



University of Dallas Policy CRT

CIVIL RIGHTS POLICY – RELEVANT TERMS

1. **Purpose** –The University of Dallas has adopted the following uniform definitions to implement the University Civil Rights Policy (Policy CRP) and all related policies.
2. **Implementing Policies and Procedures** – The President of the University has the authority to adopt policies and procedures implementing this Policy.
3. **Identification of Officials** – Unless otherwise specified, a reference to a University official means that official, or that official’s designee.
 - 3.1. **Substitute Designations** – If a person designated by the President under the University Civil Rights Policy is unavailable or has a conflict that prevents the person from fulfilling their designated responsibilities, the President shall designate another person to fulfill those responsibilities in an acting capacity.
4. **General Terms Related to Reporting and Parties Participating in Investigation of Complaints of Prohibited Conduct**
 - 4.1. **“Advisor”** means a person chosen by a party, or by the University when the party does not have an Advisor present at a live hearing, to conduct cross-examination on behalf of that party.
 - 4.2. **“Appeal Officer”** means the University official designated by the President of the University to review appeals from disciplinary decisions made by a Hearing Panel.
 - 4.3. **“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.
 - 4.4. **“Civil Rights Pool”** means those persons appointed by the President of the University to serve as decision-makers on hearing panels and as Advisors and Investigators in relation to Formal Complaints of Prohibited Conduct.
 - 4.5. **“Complainant”** refers to the individual who is alleged to have been subject to Prohibited Conduct. Generally the Reporting Party and the Complainant will be the same individual.
 - 4.6. **“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.

- 4.7. **“Day”** means a calendar day, unless otherwise specified.
- 4.8. **“Decision-maker”** means a person designated to participate as a member of a Hearing Panel or as an Appeal Officer in connection with a Formal Complaint.
- 4.9. **“Deputy Title IX Coordinator”** means a University official designated to assist the Title IX Coordinator in receiving and investigating complaints of sex discrimination, Non-Title IX Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking. The President may designate one or more Deputy Title IX Coordinators.
- 4.10. **“Discrimination”** means actions that deprive, limit, or deny, members of the community of educational or employment access, benefits, or opportunities, based on a protected category, except as otherwise permitted by law. Specific types of discrimination may include disparate treatment, failure to accommodate, Harassment, and Retaliation. Discrimination based on sex includes, but is not limited to, Non- Title IX Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Dating Violence, Domestic Violence, Stalking, and Sexual Exploitation.
- 4.11. **“Document filed by a Complainant”** means a document or electronic submission (such as by electronic mail or through an online portal provided for this purpose by the University) that contains the Complainant’s physical or digital signature, or otherwise indicates that the Complainant is the person filing the Formal Complaint.
- 4.12. **“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.
- 4.13. **“Employee”** is a broad term used to encompass staff, faculty and administrators of the University, unless otherwise stated.
- 4.14. **“Harassment (other than Sexual 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 or activities. Harassment can take many forms, including slurs, taunts, stereotypes, or name-calling, as well as physical threats, attacks, or other hateful conduct based on a person’s membership or perceived membership in a protected category.

- 4.15. **“Hearing Panel”** means the members of the Civil Rights Pool who are designated to hear a Formal Complaint.
- 4.16. **“Individual with a disability”** means a person who (1) has a physical or mental impairment that substantially limits one or more “major life activities,” (2) has a record of such an impairment, or (3) is regarded as having such an impairment.
- 4.17. **“Investigator”** means the person designated by the Civil Rights Coordinator to investigate (pursuant to Policy CRI) a report of Prohibited Conduct.
- 4.18. **“Notice of Investigation”** means the written notice provided to a Complainant and Respondent that the Investigator has opened an investigation (pursuant to Policy CRI) into a report of Prohibited Conduct.
- 4.19. **“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 race, 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.
- 4.20. **“Qualified individual with a disability”** means an individual with a disability who, with respect to employment, can, with reasonable accommodations, perform the essential functions of the job in question; with respect to postsecondary educational services, meets the academic and technical standards requisite to admission or participation in the University’s educational program or activity; or with respect to other services, meets the essential eligibility requirements for receipt of such services.
- 4.21. **“Report”** means an allegation that is reported to the University which may constitute Prohibited Conduct.
- 4.22. **“Reporting Party”** refers to an individual who reports alleged Prohibited Conduct.
- 4.23. **“Respondent”** refers to a party who has been accused of Prohibited Conduct.
- 4.24. **“Retaliation”** refers to any adverse action taken against a person participating in a protected activity because of that person’s participation in that protected activity, including participation by a Respondent. This includes, but is not limited to, any adverse employment or educational action taken for making reports of a violation of or otherwise participating under the University Civil Rights Policy, with the Equal Employment Opportunity Commission, the Office of Civil Rights, or any other civil rights

agency.

- 4.24.1. Retaliation also includes intimidating, threatening, coercing, harassing, or discriminating against any individual for the purpose of interfering with any right or privilege secured by law or policy, or because the individual has made a report or complaint, testified, assisted, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under this Policy and its procedures.
 - 4.24.2. Intimidation, threats, coercion, or discrimination, including charges against an individual for code of conduct violations that do not involve sex discrimination or Title IX Sexual Harassment, but arise out of the same facts or circumstances as a report or complaint of sex discrimination, or a report or formal complaint of Title IX Sexual Harassment, for the purpose of interfering with any right or privilege secured by Title IX, constitutes retaliation.
 - 4.24.3. The recipient must keep confidential the identity of any individual who has made a report or complaint of sex discrimination, including any individual who has made a report or filed a formal complaint of Title IX Sexual Harassment, any complainant, any individual who has been reported to be the perpetrator of sex discrimination, any respondent, and any witness, except as may be permitted by the FERPA statute, 20 U.S.C. 1232g, or FERPA regulations, 34 CFR part 99, or as required by law, or to carry out the purposes of 34 CFR part 106, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.
 - 4.24.4. The exercise of rights protected under the First Amendment does not constitute retaliation prohibited.
 - 4.24.5. Charging an individual with a code of conduct violation for making a materially false statement in bad faith in the course of a grievance proceeding does not constitute retaliation prohibited, provided, however, that a determination regarding responsibility, alone, is not sufficient to conclude that any party made a materially false statement in bad faith.
- 4.25. **“Supportive Measures”** means non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to the Complainant and/or the Respondent before or after the filing of a Formal Complaint or where no Formal Complaint has been filed. Such measures are designed to restore or preserve equal access to the University’s education program or activity without unreasonably burdening the other party. Such measures may be designed to protect the safety of all parties and/or the University’s educational environment, and to

deter Prohibited Conduct.

- 4.26. **“Student”** means a person who is: (a) currently enrolled at the University; (b) has been accepted for admission or re-admission to the University; (c) has been enrolled at the University in a prior semester and is eligible to continue enrollment the following semester; or (d) is attending an educational program sponsored by the University while that person is on campus.
- 4.28 **“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, Non-Title IX Sexual Harassment, Title IX 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 Non-Title IX Sexual Harassment, Title IX Sexual Harassment, Sexual Assault, Dating and Domestic Violence, and Stalking.
- 4.29 **“University Community”** refers to all members of the University Community including University faculty, staff, administrators, Employees and contractors, University Students, volunteers and participants in any University program or activity, and guests and visitors to campus or to any University sponsored activity offered off-campus.
- 4.30 **“University Premises”** includes buildings or grounds owned, leased, operated, controlled or supervised by the University, including property in Texas and in Italy.

5 **Definitions of Prohibited Behavior Relating to Discrimination on the Basis of Sex:**

- 5.28 **“Coercion”** means unreasonable pressure for sexual activity. Coercive behavior differs from seductive behavior based on the type of pressure someone uses to get consent from another. When someone makes clear that they do not want sexual activity, that they want to stop, or that they do not want to go past a certain point of sexual interaction, continued pressure beyond that point can be coercive.
- 5.29 **“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.
- 5.29.1 A person who is incapacitated cannot give valid consent.
- 5.29.2 For consent to be valid, there must be a clear expression in words or

actions that the other individual consented to the specific sexual conduct.

5.29.3 Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse).

5.29.4 Consent can be withdrawn once given, as long as the withdrawal is clearly communicated.

5.29.5 A current or previous dating relationship is not sufficient to constitute consent.

5.29.6 The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred and any similar previous patterns that may be evidenced.

5.29.7 Silence or the absence of resistance is not consent.

5.29.8 Resistance is a clear demonstration of a lack of consent. The absence of resistance does not demonstrate the presence of consent. Sexual activity that is forced is by definition non-consensual, but non-consensual sexual activity is not by definition forced.

5.30 **“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. The University is required to report Dating Violence under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

5.31 **“Domestic Violence”** refers to the following types of violence:

5.31.1 By a current or former spouse or intimate partner of the victim;

5.31.2 By a person with whom the victim shares a child in common;

5.31.3 By a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner;

5.31.4 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

5.31.5 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.

5.31.6 The University is required to report Domestic Violence under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

5.32 **“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.

5.33 **“Force”** refers to the use of physical violence and/or imposing on someone physically to gain sexual access. Force also includes threats, intimidation (“implied threats”), and coercion that overcomes resistance or produces consent (“Have sex with me or I’ll hit you.” “Okay, don’t hit me, I’ll do what you want.”).

5.34 **“Incapacitated”** means a state of being in which a person cannot provide consent because the person is unable to understand what is happening or is disoriented, helpless, asleep or unconscious for any reason, including due to ingesting alcohol or other drugs (e.g., unable to understand the “who, what, when, where, why, or how” of the sexual interaction).

5.34.1 A person’s incapacity may be inferred based on surrounding factors, including, but not limited to, hallucinations, black outs, seizures, vomiting, slurred speech, disorientation or lack of physical or mental coordination.

5.34.2 Prohibited Conduct is not excused because the Respondent was intoxicated and, therefore, did not realize the incapacity of the Complainant. The standard that shall be applied is whether or not a reasonable person would have known based on the facts and circumstances presented that the other party was Incapacitated and therefore, not capable of consenting.

5.34.3 A person may also be Incapacitated due to mental disability or involuntary physical restraint.

5.35 **“Incest”** means sexual intercourse between persons who are related to each other within the degrees prohibited by state law.

5.36 **“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.

5.37 **“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. The University is required to report Sexual Assault under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

5.38 **“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:

5.38.1 Sexual voyeurism, such as watching a person undressing, using the bathroom, or engaging in sexual acts, without the consent of the person observed.

5.38.2 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).

5.38.3 Prostitution.

5.38.4 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.

5.38.5 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).

5.38.6 Exposing one’s genitals in non-consensual circumstances (including in an electronic format).

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

5.39.1 In the employment context, unreasonably interferes with the victim’s work performance or creates an intimidating, hostile, or offensive work environment.

5.39.2 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.

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

- 5.39.3.1 Pressuring another to engage in sexual behavior for some educational or employment benefit (*quid pro quo* sexual harassment);
- 5.39.3.2 Persistent unwelcome efforts to develop a romantic or sexual relationship;
- 5.39.3.3 Unwelcome commentary about an individual's body or sexual activity;
- 5.39.3.4 Unwanted sexual attention;
- 5.39.3.5 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
- 5.39.3.6 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.

5.39.4 The more severe the conduct, the less need there is to show a repetitive series of incidents to prove a hostile environment, particularly if the Harassment is physical. A single or isolated instance of Non-Title IX Sexual Harassment may create a hostile environment if the incident is sufficiently severe.

5.40 **“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. The University is required to report Stalking under the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. Section 1092(f)).

5.40.1 For the purposes of defining Stalking under this Policy:

- 5.13.11 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.
- 5.13.12 “Substantial emotional distress” means significant mental suffering or anguish that may, but does not necessarily, require medical or other professional treatment or counseling.
- 5.13.13 A “reasonable person” means a reasonable person under

similar circumstances and with similar identities to the victim.

5.40.2 The Policy definition of Stalking also extends to cyberstalking

5.41 **“Statutory Rape”** means non-forcible sexual intercourse with a person who is under the statutory age of consent. The statutory age of consent in Texas is 17.

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

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

5.42.2 Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University’s Education Program or Activity; or

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