9)

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Until the Jury Returns Its Verdict

- At any time *prior to reaching a determination regarding responsibility* the recipient may facilitate an informal resolution process, such as mediation, that does not involve a full investigation and adjudication. 34 C.F.R. § 106.45(b)(9)

UNIVERSITY OF DALLAS



Required Disclosures

The University must disclose to the parties, in writing,

- The allegations,
- The requirements of the informal resolution process, including
 - When the deal is closed,
 - That consent to negotiate is not consent to close,
 - Any consequences from participating in the informal resolution process [delay of investigation, etc.], and
 - What records will be maintained or could be shared. 34 C.F.R. § 106.45(b)(9)(i)

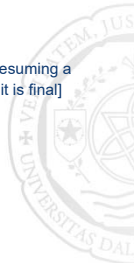
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When is the deal closed?

- The circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations [i.e., when it is final]

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Consent to Negotiate is not Consent to Close

- 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

The Department expects informal resolution agreements to be treated as contracts; the parties remain free to negotiate the terms of the agreement and, once entered into, it may become binding according to its terms. (85 Fed. Reg. 30,405 (May 19, 2020))

UNIVERSITY OF DALLAS

Consent to Negotiate

- The University must obtain the parties' voluntary, written consent to the informal resolution process. 34 C.F.R. § 106.45(b)(9)(ii)

It is inappropriate for a school to simply instruct parties to work out the problem between themselves. ... We disagree [with critics] that mediation improperly shifts the burden of resolution to the parties instead of school professionals, and that informal resolution could violate a respondent's due process rights. Informal resolution under the final regulations is not possible without the informed, voluntary consent of all parties, and persons who facilitate informal resolution must be well-trained. (85 Fed. Reg. 30,403 (May 19, 2020))

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Matters Excluded from Informal Resolution

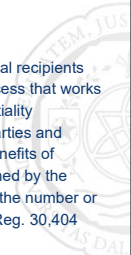
- The University may not offer or facilitate an informal resolution process to resolve allegations that an employee sexually harassed a student. 34 C.F.R. § 106.45(b)(9)(iii)

When the Formal Complaint involves an allegation that an Employee committed the following offense against a Student: Sexual Harassment under Title IX (see definition in Section 6.2.4 of Policy CRI-I – Investigation of Formal Complaints). (CRI-R 5.2)

UNIVERSITY OF DALLAS

The University Facilitates


- We believe as a fundamental principle that parties and individual recipients are in the best position to determine the conflict resolution process that works for them; for example, a recipient may determine that confidentiality restrictions promote mutually beneficial resolutions between parties and encourage complainants to report, or may determine that the benefits of keeping informal resolution outcomes confidential are outweighed by the need for the educational community to have information about the number or type of sexual harassment incidents being resolved. (85 Fed. Reg. 30,404 (May 19, 2020))



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Types of Informal Resolution

- Mediation (typically involves consequences, but not admission of fault)
- Restorative Justice (admission of fault is typical, focused on relationship)

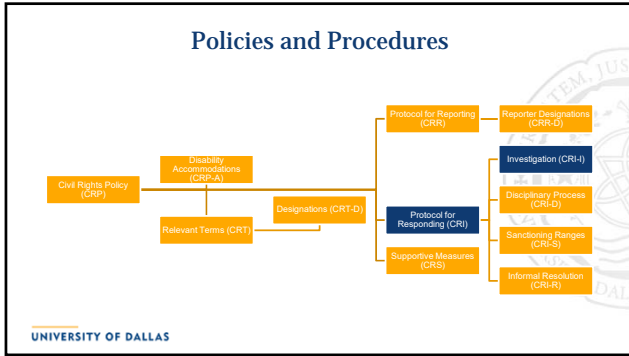


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Investigations
Conduct of Investigations

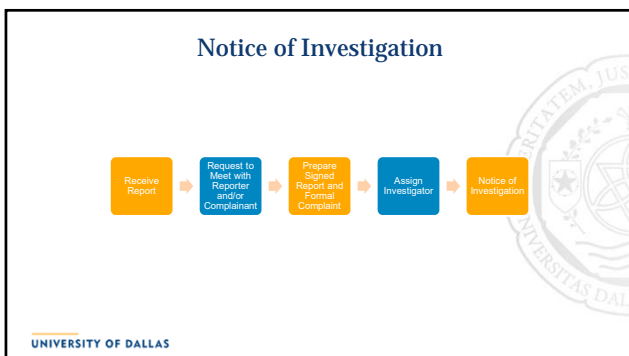
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Role of the Investigator

- "Investigator" means the person designated by the Civil Rights Coordinator to investigate (pursuant to Policy CRI) a report of Prohibited Conduct. (CRT 4.16)
- The Investigator is responsible for conducting a prompt and equitable investigation of the allegations in the Formal Complaint. (CRI 7.2)
- 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. (CRI-I 4.4.1)

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Notice of Investigation

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. (CRI-I 4.1.1)

- Sufficient details include
 - (1) the identities of the parties involved in the incident, *if known*,
 - (2) the conduct allegedly constituting Prohibited Conduct, and
 - (3) the date and location of the alleged incident, *if known*.

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Notice of Rights

- 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.
- 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.
- 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.
- 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.

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Amending and Consolidating Notices

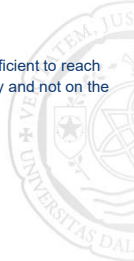
- Amending notices sometimes happens as more information is learned. It could be that more information demonstrates that there are more alleged incidents of Prohibited Conduct. Or that there are fewer.
- Consolidating is typically done at the beginning, unless the consolidation is based on later, connected incidents.

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Burden of the Investigation

- 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.

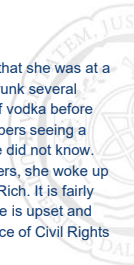
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Interviews

Jane Doe has filed a formal complaint. In her complaint, she alleges that she was at a party at John Roe's apartment in Old Mill. Jane remembers having drunk several cups of "jungle juice," and she had pre-gamed some with 2-3 shots of vodka before heading to the party. Jane remembers being at the party and remembers seeing a few friends of hers, Tom, Sue, and Jerry, as well as many people she did not know. But her memory gets fuzzy after that and the next thing she remembers, she woke up in bed in her dorm room in Clark with a guy she sort of knew named Rich. It is fairly clear to her, and Rich admits, that they have vaginal intercourse. Jane is upset and not sure what to do. A few days later, she made her report to the Office of Civil Rights and Title IX and filed the formal complaint.

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What are you trying to find out?

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What are you trying to find out?

Did Rich rape Jane?

"Rape" means penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the other person, including instances where the other person is incapable of giving consent.

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What are you trying to find out?

Was the sexual intercourse consensual?

"Consent" is knowing, voluntary, and clear permission by word or action to engage in mutually agreed upon sexual activity. It is the responsibility of each party to make certain that the other has consented before engaging in the activity.

- A person who is incapacitated cannot give valid consent.
- Silence or the absence of resistance is not consent.

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Who do you need to interview?

- Complainant
- Respondent
- Tom, Sue, Jerry
- John
- Other witnesses identified by Complainant, Respondent, or one of the witnesses

- "Likely to lead to the discovery of admissible evidence"

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Why are you interviewing each of them?

- Complainant
- Respondent
- Tom, Sue, Jerry
- John
- Other witnesses identified by Complainant, Respondent, or one of the witnesses

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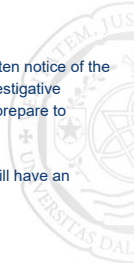


Notice of Meetings

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.

- Notice should include deadline for party to state if he or she will have an advisor or support person present and, if so, who.

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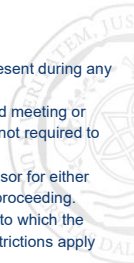


Advisors / Support Persons

Provide the parties with the same opportunities to have others present during any investigation or hearing proceedings.

- 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.
- The University may not limit the choice or presence of an Advisor for either the Complainant or Respondent in any meeting or grievance proceeding.
- 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.

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Non-Civil Rights 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.

- Amnesty *does not* apply to a person who perpetrates or assists in the perpetration of the civil rights violation.

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Gathering Physical and Digital Evidence

- Social media – Snapchat, FB, text messages, etc. (public/semi-public posts, as well as direct messages)
- Video cameras
- Off-campus evidence

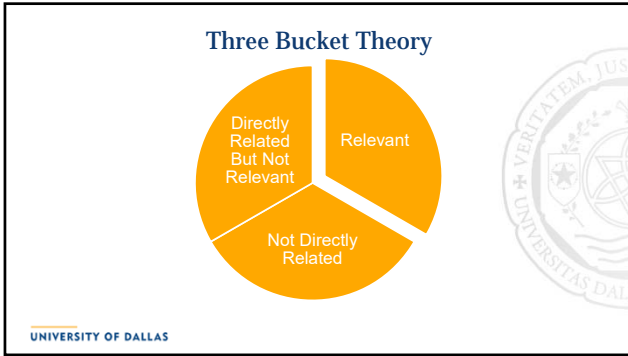
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Equity in Investigation

The University must:

- Provide an equal opportunity for the parties to present witnesses, including fact and expert witnesses, and other inculpatory and exculpatory evidence.
- Not restrict the ability of either party to discuss the allegations under investigation or to gather and present relevant evidence.
- 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.

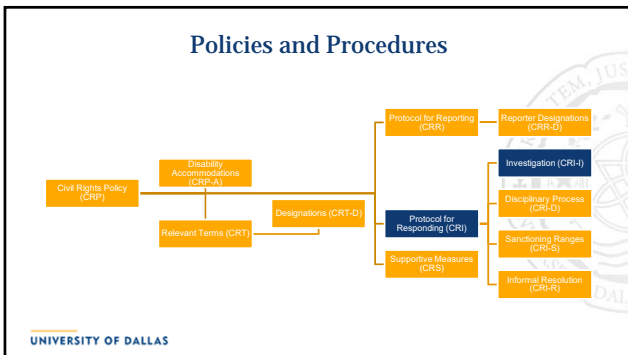
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Permissive Dismissal

Complaint Withdrawn

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

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

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Permissive Dismissal

Lack of Affiliation

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

- 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).

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Permissive Dismissal

Lack of Affiliation

By granting recipients the discretion to dismiss in situations where the respondent is no longer a student or employee of the recipient, the Department believes this provision appropriately permits a recipient to make a dismissal decision based on reason that may include **whether a respondent poses an ongoing risk to the recipient's community**, whether a determination regarding responsibility provides a benefit to the complainant even where the recipient lacks control over the respondent and would be unable to issue disciplinary sanctions, or other reasons.

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Permissive Dismissal

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Permissive Dismissal

Exception to Lack of Affiliation

If a Respondent **withdraws or graduates** from the University pending a charge that the Respondent violated the University Civil Rights Policy by committing Sexual Harassment, Sexual Assault, Dating Violence, or Stalking, the University:

- may not end the investigative and disciplinary process or issue a transcript to the Student until the University makes a final determination of responsibility; and
- shall expedite the University's investigative and disciplinary process as necessary to accommodate both the Respondent's and the Complainant's interest in a speedy resolution.

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UNIVERSITY OF DALLAS

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- shall expedite the University's investigative and disciplinary process as necessary to accommodate both the Respondent's and the Complainant's interest in a speedy resolution.

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Transcript Notation

Tex. Educ. Code Section 51.9364

- If a student is ineligible to reenroll in a postsecondary educational institution for a reason other than an academic or financial reason, the institution shall include on the student's transcript a notation stating that the student is ineligible to reenroll in the institution for a reason other than an academic or financial reason.

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Transcript Notation

Tex. Educ. Code Section 51.9364

- If a student **withdraws** from a postsecondary educational institution **pending disciplinary charges that may result in the student becoming ineligible to reenroll** in the institution for a reason other than an academic or financial reason, the institution **may not end the disciplinary process** until the institution makes a final determination of responsibility, including, if applicable, a determination of whether the student will be ineligible to reenroll in the institution for a reason other than an academic or financial reason. If, as a result of the disciplinary process, the student is ineligible to reenroll in the institution for a reason other than an academic or financial reason, the institution shall include on the student's transcript the notation required under Subsection (b).

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Permissive Dismissal

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

- Specific circumstances prevent the University from gathering evidence sufficient to reach a determination as to the Formal Complaint or allegations therein.

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Permissive Dismissal

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

- 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.

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Attempting to Participate

Someone who is not participating or attempting to participate is **never** a complainant under Title IX

A complainant who has graduated may still be "attempting to participate" in the recipient's education program or activity; for example,

- where the complainant has graduated from one program but intends to apply to a different program, or
- where the graduated complainant intends to remain involved with a recipient's alumni programs and activities.
- Similarly, a complainant who is on a leave of absence may be "participating or attempting to participate"
- By way of further example, a complainant who has left school because of sexual harassment, but expresses a desire to re-enroll if the recipient appropriately responds to the sexual harassment, is "attempting to participate" in the recipient's education program or activity.

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Permissive Dismissal

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

- 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.

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Mandatory Dismissal

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)).

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Mandatory Dismissal

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

- Would not constitute "Sexual Harassment under Title IX;"
- Did not occur in the University's "Education Program or Activity under Title IX;" or
- Did not occur against a person in the United States.

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Sexual Harassment under Title IX

"Sexual Harassment under Title IX" means conduct on the basis of sex that satisfies one or more of the following:

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

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Sexual Harassment and ... Sexual Harassment

- 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.
- In the education context, is sufficiently severe, pervasive, or persistent that the conduct interferes with a Student's ability to participate in, or benefit from, educational programs or activities of the University.

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Mandatory Dismissal

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

- Would not constitute "Sexual Harassment under Title IX;"
- Did not occur in the University's "Education Program or Activity under Title IX;" or
- Did not occur against a person in the United States.

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Education Program of Activity under Title IX

"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.

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Education Program of Activity under Title IX

"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.

New York v. Dep't of Ed., District Court Order (August 9, 2020)

- At oral argument, the DOE maintained that the Rule's definition is also exemplary, rather than exclusionary, and states only that in the context of sexual harassment, "program or activity" is defined to "include ...

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Education Program of Activity under Title IX

In response to criticism that the draft regulations would have excluded off-campus misconduct, the Department of Education explained in footnote 875 that the final regulations

- “clarify that even if a situation arises off campus, it may still be part of the recipient’s education program or activity if the recipient exercised substantial control over the context and the alleged harasser. While such situations may be fact specific, recipients must consider whether, for example, a sexual harassment incident between two students that occurs in an off-campus apartment (i.e., not a dorm room provided by the recipient) is a situation over which the recipient exercised substantial control; if so, the recipient must respond to notice of sexual harassment that occurred there.” (emphasis added) (85 Fed. Reg. 30,199 (May 19, 2020))

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Mandatory Dismissal

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

- Would not constitute “Sexual Harassment under Title IX;”
- Did not occur in the University’s “Education Program or Activity under Title IX;” or
- **Did not occur against a person in the United States.**

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Person in the United States

- *King v. Bd. Of Control*, 221 F. Supp. 2d 783, 788 (E.D. Mich. 2002) (“Title IX in broad language, not limited by an exception for study abroad programs, sweeps within its scope every single university education program.”);
 - *Bird v. Lewis & Clark Coll.*, 104 F. Supp. 2d 1271 (D. Or. 2000) (applying the ADA and Section 504 to study abroad program);
 - *Doe v. Baylor Univ.*, 336 F. Supp. 3d 763 (W.D. Tex. 2018) (assuming that Title IX applies to sexual assault of student while studying abroad)
- Rome Campus
- versus
- UCAv (Catholic University of Ávila)

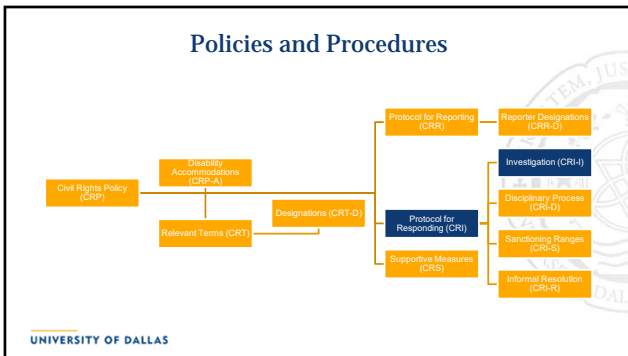
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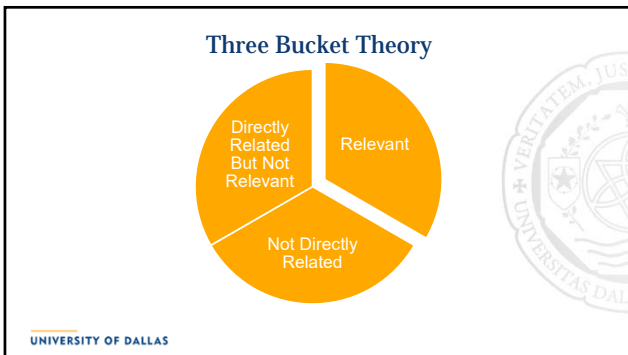


Investigations

Investigation Reports

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Is it more likely than not that Respondent harassed Complainant because of his race?

Elements

1. Respondent engaged in physical, verbal, or nonverbal conduct,
2. The conduct was based on Complainant's membership or perceived membership in a protected category,
3. The conduct was objectively offensive, and
4. The conduct was sufficiently severe or pervasive such that it unreasonably interferes with, denies, or limits Complainant's ability to participate in or benefit from the University's educational, employment, social, or residential program.

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Respondent engaged in physical, verbal, or nonverbal conduct

What evidence is relevant to this element?

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Respondent engaged in physical, verbal, or nonverbal conduct

What evidence is relevant to this element?

- Copy of the online communications
- Testimony of Complainant regarding (1) online communications, and (2) write-up
- Testimony of Respondent regarding (1) online communications, and (2) write-up

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The conduct was based on Complainant's membership ... in a protected category

What evidence is relevant to this element?

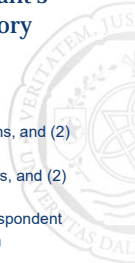


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The conduct was based on Complainant's membership ... in a protected category

What evidence is relevant to this element?

- Copy of the online communications
- Testimony of Complainant regarding (1) online communications, and (2) Madonna lounge discussion
- Testimony of Respondent regarding (1) online communications, and (2) Madonna lounge discussion
- Testimony of Student 1 regarding what he overheard from Respondent
- Testimony of Student 2 regarding Madonna lounge discussion



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The conduct was objectively offensive

What evidence is relevant to this element?



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The conduct was objectively offensive

What evidence is relevant to this element?

- Testimony of Respondent regarding objective offensiveness of actions if done as part of racial harassment
- Possibly testimony of others regarding objective offensiveness (though this is more likely to be important when there is some question about the offensiveness of the conduct)

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The conduct was sufficiently severe or pervasive

What evidence is relevant to this element?

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The conduct was sufficiently severe or pervasive

What evidence is relevant to this element?

- Testimony of Complainant regarding (1) online communications, (2) write-up, and (3) Madonna lounge discussion
- Testimony of Respondent regarding (1) online communications, (2) write-up, and (3) Madonna lounge discussion
- Testimony of Student 1 regarding racist comments
- Testimony of Student 2 regarding Madonna lounge discussion

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Is it more likely than not that Respondent harassed Complainant because of his race?

Elements

1. Respondent engaged in physical, verbal, or nonverbal conduct,
2. The conduct was based on Complainant's membership or perceived membership in a protected category,
3. The conduct was objectively offensive, and
4. The conduct was sufficiently severe or pervasive such that it unreasonably interferes with, denies, or limits Complainant's ability to participate in or benefit from the University's educational, employment, social, or residential program.

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Three Keys Components

Investigation Report

1. Fairly summarizing the relevant evidence
2. Detailing the procedural and investigative history (report through evidence review)
3. Identifying contested questions of fact (the credibility determinations that the hearing panel will need to make)

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Evidence Review

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.

- Watermarking
- View only (no editing, copying, saving, or printing)
- Also good to send a draft investigation report if possible.

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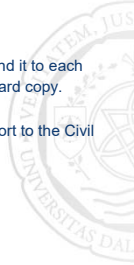
Completion of Report

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.

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

- Watermarking
- View only for parties (no editing, copying, saving, or printing)

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Civil Rights Policy

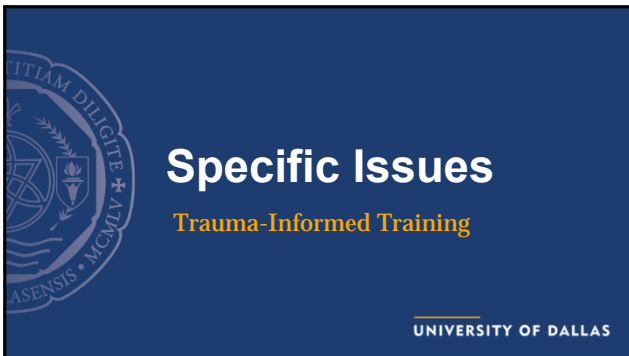
Team Training (August 2020)

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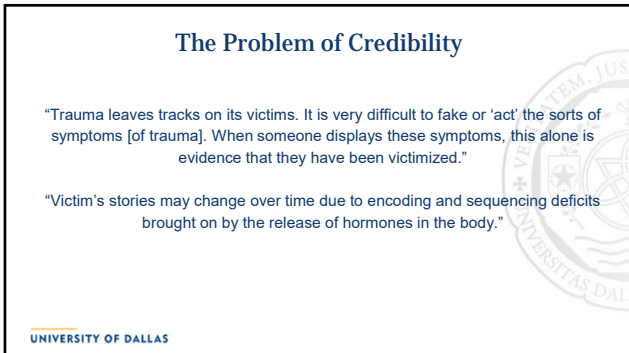




Civil Rights Policy
Team Training (August 2020)
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Specific Issues
Trauma-Informed Training
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The Problem of Credibility

"Trauma leaves tracks on its victims. It is very difficult to fake or 'act' the sorts of symptoms [of trauma]. When someone displays these symptoms, this alone is evidence that they have been victimized."

"Victim's stories may change over time due to encoding and sequencing deficits brought on by the release of hormones in the body."

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Reliability of Evidence

- As of 2014, Harvard Law's Title IX training for its disciplinary board included Campbell's PowerPoint slides. Janet Halley, a professor at Harvard Law School, has written of the intended effect of the training on recipients: "It is 100% aimed to convince them to believe complainants, precisely when they seem unreliable and incoherent."

Emily Yoffe, "The Bad Science Behind Campus Response to Sexual Assault," *The Atlantic*, September 8, 2017

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Reliability of Evidence

The field needs to incorporate trauma-informed investigation and interviewing methods into its best practices provided that they do not compromise the ability to obtain credible, relevant evidence; however, the "Neurobiology of Trauma" should not significantly influence the way that colleges and schools evaluate evidence. (ATIXA Position Statement, 2019)

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Trauma is not a substitute for evidence

Trauma can impact consistency. Recognizing that an incident may have triggered a trauma-based response makes the inconsistency understandable, but it does not excuse the inconsistency. Put succinctly, the presence of trauma is not a substitute for the absence of evidence. Those who experience trauma may provide varying or inconsistent accounts or have material memory gaps. Missing information should not be held against someone, if it is missing as the result of trauma, but trauma itself does not provide a rationale for bolstering credibility in the absence of evidence. (ATIXA Position Statement, 2019)

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Take Away

- Trauma can affect memory recall.
- Inconsistencies *could* be a result of trauma.
- Therefore, the presence of inconsistencies does not prove that the account is false or unreliable.
- But that is not the same as to say that trauma proves the account *is* reliable.
- Inconsistencies *can* be a result of trauma. And they *can also* be a result of a false account or non-traumatized faulty memory.

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The Confusion About Trauma-Informed Training

Trauma-informed training should be provided to investigators so they can avoid re-traumatizing complainants during the investigation. This is distinct from a trauma informed approach to evaluating the testimony of parties or witnesses. The use of trauma-informed approaches to evaluating evidence can lead adjudicators to overlook significant inconsistencies on the part of complainants in a manner that is incompatible with due process protections for the respondent. Investigators and adjudicators should consider and balance noteworthy inconsistencies (rather than ignoring them altogether) and must use approaches to trauma and memory that are well grounded in current scientific findings.' (85 Fed. Reg. 30,256 (May 19, 2020))

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Avoiding Retraumatizing Victims

- Patience in questioning
- Returning to issues later to fill in gaps
- Avoiding blame for delays in reporting
- Look for other sources of evidence (diaries, conversations with friends)
- In the hearing, the advisors and the control on questioning of the hearing panel chair are efforts to avoid retraumatizing victims.

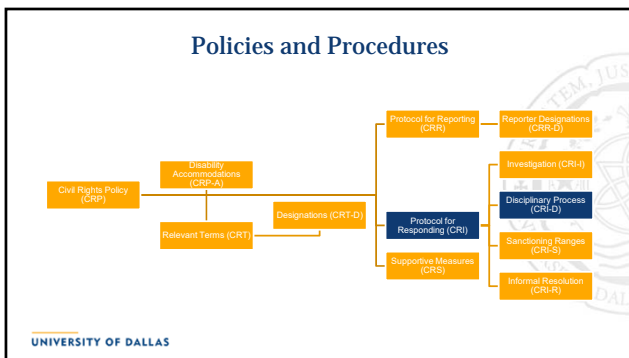
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Hearings


Introduction

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The Cast of Characters

- Investigator
- Advisors
- Hearing Panelists
- Hearing Panel Chair
- Coordinator
- Complainant
- Respondent
- Witnesses



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The Role of the Coordinator

Administrative Oversight

- Receives notices, objections, etc. and distributes information accordingly
- Selection of the Hearing Panel
- Appointment of Chair
- Scheduling of hearing
- Oversight or operation of technology (if anyone is to appear remotely)

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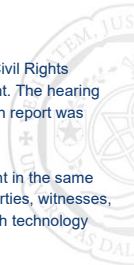


Live Hearing

Upon receipt of an investigation report from an Investigator, the Civil Rights Coordinator shall schedule a live hearing on the Formal Complaint. The hearing must be scheduled for at least ten (10) days after the investigation report was sent to each party and the party's advisor, if any.

A live hearing may be conducted with all parties physically present in the same geographic location or, at the University's discretion, any or all parties, witnesses, and other participants may appear at the live hearing virtually, with technology enabling participants simultaneously to see and hear each other.

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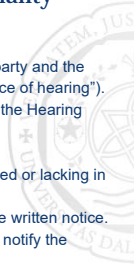


Objections for Bias or Lack of Impartiality

The Civil Rights Coordinator shall provide written notice to each party and the party's advisor of the time, date, and location of the hearing ("notice of hearing"). The notice of hearing shall include the identity of the members of the Hearing Panel.

- A party may object to member(s) of the Hearing Panel as biased or lacking in impartiality.
- A party must subject any objections within three (3) days of the written notice.
- The Civil Rights Coordinator will consider the objection(s) and notify the parties of the Coordinator's decision.

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Examples of Bias and Lack of Impartiality

- Bias for/against Complainant
- Bias for/against Respondent
- Bias for/against Witness(es)

"I am always for the male"
The Goddess Athena in
Aeschylus' *The Eumenides*

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- Bias for/against Complainants
- Bias for/against Respondents

- Bias relating to other factors:
 - Students/Faculty/Staff;
 - Protected Class;
 - Area of Study;
 - Involvement in Extracurricular Activities; and
 - Any Similar Factor

Questions to Consider

- Can you decide the complaint based on the evidence presented?
- Can you decide the complaint based on the terms of the Civil Rights Policy and its accompanying procedures?
- Can you decide the complaint without using evidence that might ultimately need to be excluded from consideration?
- Would my connections to one or the other of the parties and/or witnesses in the complaint create the appearance of bias or lack of impartiality?

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What evidence may be submitted?

The University shall make **all 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, available at any hearing to give each party equal opportunity to refer to such evidence during the hearing, including for purposes of examination of witnesses.

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What about new evidence?

Neither the Investigator nor the parties may introduce witnesses or evidence at the hearing that was not disclosed during the investigation.

- If the Investigator or the Hearing Panel concludes that there is new evidence that was not reasonably available at the time the investigation report was completed, and that could affect the outcome of the matter, the Investigator may reopen the investigation or the Hearing Panel may refer the investigation back to the Investigator, as applicable.

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What witnesses are called?

Typically, the Investigator will call as witnesses those individuals whose testimony is summarized in the Investigation Report, including the Complainant and Respondent.

- In addition, no fewer than seven (7) days before the hearing, the Complainant and Respondent each may submit to the Civil Rights Coordinator a written list of individuals the party intends to call as witnesses.

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Accommodations

At the request of either party, the University must provide for the live hearing to occur with the parties located in separate rooms with technology enabling the Hearing Panel and parties to simultaneously see and hear the party or the witness answering questions. Such requests must be submitted to the Civil Rights Coordinator at least three (3) days prior to the hearing.

- The University will make reasonable accommodations for parties or witnesses with a documented disability as needed. If a party or witness would like to request an accommodation, the party or witness should notify the Chair at least seven (7) days prior to the hearing.

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Attorneys and Advisors

If a party intends to bring an attorney as the party's Advisor, the party must notify the Civil Rights Coordinator in writing at least seven (7) days prior to the hearing.

- The University expects Advisors, including attorneys, to adjust their schedules to allow them to attend the hearing or hearings when scheduled. The University does not typically change scheduled meetings to accommodate an Advisor's inability to attend. The University will, however, make reasonable provisions to allow an Advisor who cannot attend in person to attend a hearing by telephone, video and/or virtual meeting technologies as may be convenient and available.

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Recording

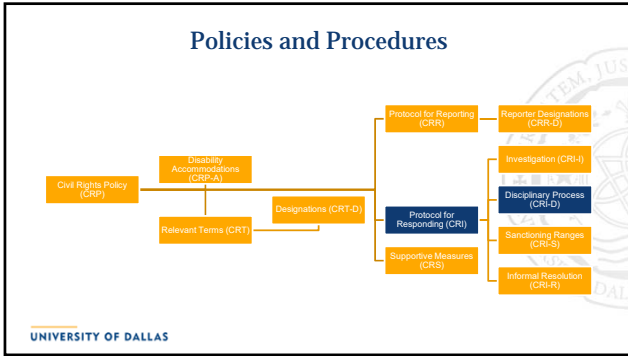
The University must create an audio or audiovisual recording, or transcript, of any live hearing and make it available to the parties for inspection and review. The recording or transcript is the property of the University of Dallas.

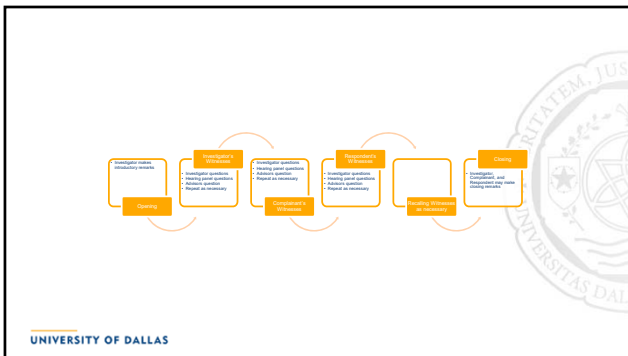
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Hearings

Conduct of the Hearing

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Advisors and the Chair

The chair of the Hearing Panel must permit each party's Advisor to ask the other party and any witnesses all relevant questions and follow-up questions.

Before a Complainant, Respondent, or witness answers a question from a party's Advisor, the chair of the Hearing Panel must first determine whether the question is relevant and explain any decision to exclude a question as not relevant.

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What questions need not be answered?

- Duplicative questions are not relevant.
- All questions must be asked in a respectful, non-abusive manner. The chair of the Hearing Panel may reject a question that is harassing, intimidating, or abusive, even if the substance of the question would otherwise be relevant.

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What is (almost) always irrelevant?

Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless

- such questions and evidence about the Complainant's prior sexual behavior are offered to prove that someone other than the Respondent committed the conduct alleged by the Complainant, or
- if the questions and evidence concern specific incidents of the Complainant's prior sexual behavior with respect to the Respondent and are offered to prove consent.

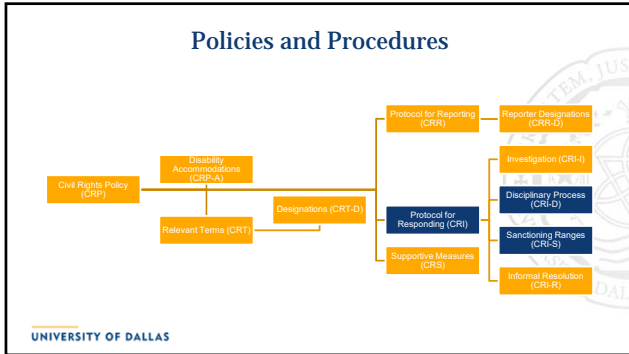
Questions or evidence that constitutes or seeks disclosure of information protected under a legally recognized privilege, unless that person has waived the privilege, is not relevant.

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Hearings

Written Determinations and Appeals

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Responsibility of the Hearing Panel

- The Hearing Panel shall use the **preponderance of the evidence** ("more likely than not") standard when determining responsibility. That is to say, the Hearing Panel will determine whether it is more likely than not that the Respondent committed the alleged Prohibited Conduct.
- The Hearing Panel shall make an **objective evaluation of all relevant evidence** – including both inculpatory and exculpatory evidence – and **credibility determinations may not be based on a person's status as a Complainant, Respondent, or witness.**
- The Respondent is **presumed not responsible** for the alleged conduct until a determination regarding responsibility is made by the Hearing Panel.

Evidence to be Excluded

- The Hearing Panel shall not require, allow, rely upon, or otherwise use questions or evidence that constitute or seek disclosure of, information protected under a legally recognized privilege, unless the person holding such privilege has waived the privilege.
- The Hearing Panel 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.

Cross-Examination

If a party or witness does not submit to cross-examination at the live hearing, the Hearing Panel shall not rely on any statement of that party or witness in reaching a determination regarding responsibility.

- "Cross-examination" means the examination of a witness by a party's Advisor, or examination of a party by another party's Advisor.
- The exclusion does not apply if the party or parties entitled to conduct cross-examination agrees to submission of the statement or statements.
- The exclusion does not apply if the party or witness refused to respond to a question from the Hearing Panel.
- The exclusion does not apply to alleged verbal conduct that itself constitutes the Harassment at issue (For example, where a Complainant alleges that the Respondent said to the Complainant: "If you go on a date with me, I'll give you a higher grade in my class," the words attributed to the Respondent are themselves the misconduct that constitutes Sexual Harassment and are not subject to exclusion).

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Contents of Written Determination

The written determination of the Hearing Panel must include:

- Identification of the allegations potentially constituting Prohibited Conduct;
- A description of the procedural steps taken from the receipt of the Formal Complaint through the determination, including any notifications to the parties, interviews with parties and witnesses, site visits, methods used to gather other evidence, and hearings held;
- Findings of fact supporting the determination;
- Conclusions regarding the application of the University's code of conduct and policies to the facts;
- A statement of, and rationale for, the result as to each allegation, including a determination regarding responsibility, any disciplinary sanctions the University imposes on the Respondent, and whether remedies designed to restore or preserve equal access to the University's education program or activity will be provided by the University to the Complainant; and
- The University's procedures and permissible bases for the Complainant and Respondent to appeal.

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Incorporation by Reference

- The written determination of the Hearing Panel may incorporate by reference portions of the investigation report, so long as the investigation report is included as an appendix to the written determination.

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Consulting on Sanctions

The hearing panel may consult with other University officials regarding the practical effect of specific sanctions.

- For instance, if the panel thinks some sort of educational program should be required, consulting with whoever would be responsible for implementing that.

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Appeals

The Complainant and Respondent may appeal on the following bases:

- Procedural irregularity that affected the outcome of the matter;
- New evidence that was not reasonably available at the time of the determination regarding responsibility or when dismissal was made, that could affect the outcome of the matter;
- The Civil Rights Coordinator, Investigator, or members of the Hearing Panel had a conflict of interest for or against Complainants or Respondents generally or the individual Complainant or Respondent that affected the outcome of the matter; or
- The sanction is inconsistent with previous sanctions and is therefore arbitrary or unfair.

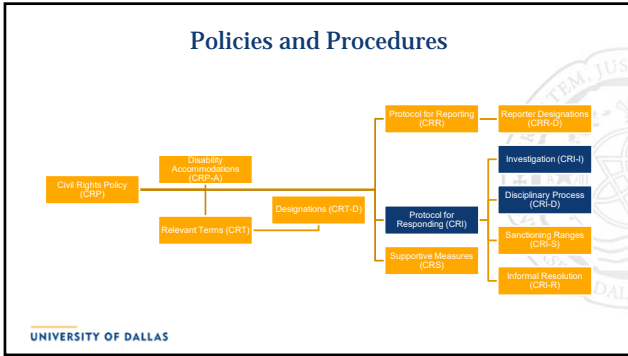
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Investigations & Hearings

Technology

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- ### Investigations
- Recording devices
 - Zoom / Google Meets
 - Watermarking
 - Sharing with restrictions
- 
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- ### Hearings
- Recording Devices
 - Zoom
 - Separate Rooms
 - Remote Parties (and Advisors), Witnesses, and Hearing Panel Members
- 
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Zoom Control

- Controlling who enters the meeting through the waiting room function
- Making sure everyone is visible
- Moving witnesses in and out of the meeting (again waiting room)
- Allowing parties and their advisors to meet in break out rooms
- Allowing hearing panel to meet in a break out room (possibly with legal counsel)

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Civil Rights Policy

Team Training (August 2020)

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