



University of Dallas Policy CRI-D

CIVIL RIGHTS PROCEDURE – DISCIPLINARY PROCESS

1. **Purpose** – This Procedure provides the exclusive process for disciplinary actions against Students and Employees accused of violations of the University Civil Rights Policy, including, but not limited to, Sexual Harassment, Sexual Assault, Dating Violence and Stalking.
2. **Definitions** – Relevant terms for implementation of this Procedure are set forth in University Policy CRT – Civil Rights Policy – Relevant Terms.
3. **Scope** – This Procedure applies to all Respondents who are Students or Employees.
4. **Notice of Hearing** – Upon receipt of an investigation report from an Investigator, the Civil Rights Coordinator shall schedule a live hearing on the Formal Complaint.
 - 4.1. 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.
 - 4.2. 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”).
 - 4.2.1. The notice of hearing shall include the identity of the members of the Hearing Panel.
 - 4.2.1.1. A party may object to member(s) of the Hearing Panel as biased or lacking in impartiality.
 - 4.2.1.2. A party must subject any objections within three (3) days of the written notice.
 - 4.2.1.3. The Civil Rights Coordinator will consider the objection(s) and notify the parties of the Coordinator’s decision.
5. **Hearing Panel** – The Hearing Panel will be made up of at least three (3) people drawn from the Civil Rights Pool.
 - 5.1. The members of the Civil Rights Pool are appointed by the President of the University.

- 5.2. The members of a Hearing Panel shall be selected from the Civil Rights Pool by the Civil Rights Coordinator and the Civil Rights Coordinator shall appoint one of the members of the Hearing Panel as chair.
 - 5.2.1. The members of the Hearing Panel shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
 - 5.2.2. If a party believes that a member of the Hearing Panel should be replaced because the member has a conflict of interest or is biased for or against the party, either individually or because of the party's status as a Complainant or Respondent, the party may submit a written request to the Civil Rights Coordinator, within three (3) days of notice that the person is a member of the Hearing Panel, that the member of the Hearing Panel be replaced.
 - 5.2.2.1. The Civil Rights Coordinator will evaluate the request to replace a member of the Hearing Panel and will make a timely decision regarding the request.

6. **Conduct of Hearing –**

- 6.1. **Evidence** – 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.
 - 6.1.1. **No New Evidence** – Neither the Investigator nor the parties may introduce witnesses or evidence at the hearing that was not disclosed during the investigation.
 - 6.1.1.1. 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.
- 6.2. **Additional Witnesses and Evidence** – 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.

6.2.1. The parties will not be permitted to call witnesses who were not identified in accordance with this subsection.

6.2.2. The Civil Rights Coordinator shall provide any witness lists from a party to the other party at least three (3) days before the hearing.

6.3. **Privacy** – The hearing is conducted privately, informally, and does not apply traditional rules of courtroom evidence.

6.4. **Live Hearing** – 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.

6.4.1. 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.

6.5. **Attorneys** – 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.

6.5.1. 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.

6.6. **Recording or Transcript** – 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.

6.7. **Disability Accommodations** – 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.

7. **Order of Hearing** – The hearing is presided over by the chair of the hearing panel. So as to facilitate a prompt and equitable resolution, the order of the hearing is subject to modification at the discretion of the chair of the hearing panel.
 - 7.1. The Investigator may provide introductory remarks at the commencement of the live hearing.
 - 7.2. Based on the investigation report and any witness lists submitted by the Complainant and Respondent, the Investigator will call the witnesses, including the Complainant and Respondent.
 - 7.2.1. The Investigator shall question each witness.
 - 7.2.2. When the Investigator finishes questioning a witness, the Hearing Panel may question the witness.
 - 7.2.3. After a party is questioned by the Investigator and the Hearing Panel has its opportunity to question the party, the party may make a statement as to other relevant matters.
 - 7.2.4. After the party has his or her opportunity to make a statement as to other relevant matters, the other party, through the other party's Advisor, may question the party.
 - 7.2.5. When the Hearing Panel finishes questioning a witness, the Complainant and then the Respondent, through their Advisors, may question the witness.
 - 7.2.6. The chair of the Hearing Panel may permit additional questioning by the Investigator, hearing panel, Complainant and Respondent, so long as the Complainant and Respondent are provided equal opportunity to question the witness.
 - 7.3. A party's examination of the other party or of any witnesses must be conducted directly, orally, and in real time by the party's Advisor of choice and never by a party personally.
 - 7.3.1. If a party does not have an Advisor present at the live hearing, the University shall provide, without fee or charge to that party, an Advisor of the University's choice, who may be, but is not required to be, an attorney, to conduct examination of witnesses on behalf of that party. When the University has the responsibility to select the Advisor, the Civil Rights Coordinator will typically choose that person from among the members of the Civil Rights Pool.

- 7.3.2. Only relevant questions may be asked of a party or witness.
- 7.3.3. 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.
- 7.3.4. 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.
 - 7.3.4.1. Duplicative questions are not relevant.
 - 7.3.4.2. 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.
 - 7.3.4.3. Questions and evidence about the Complainant's sexual predisposition or prior sexual behavior are not relevant, unless
 - 7.3.4.3.1. 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
 - 7.3.4.3.2. 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.
 - 7.3.4.4. 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.

7.4. The Investigator, Complainant, and Respondent may provide closing remarks after the presentation of evidence is concluded and before the Hearing Panel begins deliberations.

8. **Determination** – The Hearing Panel must issue a written determination regarding responsibility.

8.1. **Evaluation of Evidence** – 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.

8.1.1. 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.

8.1.2. The Respondent is presumed not responsible for the alleged conduct until a determination regarding responsibility is made by the Hearing Panel.

8.1.3. **Exclusion of Privileged Information** – 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.

8.1.4. **Exclusion of Certain Statements** – 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.

8.1.4.1. “Cross-examination” means the examination of a witness by a party’s Advisor, or examination of a party by another party’s Advisor.

8.1.4.2. The exclusion does not apply if the party or parties entitled to conduct cross-examination agrees to submission of the statement or statements.

8.1.4.3. The exclusion does not apply if the party or witness refused to respond to a question from the Hearing Panel.

8.1.4.4. 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).

8.1.5. **Absence from Hearing** – 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.

8.2. Contents of Determination – The written determination of the Hearing Panel must include:

8.2.1. Identification of the allegations potentially constituting Prohibited Conduct;

8.2.2. 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;

8.2.3. Findings of fact supporting the determination;

8.2.4. Conclusions regarding the application of the University's code of conduct and policies to the facts;

8.2.5. 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

8.2.6. The University's procedures and permissible bases for the Complainant and Respondent to appeal.

8.2.7. 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.

8.3. Notice of Determination – The Hearing Panel must provide the written determination to the parties simultaneously.

8.3.1. The determination regarding responsibility becomes final either on the date that the University provides the parties with the written determination of the result of the appeal, if an appeal is filed, or if an appeal is not filed, the date on which the appeal would no longer be considered timely.

9. Appeal – The Complainant and Respondent may appeal from a determination regarding responsibility, and from an Investigator's dismissal of a Formal Complaint or any allegations therein.

- 9.1. **Bases for Appeal** – The Complainant and Respondent may appeal on the following bases:
 - 9.1.1. Procedural irregularity that affected the outcome of the matter;
 - 9.1.2. 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; and
 - 9.1.3. 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
 - 9.1.4. The sanction is inconsistent with previous sanctions and is therefore arbitrary or unfair.
- 9.2. **Request to Appeal** – In order to appeal, a party must submit a written request to appeal to the Civil Rights Coordinator within seven (7) days of receipt of the written determination. The request to appeal must include a written statement explaining the basis for the appeal.
 - 9.2.1. Upon receipt of a request to appeal, the Civil Rights Coordinator shall notify the other party in writing that an appeal has been filed.
 - 9.2.1.1. The other party may submit a written statement in support of, or challenging, the outcome.
 - 9.2.1.2. Any written statement from the other party must be submitted to the Civil Rights Coordinator within seven (7) days after notice that an appeal has been filed. The Civil Rights Coordinator shall provide a copy to the party that submitted the request to appeal.
- 9.3. **Appeal Officer** – The Appeal Officer is appointed by the President of the University to review appeals of Hearing Panel decisions under the Civil Rights Policy.
 - 9.3.1. The Appeal Officer shall not have a conflict of interest or bias for or against Complainants or Respondents generally or an individual Complainant or Respondent.
 - 9.3.2. The Appeal Officer cannot be one of the members of the Hearing Panel, the Investigator, nor the Civil Rights Coordinator.
- 9.4. **Submission to Appeal Officer** – After the time for submission of a response to a request for appeal has passed, the Civil Rights Coordinator shall submit the appeal to the Appeal Officer.

- 9.4.1. **Objective Review** – The Appeal Officer shall make an objective evaluation of the appeal, including, as applicable, 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.
- 9.4.2. **Appellate Review** – The Appeal Officer reviews the decision of the Hearing Panel to determine if it is clearly erroneous. A decision is clearly erroneous when, although there is evidence to support it, the reviewer is left with the definite and firm conviction that a mistake has been committed.
- 9.4.3. **Decision** – The Appeal Officer shall provide a written decision on the appeal.
 - 9.4.3.1. The Appeal Officer must provide the written decision to the parties simultaneously.