

# Drexel University

# Title VI Investigator Training

January 16, 2025

**Presented By:**

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# Who We Are

**Gina Maisto Smith**



**Leslie Gomez**



**Kendyl Gilmore**



# Institutional Response Group

- **Cozen O'Connor's Institutional Response Group delivers holistic responses to institutions confronting discrimination and harassment on the basis of protected characteristics, including under Title IX, Title VI, Title VII and related federal, state, and local civil rights laws.**

# Today's Agenda

- **National Context of Title VI**
- **Drexel University Policies: Overview**
- **Recognizing and Identifying National Origin Discrimination (Shared Ancestry and Ethnic Characteristics)**
- **Intersection of Title VI and Protected Speech**
- **Importance of Reporting and Centralized Review**
- **Institutional Responses**

# Agenda: OCR Resolution Agreement (07/31/24)

- **Action Item II - Annual Investigator Training**
  - **The University will continue to provide training to all employees and staff responsible for investigating complaints and other reports of discrimination, including harassment, based on shared ancestry or ethnic characteristics (which includes antisemitism) to ensure the investigators know how to:**
    - identify relevant witnesses to interview and
    - how to conduct interviews about such harassment.
  - **The training will continue to be provided to all staff involved in responding to reports of race, color and national origin discrimination and harassment.**
  - **The University will repeat this training on an annual basis, which will address:**

# Today's Agenda – OCR Resolution Agreement

- **The University's obligations under Title VI to respond to alleged discrimination, including harassment based on shared ancestry, including Jewish ancestry (Slides 7-21)**
- **The University's obligations to assess whether alleged conduct reported creates a hostile environment on the basis of shared ancestry, even when the conduct occurs off campus or on social media postings (Slide 41)**
- **Examples of the type of harassment conduct and behavior that is covered by the University's Anti-harassment Policies and Procedures (Slides 42,48 containing the Policy examples and throughout the presentation)**
- **A review of the University's Anti-harassment Policies and Procedures that focus on the investigation of complaints of discrimination, including harassment, based on national origin/shared ancestry, including instructions on how to conduct and document thorough and impartial investigations of alleged discrimination, including harassment, based on shared ancestry (Slides 77-116)**

# Today's Agenda – OCR Resolution Agreement

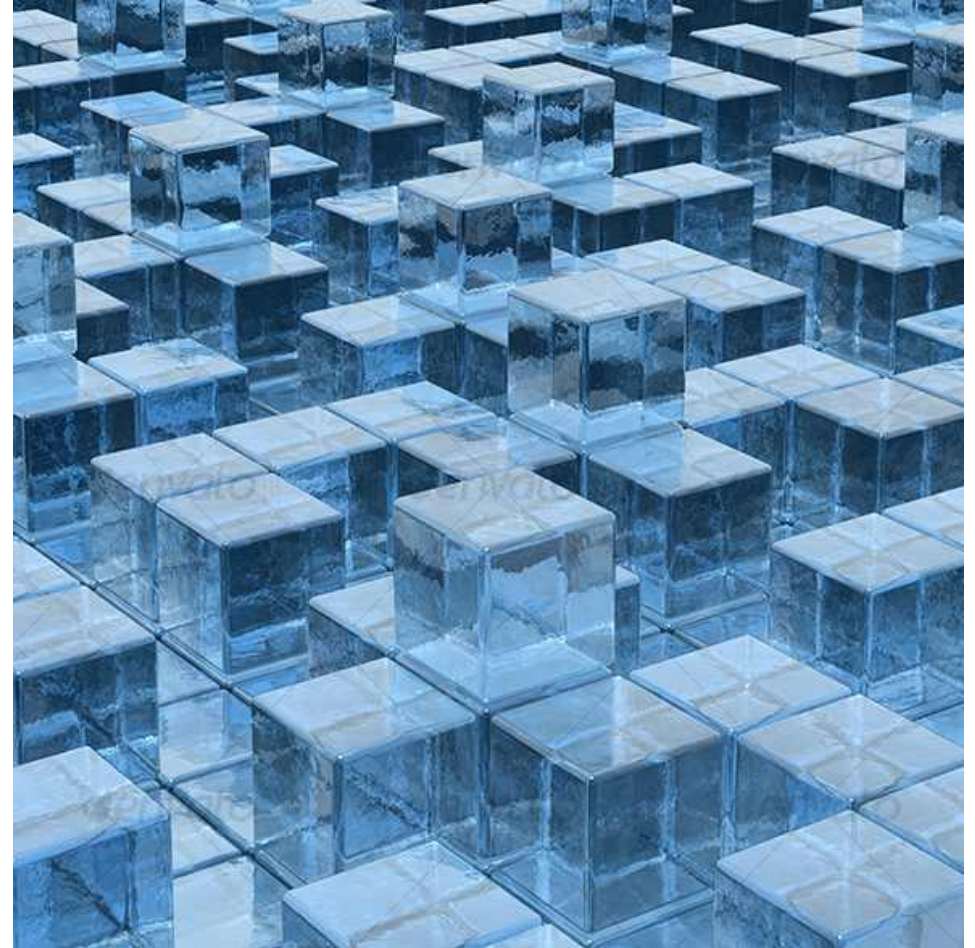
- **A description of the steps the University will take in response to the alleged discrimination, including harassment, such as the offer of support for students who are subjected to harassment, the alleged harasser, where appropriate, and remedial measures to ensure that any hostile environment created by the harassment is eliminated (Slides 77-116)**
- **A description of the steps the University will take in response to the alleged discrimination, including harassment, even where discipline may not be appropriate (Slide 51)**
- **How to identify possible indications that a complainant or other witness may be experiencing retaliation and how to respond (Slides 115-116)**

# National Context of Title VI

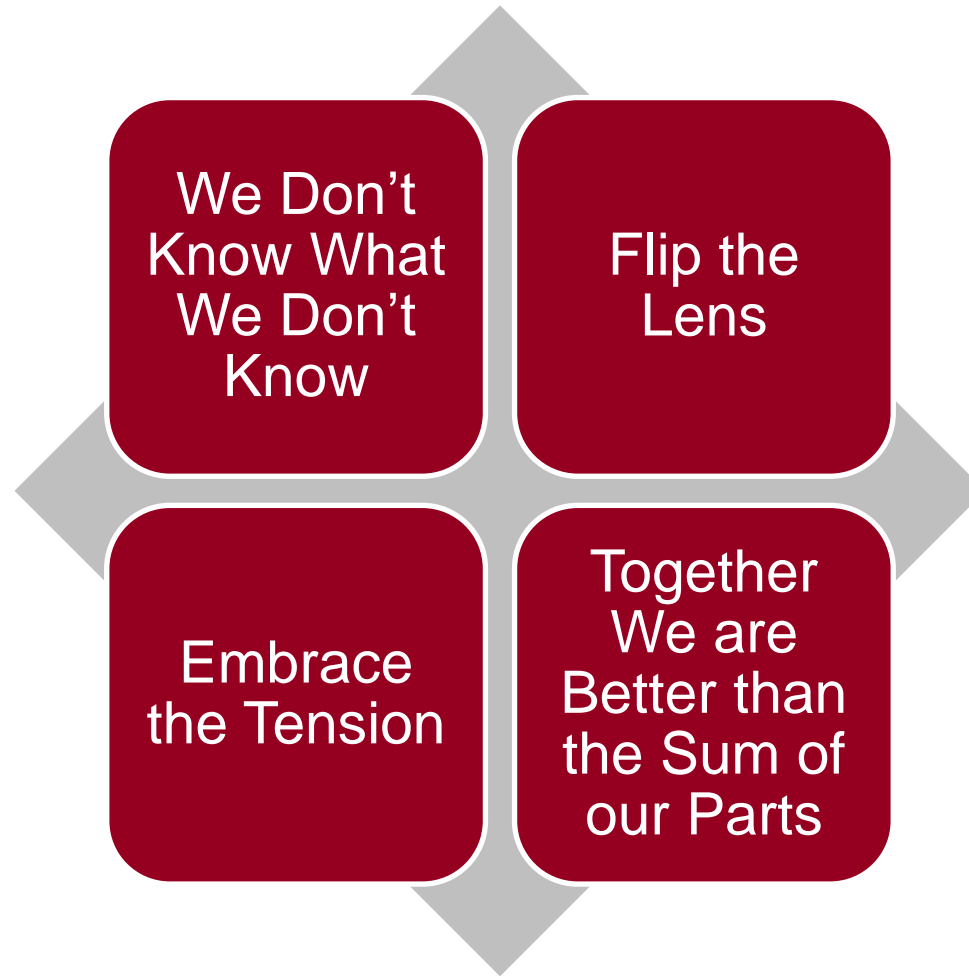


# The Context

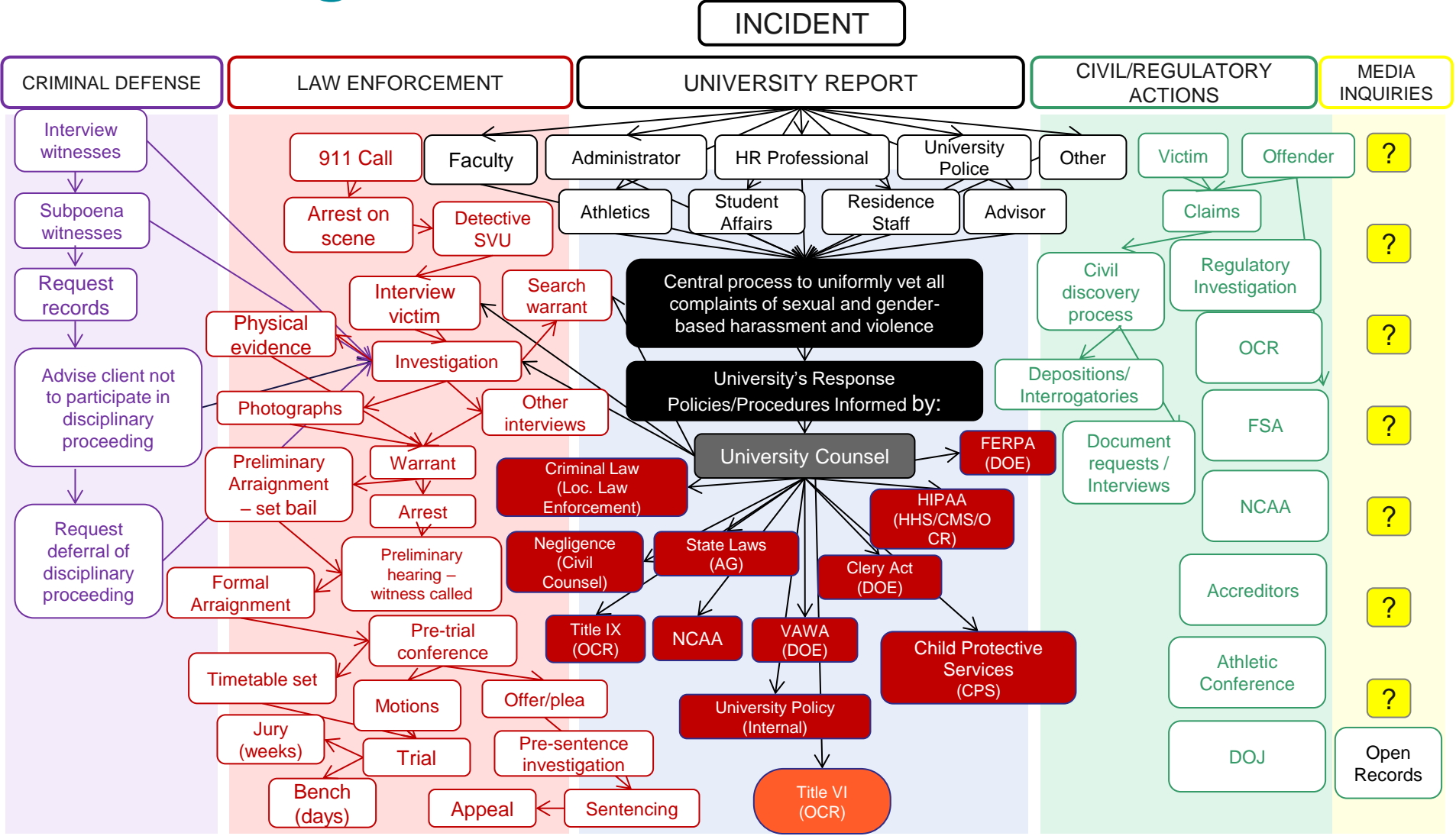
- **Legal and Regulatory Framework**
- **Impacts of the Conduct**
- **Individual Culture, Climate, History, Resources, Policies, Procedures, Personnel and Values of the Institution**



# Framing the Conversation

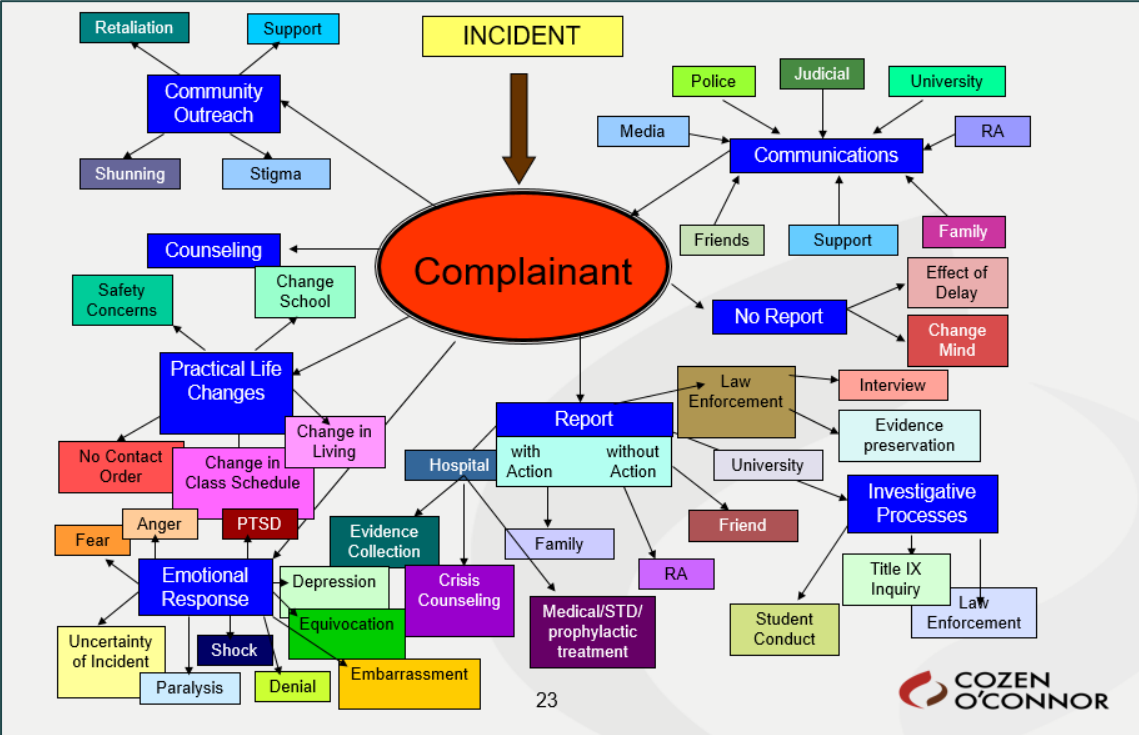


# The Challenge of the Context



Note: Lists of report recipients and relevant laws not exhaustive.

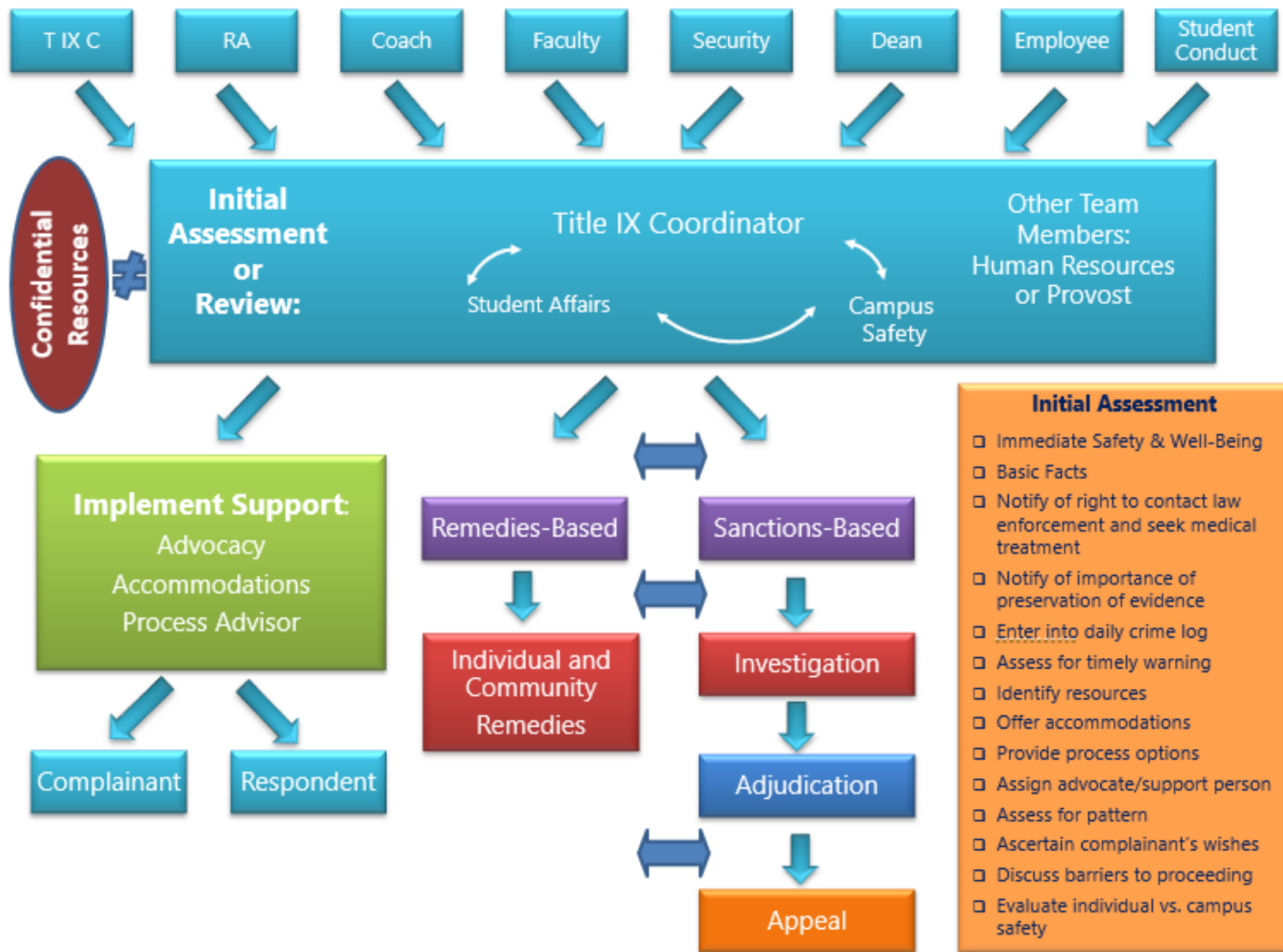
# Informed Care for the Individual



# Care-Compliance Continuum

- **Every compliance element can be tied to a duty of care**
- **Effective practices incorporate an understanding of the impacts of trauma on individuals and communities**





# Good Investigative Practice

- **Incorporate by reference all investigative practice trainings**
  - **Hold central principles of good investigative practice including: thoroughness, fairness, impartiality, notice and an opportunity to be heard, informed credibility analyses, consistent and accessible communications, investigative hygiene...**
- **Prioritize Preparation**
  - **Personal**
  - **Professional**
  - **Partners**
- **Maintain a current understanding of the evolving legal and regulatory landscape. The complexity of legal issues require close attention to detail in investigative practice.**

# Title VI Prohibition on Discrimination

***“No person in the United States shall,  
on the ground of race, color, or national origin,  
be excluded from participation in,  
be denied the benefits of, or  
be subjected to discrimination  
under any program or activity receiving  
Federal financial assistance.”***

# Institutional Obligations Under Title VI

- **Title VI Enforced by Dept. of Education Office for Civil Rights (OCR)**
- **OCR may find Title VI violations if:**
  - **a hostile environment based on race existed;**
  - **the school had actual or constructive notice of the hostile environment; and**
  - **the school failed to take prompt and effective steps reasonably calculated to end the harassment, eliminate any hostile environment and its effects, and prevent the harassment from recurring.**
- **To redress a hostile environment, a school has a legal duty to take prompt and effective steps that are reasonably calculated to:**
  - **end the harassment,**
  - **eliminate any hostile environment and its effects, and**
  - **prevent the harassment from recurring.**

*Dear Colleague Letter: Race and School Programming (August 24, 2023)*

# 2023-24 Title VI Guidance: May 2024

- **OCR interprets Title VI to mean the following type of harassment creates a hostile environment:**
  - **unwelcome conduct based on race, color, or national origin that,**
  - **based on the totality of circumstances,**
  - **is subjectively and objectively offensive and**
  - **is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a school's education program or activity.**

*U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, May 7, 2024*

# 2023-24 Title VI Guidance: May 2024

- **Harassing conduct need not always be targeted at a particular person in order to create a hostile environment for a student or group of students, or for other protected individuals.**
- **Once on notice, actual or constructive, must take steps that are reasonably calculated to end any such hostile environment and prevent its recurrence.**

*U.S. Department of Education, Office for Civil Rights Dear Colleague Letter, May 7, 2024*

# OCR Training on Application of Title VI

- **Title VI's prohibition on discrimination on the basis of race, color, and national origin extends to students who experience discrimination, including harassment, based on their actual or perceived:**
  - **Shared ancestry or ethnic characteristics, or**
  - **Citizenship or residency in a country with a dominant religion or distinct religious identity**
- **Law protects students who are or are perceived to be of a particular faith, such as Jewish, Muslim, Sikh, Hindu, Buddhist, or Christian, or of a particular national origin, such as Israeli, Arab, or Palestinian, when the discrimination or harassment involves:**
  - **Racial or ethnic slurs or stereotypes;**
  - **How a student looks, including skin color, physical features, or styles of dress that reflects both ethnic and religious traditions; and**
  - **A foreign accent or name, including name commonly associated with a particular shared ancestry or ethnic characteristics, or speaking a foreign language.**

*U.S. Department of Education, Office for Civil Rights Training, April 2024*

# Applying Title VI, National Origin, to Shared Jewish Ancestry and Ethnic Characteristics



- **2004 Dear Colleague Letter expanded interpretation of Title VI to include shared Jewish ancestry**

have both condemned such acts of bigotry. As President Bush has said, “Those who feel like they can intimidate our fellow citizens to take out their anger don’t represent the best of America, they represent the worst of humankind, and they should be ashamed of their behavior.” OCR has conducted countless outreach initiatives since September 11, 2001, to assure members of affected communities that their civil rights will be protected. Groups that face discrimination on the basis of shared ethnic characteristics may not be denied the protection of our civil rights laws on the ground that they also share a common faith. Similarly, the existence of facts indicative of religious discrimination does not divest OCR of jurisdiction to investigate and remedy allegations of race or ethnic discrimination. OCR will exercise its jurisdiction to enforce the Title VI prohibition against national origin discrimination, regardless of whether the groups targeted for discrimination also exhibit religious characteristics. Thus, for example, OCR aggressively investigates alleged race or ethnic harassment against Arab Muslim, Sikh and Jewish students.

- **“OCR will exercise its jurisdiction to enforce the Title VI prohibition against national origin discrimination, regardless of whether the groups targeted...also exhibit religious characteristics.”**

# 2023-24 Title VI Guidance: Student Focus

- **Dear Colleague Letter, November 7, 2023 - “Jewish students, Israeli students, Muslim students, Arab students, Palestinian students, and all other students who reside within our school communities have the right to learn in our nation’s schools free from discrimination. Please be vigilant in protecting your students’ rights under Title VI, understanding that we in OCR are and will be.”**
- **Dear Colleague Letter, March 14, 2024 - “I write to remind you of schools’ legal obligation under Title VI of the Civil Rights Act of 1964 and its implementing regulations (Title VI) to provide all students a school environment free from discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics.**
- **Dear Colleague Letter, May 7, 2024 - “OCR stands ready to support schools in fulfilling the promise of Title VI to protect every student's right to equal access to educational opportunities without discrimination based on race, color, or national origin, including shared ancestry or ethnic characteristics. All students, including students who are or are perceived to be Jewish, Israeli, Muslim, Arab, Sikh, South Asian, Hindu, or Palestinian as well as students who come from, or are perceived to come from, all regions of the world are entitled to a school environment free from discrimination.**

# OCR Resolution Agreement: Drexel Context



# 141 Open Title VI Shared Ancestry Investigations by OCR (as of 1.15.25)



## OCR INVESTIGATIONS

- Updated Tuesdays 1PM EDT
- <https://www2.ed.gov/about/offices/list/ocr/sharedancestry-list.html>
- 141+ Total, 78 involving IHEs

## 15 RESOLUTION AGREEMENTS

- University of Vermont
- University of Michigan
- City University of New York (CUNY)
- Lafayette College
- Brown University
- Drexel University
- University of Illinois Urbana-Champaign
- Muhlenberg College
- Temple University
- University of California System
- University of Cincinnati
- Rutgers University
- Johns Hopkins University
- Lehigh University
- University of Washington

Expanded Responsibilities

# Combined Elements in Resolution Agreements

- **Review Prior Reports**
  - Conduct analysis of hostile environment
- **Policies and Procedures**
- **Training Requirements**
  - Students
  - All employees
  - Senior leaders
  - Implementers (annual)
- **Climate Surveys & Analysis**
- **Respond to all Reports**
- **Ensure Centralized Reporting**
- **Documentation of Responses**
- **Provide OCR with Documentation of Reports over 2 Year Period**
- **Commitment to Communication**
- **Individual Remedies**

# Drexel Voluntary Resolution Agreement

- Investigation opened in December in response to allegation of shared ancestry-motivated arson; ultimately unfounded.
- Closed pursuant to Voluntary Resolution:
  - No findings of non-compliance
  - “Compliance concerns” addressed through Voluntary Resolution Agreement elements
- Elements:
  - Policies and Procedures (prescriptive)
  - Training Requirements for students, employees, senior leaders, implementers (annual)
  - Climate Surveys & Analysis
  - Respond to and document all Reports
  - File Review/Audits (prescriptive)
  - Commitment to Communication

# Voluntary Resolution Letter

- **Resolved August 2, 2024**
- **Recognition of positive steps taken**
  - **Arson matter**
  - **Training and education**
  - **Safety and security**
  - **Multiple and well-stated community-wide letters by President**
  - **Acknowledgment of External Review**
  - **Identified compliance concerns**

# Voluntary Resolution Agreement

- Review and revision of **policies and procedures** to more clearly incorporate provisions related to harassment and discrimination on the basis of actual or perceived shared ancestry or ethnic characteristics
- Continued **annual training for EIC and all implementers** who respond to and investigate reports of discrimination and harassment on the basis of race, color, and national origin
- **Training for all students and employees** on addressing discrimination on race, color, and national origin (including shared ancestry and ethnic characteristics), including information about University policies, examples of prohibited conduct, reporting options, and how the university will respond to reports
- **Climate assessment** (through written survey or focus groups) for students and staff to evaluate the climate with respect to shared ancestry and the extent to which students and employees are subjected to or witness discrimination on the basis of race, color, and/or national origin (including shared Jewish ancestry)

# Voluntary Resolution Agreement (continued)

- **File review of all reports of discrimination and harassment on the basis of shared ancestry** for the 2022-2023 and 2023-2024 AYs to ensure that the University made a determination whether the alleged conduct created a hostile environment:
  - For each incident, the University will make a legal determination of whether the reported conduct was **unwelcome based on the totality of the circumstances, both subjectively and objectively offensive, and so severe or pervasive that it limited or denied a student's ability to participate in or benefit from the University's program or activity**, and if so, notify the student and take action to remedy the hostile environment
- For the 2024-2025 and 2025-2026 AYs, the University must **document its response to all complaints and oral reports alleging discrimination**, including harassment, on the basis of shared ancestry, maintain detailed documentation and records and **provide OCR a copy of an electronic sortable spreadsheet and accompanying documentation**
- The monitoring agreement will remain in place until at least August 2026, but **OCR has the authority to keep the VRA open until it determines that all issues have been resolved.**

# Drexel University Policies



# Policy on Prohibited Discrimination, Harassment and Retaliation

- **The newly revised Policy on Prohibited Discrimination, Harassment, and Retaliation governs Drexel University's responses to all forms of discrimination and harassment**
- **Responsible Office: Executive Vice President, Treasurer, and Chief Operating Officer**
- **Approved by OCR**
- **Dissemination to Drexel community pending**

# Drexel Policy Definitions: Discrimination

- **Discrimination is adverse treatment of an individual based on one or more actual or perceived protected categories or characteristics listed in this Policy (such as race, color, ethnicity, national origin (including shared ancestry and ethnic characteristics), religion, gender, gender identity or expression, sex, sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, disability, age, status as a veteran, or any other characteristics prohibited by law (i.e., creed, marital status, citizenship status, etc.)).**
- **Discrimination is a violation of this Policy when it results in adverse action or negatively impacts the terms and conditions of an individual's employment or education or denies or limits participation in programs, services, or activities.**

# Interim Activism Guidelines (subject to revision)

- **Freedom of speech and assembly are among Drexel's fundamental values. (i.e. events such as marches, vigils, exhibits, postings on social media, and other peaceful demonstrations occur on campus).**
- **At the same time, Drexel University must ensure it follows all laws and regulations, including guidance by the U.S. Department of Education, Office for Civil Rights. One of these laws is Title VI of the Civil Rights Act of 1964, which states that universities such as Drexel have an obligation to prevent and address discrimination and harassment based on race, color, and national origin.**
- **Under Title VI, universities must also address and prevent the recurrence of any hostile environment experienced by its students, faculty, or professional staff on the basis of these protected characteristics.**

# Interim Activism Guidelines (subject to revision)

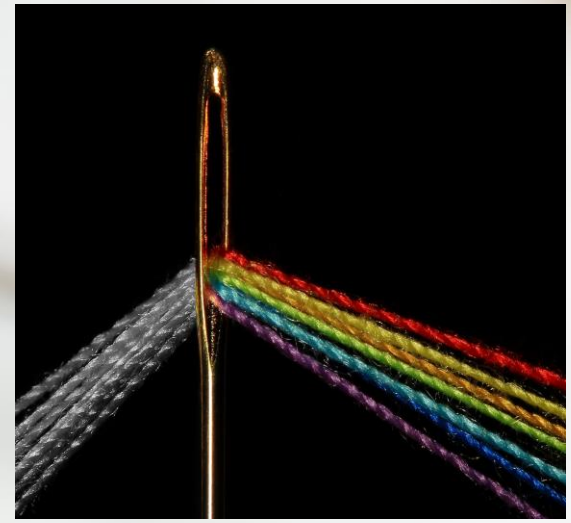
- At the beginning of 2024-2025 Academic Year, Interim Activism Guidelines published by Office of the President to clarify application of existing policies (including the [Discrimination, Harassment, and Bias Incident Prevention Policy \(EIC-1\)](#), [University Code of Conduct](#) , [Student Code of Conduct](#)) to demonstrations and activism activities.
- Speech Protections coextensive with First Amendment
- Policies prohibit disruptive conduct, including:
  - Interference with University Functions
  - Impeding access to campus
  - Endangering, threatening, harassing others
  - Damaging property
  - Possessing weapons
  - Targeting or harassing others based on protected characteristics
  - Threatening or inciting violence
  - Violating state, federal, or local laws
  - Creating imminent risk to health or safety
  - Concealing identity (clarity of contexts and language under review)
  - Impeding Emergency Operations

# Academic Freedom Statement (pending revision)

- **Faculty entitled to full freedom in research/publication, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.**
- **Faculty entitled to freedom in the classroom in discussing their subject, should not introduce controversial and unrelated matters. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.**
- **When faculty speak or write as a citizen, they should be free from institutional censorship or discipline, but should be accurate, exercise appropriate restraint, show respect for the opinion of others, and make every effort to indicate that they are not an institutional spokesperson.**

# Title VI Policy and Academic Freedom in the Academic Setting

- **If the complaint involves an allegation of Prohibited Conduct in an academic setting created a hostile educational environment either Party to the complaint may request review by a Faculty-Student Conduct Review Board.**
- **Faculty-Student Conduct Review Board reviews Civil Rights Compliance Team investigative report and makes written recommendation to Office of the Provost and EEO/TIX Coordinator regarding whether hostile environment was created.**
- **See SLIDE 111**



**Title VI  
Obligations**

# **Interim Activism Guidelines**

**Free Speech  
Academic  
Freedom  
University  
Values**

**Community  
Safety**

# Recognizing Discrimination and Harassment



# Discrimination/Harassment on the basis of National Origin

- **Unwelcome conduct based on shared ancestry or ethnic characteristics that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the recipient's education program or activity.**
- **Need not be directed at any individual**

*U.S. Department of Education, Office for Civil Rights Dear Colleague Letter, May 7, 2024*

- **IHRA Definition of antisemitism has been endorsed via Executive Order, but remains controversial in many academic settings insofar as it associates antisemitism with anti-Zionism**

# Discrimination/Harassment on the basis of National Origin

- **Harassing conduct may take many forms:**
  - verbal acts and name-calling;
  - graphic and written statements, which may include use of cell phones or the Internet;
  - other conduct that may be physically threatening, harmful, or humiliating.
  - Harassment does not have to include intent to harm, be directed at a specific target, or involve repeated incidents.
- **Harassment creates a hostile environment when the conduct is sufficiently severe, pervasive, or persistent so as to interfere with or limit a student's ability to participate in or benefit from the services, activities, or opportunities offered by a school.**

*Dear Colleague Letter: Harassment and Bullying (Oct. 26, 2010)*

# Conduct that May Likely Create a Hostile Environment

- **A Jewish student tells her principal that a few classmates routinely call her an anti-Semitic slur referencing poor hygiene and regularly vandalize her textbooks, locker, and desk with swastika graffiti.**
- **A high school principal makes Black and Latino but not white students provide proof of their Jewish identity before excusing their attendance on Jewish holidays.**
- **A group of Jewish students is hit and taunted every week in gym class by other students who say, “Jews are supposed to be good at math—not basketball.”**
- **A teaching assistant posted on social media about not giving Jewish students course participation credit; subtracted points for Jewish students, including because “I hate ur vibe in general.”**

*Fact Sheet: Combating Discrimination Against Jewish Students (Jan. 2017) , University of Vermont OCR Resolution Agreement*

# Off-Campus/Online Conduct May Create a Hostile Environment

- **Social media posts and conduct may create a Hostile Environment implicating Title VI.**
- **University of Michigan OCR Resolution Agreement:**
  - “[T]he university did not assess the existence of a hostile environment or take remedial action when a Jewish student reported having been targeted and harassed on social media that same month. This student reported that after he viewed a graduate student instructor’s Instagram story that included a discussion of pro-Palestinian topics, the instructor screenshotted that the student had viewed the story and posted a new story, tagging the student in the post and showing that he had an Israeli flag in his bio, with a comment saying, ‘Did you like my educational talk.’ The university merely responded to the reporting student that ‘formal conflict resolution is not a path forward at this time’ because social media ‘is largely going to be protected as free speech’ and told the student about informal resolution pathways.”

# Drexel Policy Definitions: Discrimination Examples

Refusing to grant a student a letter of recommendation because the student wears a Star of David on a necklace around their neck.

Not including a student in a lab group because of their race, national origin, or other protected characteristic.

Giving a student a lower grade for the quarter for taking extra time on assignments that was granted through an ODR accommodation.

Not allowing a student to join or participate in a student organization based upon their religious belief or because they wear symbols or styles of dress associated with their religion (e.g., wearing a hijab, burka, turban, or kippah).

# Drexel Policy Definitions: Harassment

- **Harassment is unwelcome verbal, physical, written, audio or visual conduct, or conduct using technology/social media based on an actual or perceived protected categories or characteristics that when based on the totality of the circumstances is subjectively and objectively offensive and so severe or pervasive that it limits or denies a person's ability to participate in or benefit from the education program or activity or has the purpose or effect of creating an academic or working environment that a reasonable person would consider to be intimidating, hostile, or offensive.**

# Drexel Policy Definitions: Harassment

- **Even a single or isolated incident may create a hostile environment if the incident is sufficiently severe. 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. In determining whether conduct is sufficiently severe or pervasive as to meet the above standards, the Civil Rights Compliance Team examines the context, nature, scope, frequency, duration, and location of incidents, as well as the relationships of the persons involved. A person's subjective belief that behavior is or is not intimidating, hostile, or offensive does not determine whether that behavior is prohibited harassment under this Policy. The behavior must create a hostile environment and/or substantially interfere with access to a University program or activity from an objective perspective. In some instances, the University may not be able to pursue a potential Policy violation because the reported statements or conduct are protected speech. In such instances, the University will evaluate all available information, including the totality of the circumstances, to determine whether the reported conduct may have impacted culture or climate more broadly, when considered in the aggregate with other reported information. If so, the University will take action reasonably calculated to remedy the campus climate and environment.**

# Drexel Policy Definitions: Harassment

- **What is Prohibited Harassment?**
  - Harassment is unwelcome verbal, physical, written, audio or visual conduct, or conduct using technology/social media
  - based on an actual or perceived protected categories or characteristics that
  - when based on the totality of the circumstances
  - is subjectively and objectively offensive and
  - so severe or pervasive that
  - it limits or denies a person's ability to
  - participate in or benefit from the education program or activity or
  - has the purpose or effect of creating an academic or working environment that
  - a reasonable person would consider to be intimidating, hostile, or offensive.

# Drexel Policy Definitions: Harassment

- **What is sufficiently severe?**
  - **Even a single or isolated incident may create a hostile environment if the incident is sufficiently severe.**
  - **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.**
  - **In determining whether conduct is sufficiently severe or pervasive as to meet the above standards, the Civil Rights Compliance Team examines the:**
    - context,
    - nature,
    - scope,
    - frequency,
    - duration, and
    - location of incidents,
    - as well as the relationships of the persons involved.

# Drexel Policy Definitions: Harassment

- **How do I evaluate “subjectively and objectively offensive”?**
  - **A person’s subjective belief that behavior is or is not intimidating, hostile, or offensive does not determine whether that behavior is prohibited harassment under this Policy.**
  - **The behavior must create a hostile environment and/or substantially interfere with access to a University program or activity from an objective perspective.**

# Drexel Policy Definitions: Harassment

- **What if comments are subjectively offensive and protected speech?**
  - In some instances, the University may not be able to pursue a potential Policy violation because the reported statements or conduct are protected speech.
  - In such instances, the University will evaluate all available information, including the totality of the circumstances, to determine whether the reported conduct may have impacted culture or climate more broadly, when considered in the aggregate with other reported information. If so, the University will take action reasonably calculated to remedy the campus climate and environment.

# Drexel Policy Definitions: Harassment Examples

Use of racist, anti-Semitic, or Anti-Muslim slurs.

Defacing a person's property with a hateful symbol or vandalizing or stealing religious or cultural symbols.

Verbal abuse or use of racist, anti-Arab, or Anti-Israel slurs or hostile behavior, which could include insulting, teasing, mocking, ridiculing, or degrading another person or group regardless of whether or not the person is a member of the group.

Repeatedly referring to a Muslim student as a "terrorist," mocking the student's keffiyeh, and taunting the student as they walk through campus.

Displays or electronic transmissions of demeaning or hostile materials related to one or more protected or perceived protected characteristics.

Intentionally misgendering a person or using their deadname because you do not agree with their choice.

# Drexel Policy Definitions: Forms of Harassment

- **Harassment can take many forms:**
  - It can occur between equals (e.g., student to student, professional staff to professional staff, faculty member to faculty member, visitor/contracted employee to professional staff) or between persons of differing power status (e.g. supervisor to subordinate, faculty member to student, coach to student-athlete).
  - It can be committed by an individual or may be a result of the collective actions of an organization or group, such as a registered student organization.
  - It can be committed against an individual, an organization or a group.

# Drexel Policy Definitions: Hostile Environment Examples

- **Examples of behavior that may create a hostile environment and will be considered as evidence of Discrimination or Harassment include, but are not limited to:**
  - **Unwanted or inappropriate innuendo, or suggestive comments, humor and jokes, racial slurs or derogatory language directed at another person's Protected Category; insults and threats based on a Protected Category and other verbal, written or electronic communications of a discriminatory nature that an individual communicates is unwanted and unwelcome;**
  - **Non-academic display or circulation of written materials or pictures degrading to an individual(s) or group's Protected Category. (Instructors should be aware that students come from a variety of backgrounds and perspectives and therefore should make a reasonable effort to provide appropriate warnings and accommodations regarding the use of explicit and/or triggering materials in their classes.)**

# Drexel Policy Definitions: Other Conduct of Concern

- **Some conduct may or may not rise to the level of Discrimination or Harassment but can nonetheless be disruptive to an individual's education or employment experience. This conduct may include verbal or nonverbal conduct that communicates hostile, derogatory, or negative messages to target persons and is based on their actual or perceived membership in a category protected by this Policy but where the information does not support an investigation or formal resolution process under this Policy because it is not severe and/or pervasive, and subjectively and objectively offensive.**
- **Other Conduct of Concern will be evaluated by the Civil Rights Compliance Team. While discipline may not be possible, the University will still take available action to address the concern by offering support, resources, and interventions available through campus partners.**
- **The purpose of these measures is to bring the information forward for centralized analysis and evaluation. Other Conduct of Concern is often a one-time comment but is documented to provide the opportunity to analyze patterns and develop education for the community.**

# Tension between Title VI and Free Speech



# Ordering Operations – Bringing Harmony



# Does the First Amendment Apply?

- **Drexel University is a private institution to which the First Amendment does not apply.**
- **However, Drexel has made commitments to its community that its conduct policies do not infringe on any students' freedom of speech or assembly.**
- **Exercise caution when there is involvement of external law enforcement authorities, state actors, as First Amendment may be implicated by their conduct.**

# What is Free Speech?

## Free Speech Includes:

- Disagreeable Speech
- Political Speech
- Hate Speech

## Free Speech Does NOT Include:

- True Threats
- Harassment
- Incitement
- Fighting Words
- Obscenity (including child sexual abuse material)
- Defamation
- Commercial Speech

# Title VI: Expectations Regarding Speech

- **“The fact that harassment involves protected speech is not the end of the inquiry even when speech is protected and the university cannot discipline the speaker, therefore, the university still has a Title VI legal obligation to ensure that a hostile environment does not exist and does not persist.”**

*OCR Briefing 06.18.24*

# When Protected Speech Creates a Hostile Environment

- **“To meet its obligation, a university can, among other steps,**
  - **communicate its opposition to stereotypical, derogatory opinions;**
  - **provide counseling and support for students affected by harassment; or**
  - **take steps to establish a welcoming and respectful school campus, which could include making clear what the school values, and is determined to fully include in the campus community, students of all races, colors, and national origins.”**

*U.S. Department of Education, Office for Civil Rights, Dear Colleague Letter, May 7, 2024*

# When Protected Speech Creates a Hostile Environment

- **Do not discipline pure speech, without associated conduct that violates student conduct code.**
- **Assess whether a hostile environment has been created by conducting a preliminary investigation.**
- **If a hostile environment has been created by this incident alone or in the context of the University's culture and climate, the University should:**
  - **Offer supportive measures to all affected parties**
  - **Consider using institutional voice to state values and reject hate-filled speech**
  - **Identify additional community members who may be affected by the hostile environment and offer support**

# Antisemitism vs. Anti-Zionism

- The International Holocaust Remembrance Association's (IHRA) definition of antisemitism is used as non-binding guidance by federal agencies under Executive Order 13899:
  - “Antisemitism is a certain perception of Jews, which may be expressed as hatred toward Jews. Rhetorical and physical manifestations of antisemitism are directed toward Jewish or non-Jewish individuals and/or their property, toward Jewish community institutions and religious facilities.”
  - “Manifestations might include the targeting of the state of Israel, conceived as a Jewish collectivity. However, criticism of Israel similar to that leveled against any other country cannot be regarded as antisemitic. Antisemitism frequently charges Jews with conspiring to harm humanity, and it is often used to blame Jews for “why things go wrong.” It is expressed in speech, writing, visual forms and action, and employs sinister stereotypes and negative character traits.”
- Subject to criticism by some groups for perception that it conflates Antisemitism and Anti-Zionism.

# Importance of Reporting and Centralized Review



# Why Centralize Reports?

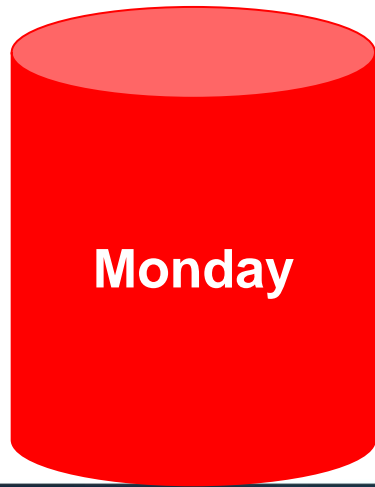
- **Demonstrative of Care-Compliance-Continuum**
- **Reports must be sent to appropriate departments for analysis under Clery Act, Title VI, and other applicable law.**
- **Centralized access to supportive measures**
  - **OCR requires that hostile environment be addressed even where speech is not disciplined**
  - **Even where speech is protected, supportive measures are available**
- **Tracking reports to evaluate impacts on educational program or activity**
- **OCR expectation that reports will be reviewed collectively for hostile environment assessment**

# Drexel Policy: Mandatory Reporting Obligations

- All officers, deans, department heads, faculty members, academic advisors, directors and supervisors, as well as any professional staff, student employees or volunteers who are responsible for student welfare, **must report immediately to the Office for Institutional Equity and Inclusive Culture any and all incidents they have reason to believe constitute discrimination and harassment under this Policy, regardless of whether or not the individual witnessed the incident themselves or learned of it through the Complainant or a Third Party.** This reporting ensures that the University has a comprehensive process for centralized reporting, analysis, and appropriate response to Prohibited Discrimination, Harassment, and Retaliation.
- These individuals **must make it clear to the Complainant that any allegation must be forwarded to the appropriate University officials and that no allegation can remain confidential once discussed** with an officer, dean, department head, faculty member, academic advisor, director and/or supervisor, any professional staff, student employee or volunteer who is responsible for student welfare. The Civil Rights Compliance Team will treat all reports it receives with the utmost care and any information received by them in connection with a report or subsequent complaint investigation will be private and will only be used to implement this Policy and will only be shared with individuals who are responsible for implementation of process under this Policy.

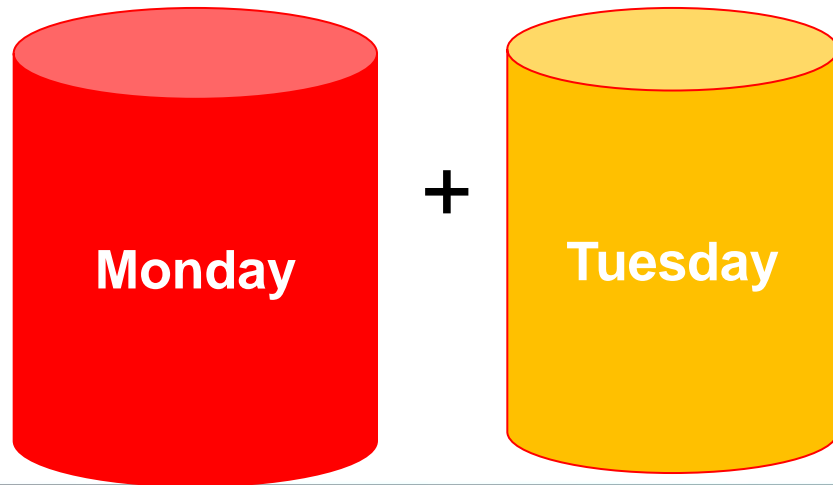
# Scenario 1: Silos of Information

- **Report:** On Monday, student Jonah, a Jewish Student, reports to the Dean of his academic program that he has learned that a student group has invited a white nationalist figure to campus, making him feel unsafe.
- **Response:** *The Dean of Jonah's program tells him that this conduct is protected speech under academic freedom principles, but keeps a record of his conversation with Jonah.*



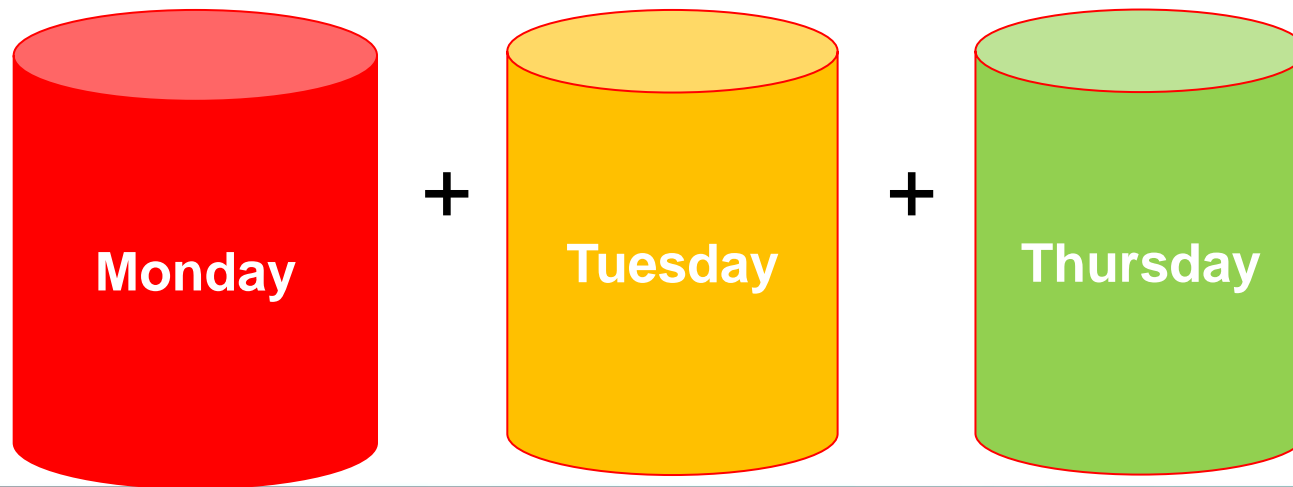
# Scenario 1: Silos of Information

- **Report:** On Tuesday, student Hannah, another Jewish student and member of Hillel, reports to the Provost's Office that she saw flyers posted on and around the Hillel building advertising the white nationalist event.
- **Response:** *The Provost assesses the University's flyer policy and issues a reminder to the student organization that they cannot post flyers outside of designated areas.*



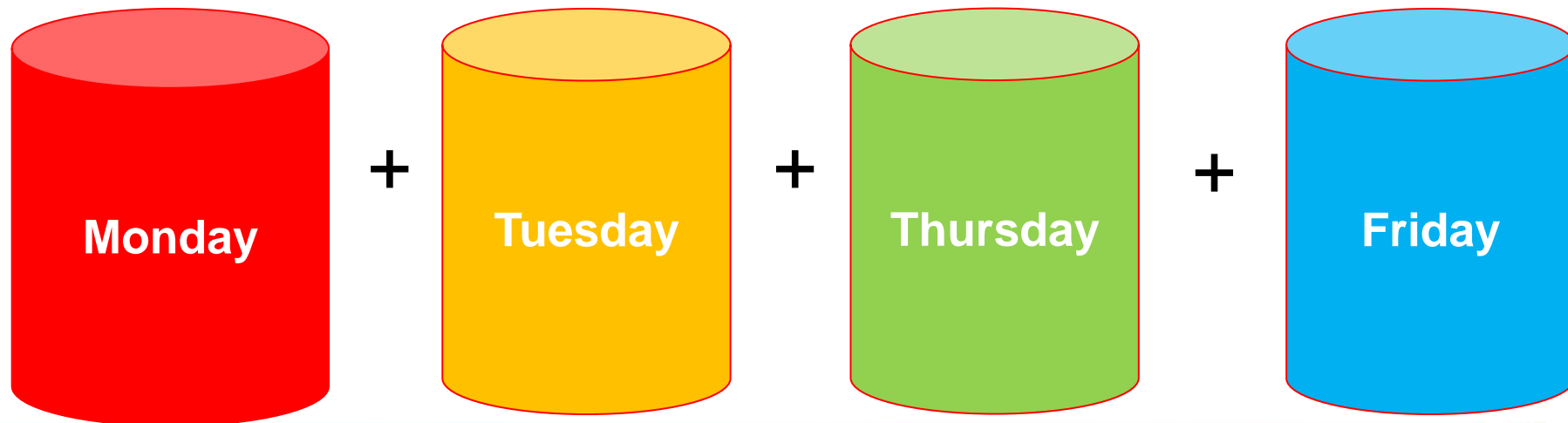
# Scenario 1: Silos of Information

- **Report:** On Thursday, at the event, several Jewish students attend to protest, and the white nationalist speaker encourages violence against the Jewish students and leads chants of “You will not replace us.” This incident is reported to the Police Department.
- **Response:** *The Police Department analyzes the event under its Clery obligations, determines that no crime has been committed because no violence occurred, and provides referral to the Counseling Center.*

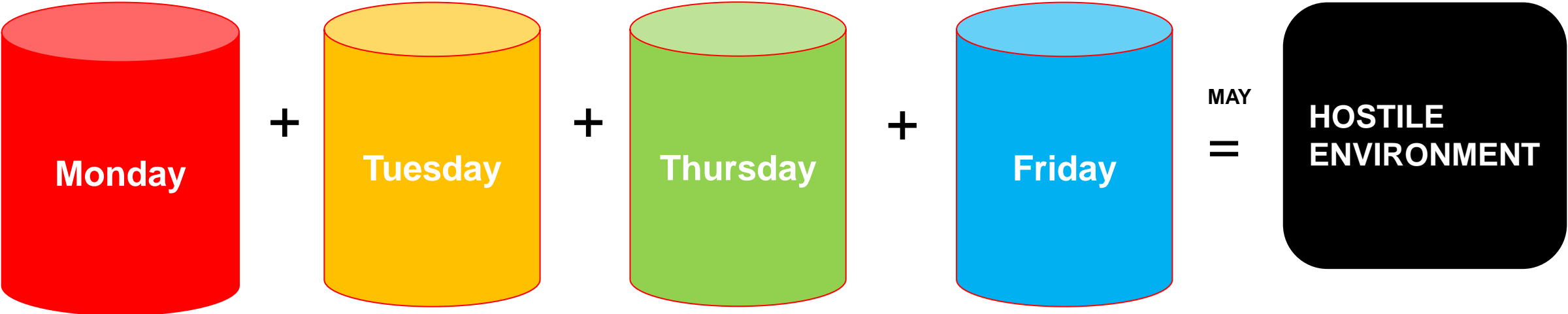


# Scenario 1: Silos of Information

- **Report:** On Friday, the local Chabad chapter is covered in swastika graffiti and other racial slurs. This is reported to campus maintenance for graffiti removal.
- **Response:** *The maintenance department removes the graffiti promptly from the Chabad chapter.*



# Scenario 1: Silos of Information



# The Danger of Silos

- **Silos of information lead to each report receiving a different response, inability to recognize that, taken together, incidents create a hostile environment.**
- **In this example, because the report was not sent to one office responsible for analyzing all complaints, the University failed to take the following care and compliance steps for each report:**
  - **Assess whether conduct, taken together, created a hostile environment**
  - **Offer supportive measures to all affected parties**
  - **Determine whether other community members may need support (i.e. Hillel and Chabad members)**
  - **Assess all conduct through Clery obligations for hate crimes**
  - **Document all responses to demonstrate Title VI Compliance**

# Silos in Action: Illinois Urbana Champaign

- **Resolution Agreement reached with OCR in September 2024.**
- **OCR indicated that instances of antisemitic graffiti, including swastikas painted throughout campus, were addressed by offering resources to the complaining parties, but not to the broader affected community.**
- **OCR indicated that responsibility for addressing these matters was “diffuse and overlapping,” rather than centralized and organized.**

# Centralized Reporting

- **How to Report Violations:**
  - Office for Institutional Equity and Inclusive Culture, James E. Marks Intercultural Center, 3225 Arch Street | 215-895-1405 | [EIC@drexel.edu](mailto:EIC@drexel.edu)
  - Anonymous reports may be made by telephone to the Drexel University Ethics Point Hotline: 866-358-1010 (Drexel University) or online at [www.drexel.ethicspoint.com](http://www.drexel.ethicspoint.com)
- Reports will be initially assessed by trained administrators who will collect, review, assess, and respond to all Title VI-related concerns.

## **Campus Resources for Students:**

- [Counseling Center](#)
- [Chaplains, Spiritual and Religious Life](#)
- Student Center for Diversity and Inclusion
- Center for Black Culture
- International students and Scholars Services

## **Campus Resources for Employees:**

- [Human Resources](#)
- [Employee Assistance Program](#)
- [Office of Faculty Affairs](#)
- [Colleague Resource Groups](#)

# Institutional Analysis of Title VI Reports



# Response to Centralized Report

## Assess Safety & Timely Warning Needs

- Determine Clery Geography
- Assess whether conduct constitutes ongoing and serious threat
- If Timely Warning required, ensure all appropriate authorities have been notified and Timely Warning issued
- Take other indicated safety steps
  - Interim actions
  - Protective measures

## Assess Applicability of Policy

- Identify alleged protected characteristics
- Identify Conduct involving protected characteristics
- Review conduct under applicable policy

# Response to Centralized Report

## Assess whether conduct occurred in Educational Program or Activity (EPA)

- Conduct engaged in by students, student organizations, faculty, staff or affiliated third parties
- Conduct occurring within College's program or activities
- Program occurring in a manner that may otherwise impact EPA

## Determine Institutional Obligation to Respond

- Identify alleged protected characteristics
- Identify Conduct involving protected characteristics
- Review conduct under applicable policy
- Conduct preliminary review of conduct

# Response to Centralized Report

## Determine whether to file Formal Complaint

- Review totality of known circumstances
- Determine whether reporting party will participate
- Analyze the severity of conduct, including whether threats, a weapon or violence was involved.
- Determine age of affected parties
- Analyze acceptance of responsibility
- Analyze pattern of behavior, including failing to obey directives
- Determine whether multiple perpetrators are involved
- Determine whether independent evidence is available
- Determine whether remedial methods have been taken already
- Analyze aggravating factors

## Review Academic Freedom Considerations

- Determine role of speaker as faculty or staff
- Review contract with institution
- Determine whether speech occurs in educational context and was germane to subject of the course, or pertained to faculty's scholarship
- Determine whether speech was given as private citizen speaking as a matter of public concern

# Response to Centralized Report

## Determine Whether Protected Speech is Implicated

- Determine if conduct involved speech
- Determine whether speech is protected speech under applicable policies or the First Amendment (where applicable)
- Determine whether any speech exceptions apply
- Determine whether it is possible that the speech created a hostile environment, and what remedial actions must be taken if so.

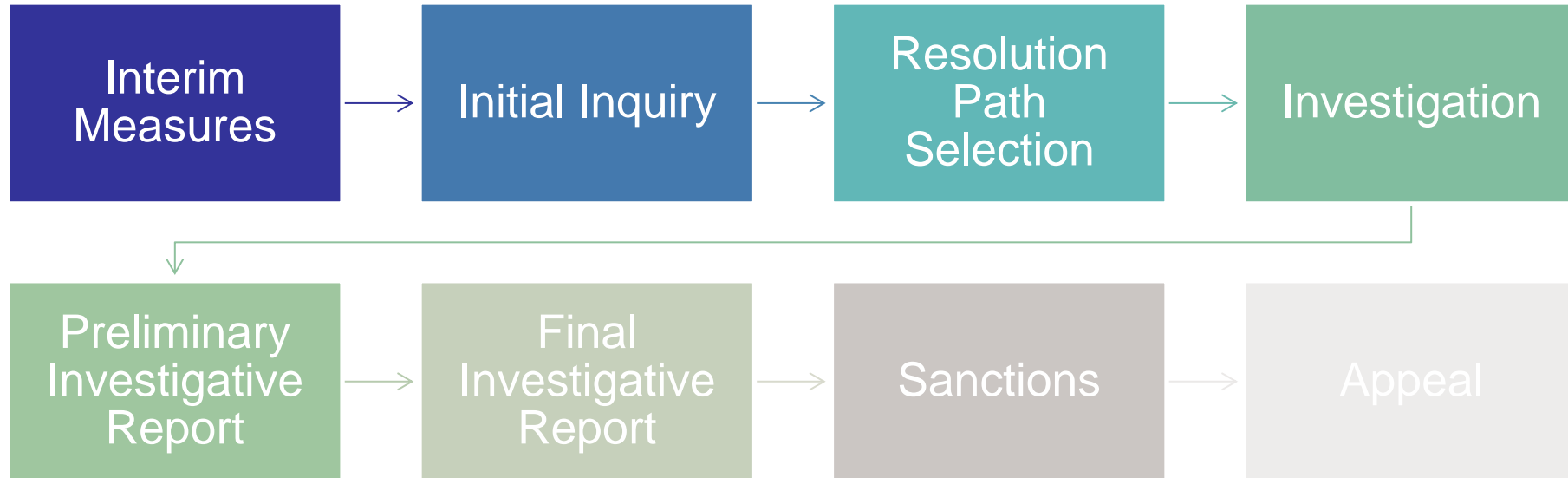
## Community Outreach and Analysis

- Determine whether speech or conduct was directed at individual or group.
- Determine whether incident targeted an institution related to particular identity.
- Identify potentially impacted communities and offer supportive measures.
- Collect any evidence of discriminatory intent/motive.

# Drexel Policy on Prohibited Discrimination, Harassment, and Retaliation: Resolution Process

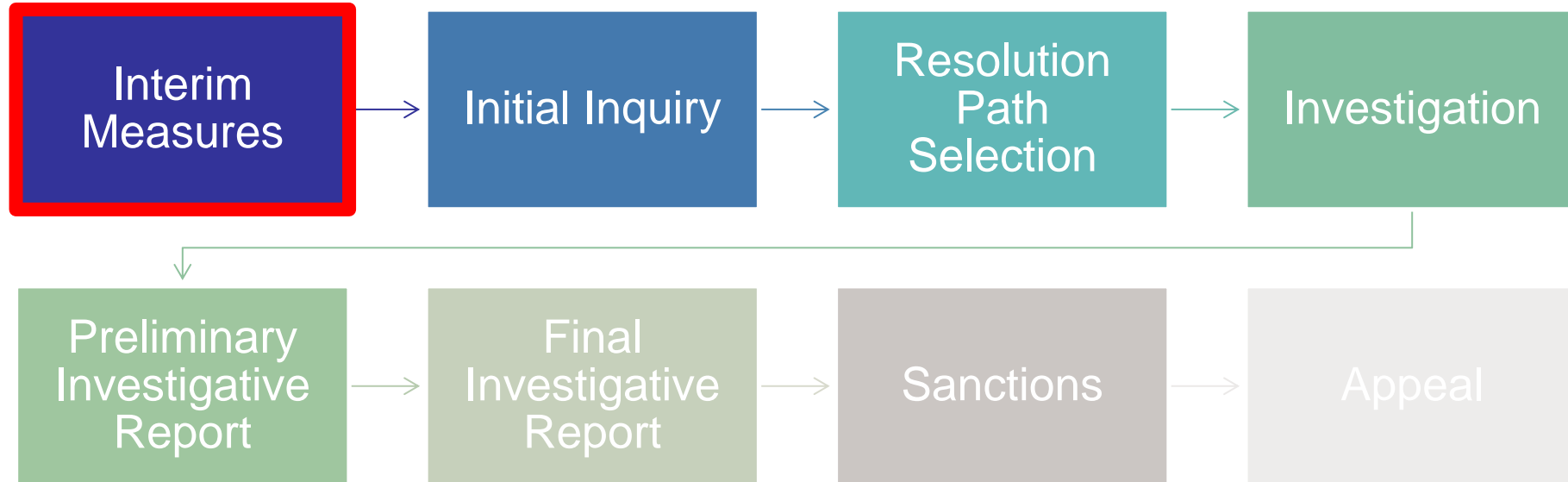


# Drexel Policy: Process Overview



**Time to Resolution: 60 Business Days**

# Drexel Policy: Process Overview

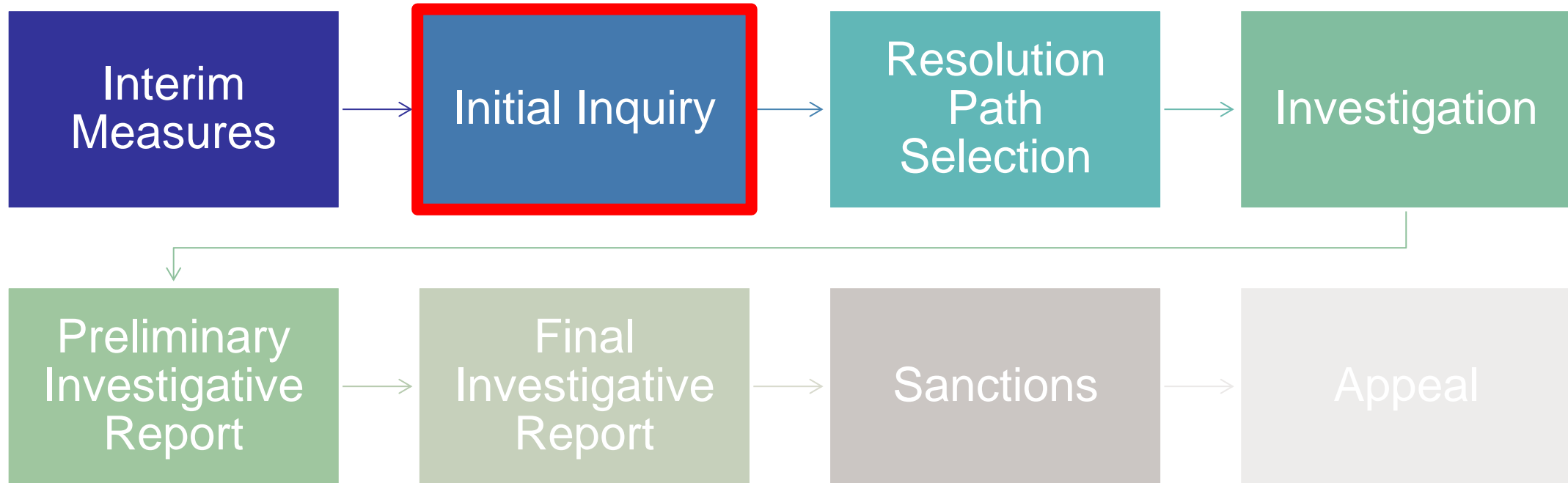


**Time to Resolution: 60 Business Days**

# Drexel Policy: Interim Measures

- **Upon receipt of a report, the University will provide interim support and reasonable Protective Measures to prevent further acts of Discrimination, Harassment, or Retaliation and to provide a physically safe and healthy, respectful educational, living, and work environment.**
- **Even if a Complainant, Respondent or anyone else involved in the investigation does not specifically request that protective action be taken, the University may choose to impose interim measures at its discretion.**

# Drexel Policy: Process Overview



Time to Resolution: 60 Business Days

# Drexel Policy: Initial Inquiry

- **In every report of Discrimination, Harassment, and/or Retaliation, the University will make an immediate assessment of any risk of harm to individuals or to the campus community and will take steps necessary to address those risks. These steps will include interim measures to provide for the safety of the individual and the campus community.**
- **If the Complainant chooses to move forward and explore a formal process or if the University deems it necessary, an initial inquiry will occur with a Civil Rights Investigator to determine whether the allegations, if substantiated, would rise to the level of a violation of University Policy; a determination of the specific Policy(ies) implicated; and an assessment of the appropriate University response.**

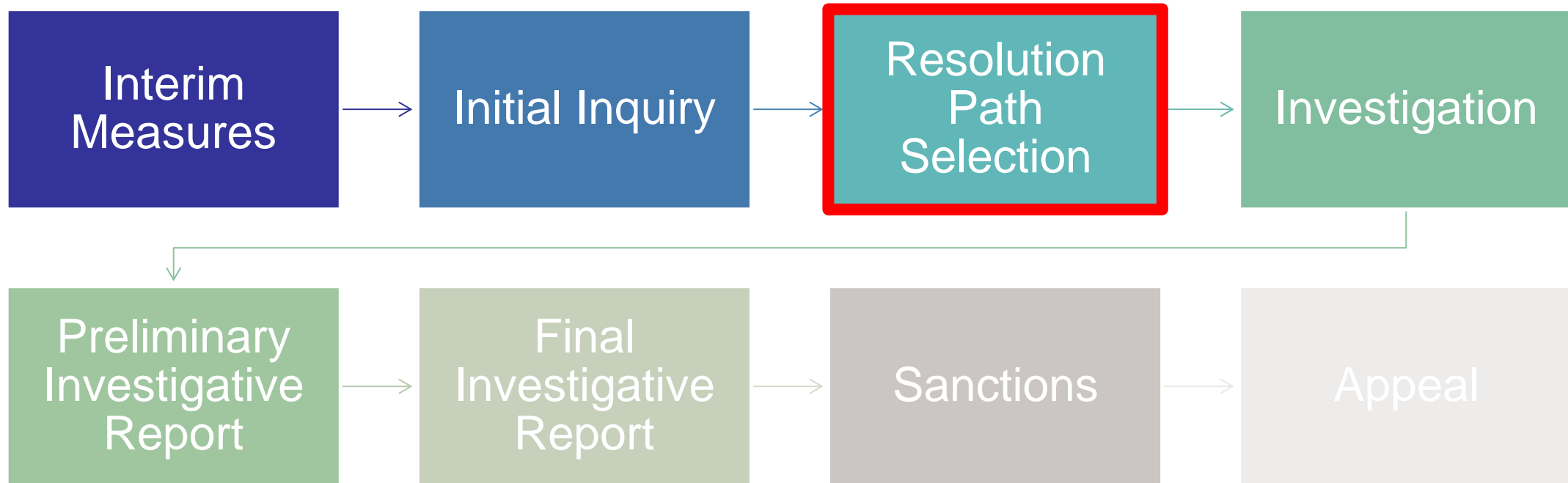
# Drexel Policy: Initial Inquiry

- **If a Complainant chooses not to participate in a full investigation and/or adjudicatory process, an Initial Inquiry and review may still move forward if needed to eliminate potential harassment, prevent recurrence, address effects.**
- **If the University is satisfied that the matter can be resolved without invoking the disciplinary process, the University will inform the Complainant in writing of the outcome of the Initial Inquiry and any action taken by the University. In cases where the Respondent has been notified of the complaint, the Respondent will also be notified in writing of the outcome.**

# Initial Inquiry

- **The Initial Inquiry will proceed to the point where a reasonable assessment of the safety of the individual and of the campus community can be made.**
- **Formal investigation may begin, depending on a variety of factors, including:**
  - **Complainant's wish to pursue disciplinary action,**
  - **Risk posed to any individual or the campus community by not proceeding, and the nature of the allegation.**
- **The Civil Rights Compliance Team will inform parties in writing Initial Inquiry finds that a formal investigation of the complaint is warranted.**

# Drexel Policy: Process Overview



**Time to Resolution: 60 Business Days**

# Resolution Path Selection

- **If the University determines that the conduct reported falls under the scope of the Drexel Policy, the matter may be resolved via:**
  - **Educational Response**
  - **Alternative Resolution/Informal Resolution**
  - **Formal Resolution**

# Resolution Path: Educational Response

- **An educational response does not preclude further steps, including formal or alternative resolution, if a complaint is later made or additional information is received by the Civil Rights Compliance Team. Educational responses may include:**
  - **An educational meeting with the Respondent**
  - **Referral to another University office for response**
  - **Training for a group or unit.**
  - **If the Civil Rights Compliance Team refers an educational response or meeting to another University office, that office will provide a summary of the meeting to the EO Coordinator or designee.**

# Resolution Path: Educational Response

- **Educational responses are appropriate when:**
  - a formal resolution is not desired by the Complainant,
  - there is not enough information to proceed with a formal resolution against a known Respondent, and/or
  - where the University deems it an appropriate response based on the assessment of the complaint.
- **Educational response is not used where the Civil Rights Compliance Team determines that an investigation will proceed through a formal resolution.**
- **An educational response is non-disciplinary and does not result in findings related to responsibility or in sanctions.**

# Resolution Path: Alternative Resolution

- **Alternative Resolution utilizes informal resolution mechanisms to resolve complaints of discrimination, and/or harassment.**
- **The Complainant, Respondent, and University must agree to participate in Alternative Resolution.**
  - **If any party does not agree, the matter will proceed with the investigation and formal resolution process.**
  - **Consent may be withdrawn at any time prior to resolution.**
- **Outcome of Alternative Resolution Process may not be appealed.**

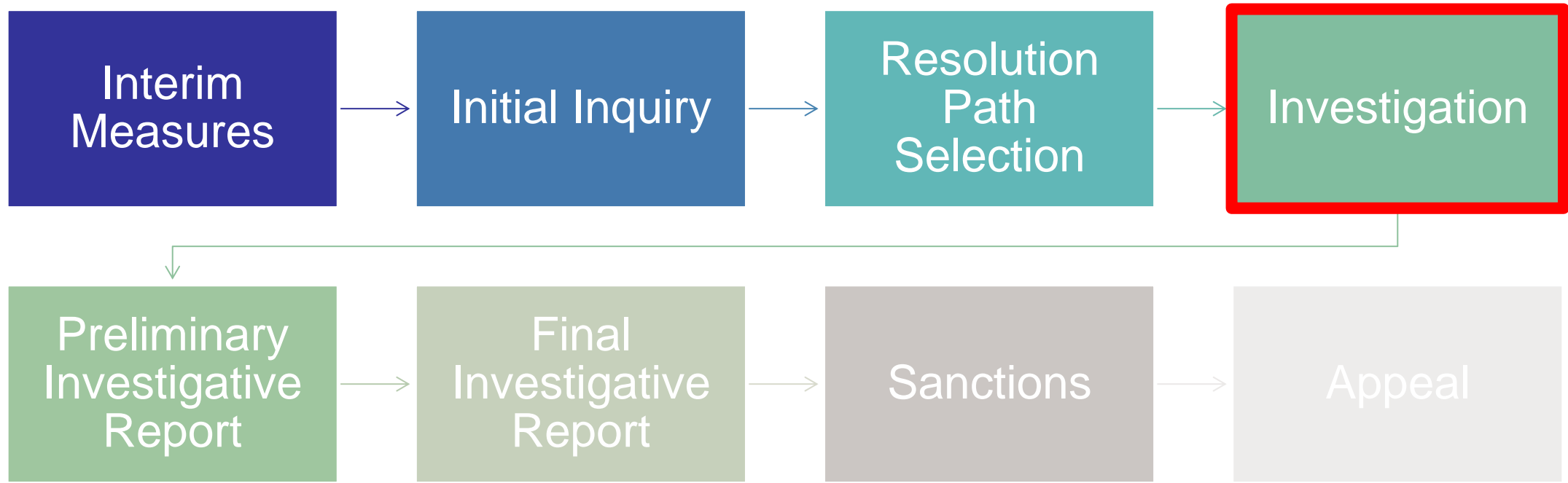
# Resolution Path: Alternative Resolution

- **Alternative Resolution may include Facilitated Agreements, which are communications between the parties where a facilitator helps the parties reach a mutually agreed upon resolution to the complaint.**
- **Examples of resolution terms obtained through this process may include but are not limited to:**
  - **Participation in educational offerings**
  - **Restrictions from participation in campus events and/or registered student organizations**
  - **Administrative and/or academic changes**
  - **Relocation or removal from on-campus housing**
  - **No Contact Directive**

# Resolution Path: Formal Resolution

- **Formal Resolution Process involves investigation and findings with respect to facts and responsibility for policy violations.**
- **Must be commenced in writing to all known parties including:**
  - **Notice of Drexel's complaint resolution process**
  - **Sufficient details of the allegations that are known at the time so the parties may prepare for their investigative interview, including: the identities of the parties involved in the incident, if known;**
  - **The conduct alleged to constitute a violation of Policy;**
  - **and the date and location of the incident(s), if known.**
  - **Notice of prohibition on retaliation, knowingly making false statements/submitting false information**
  - **If additional allegations are investigated, new notice must be issued.**

# Drexel Policy: Process Overview



Time to Resolution: 60 Business Days

# Formal Resolution: Investigation

- **Investigations performed by internal or external investigators designated by the Civil Rights Compliance Team.**
- **All investigators trained in applicable law and University's policies and procedures.**
- **Matters may be consolidated if they involve the same Respondent or in the event of cross-complaints.**

# Formal Resolution: Advisors

- **All parties are entitled to an advisor of their choice, who may not be a party or a witness.**
- **Advisor may not speak on behalf of a party.**
- **Parties may confer with advisor within reason during meetings/hearings.**

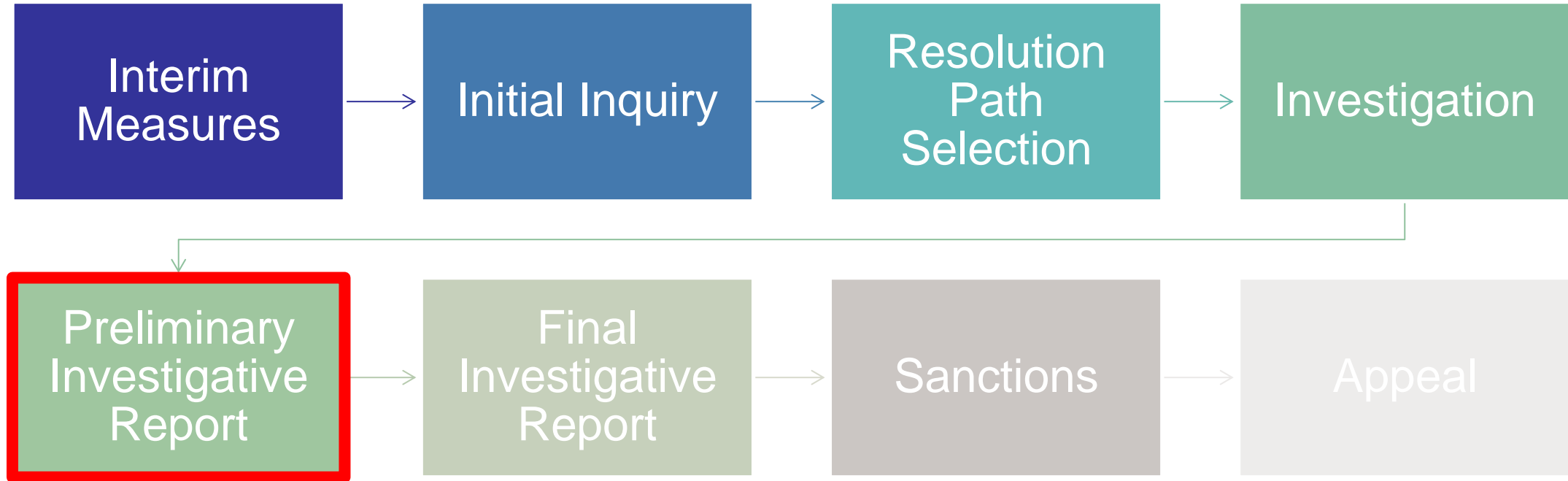
# Formal Resolution: Participation

- **Complainant and Respondent may present evidence.**
- **No party or witness, other than Respondent or University employee, may be forced to participate.**
- **No adverse inferences may be drawn for decision not to participate.**

# Formal Resolution: Evidence Presentation

- **Parties may present names of potential witnesses and propose questions to investigator to ask other party/witnesses.**
- **No Character Witnesses permitted.**
- **Investigator will consider all proposed questions, but retains discretion over witnesses interviewed and questions asked.**

# Drexel Policy: Process Overview

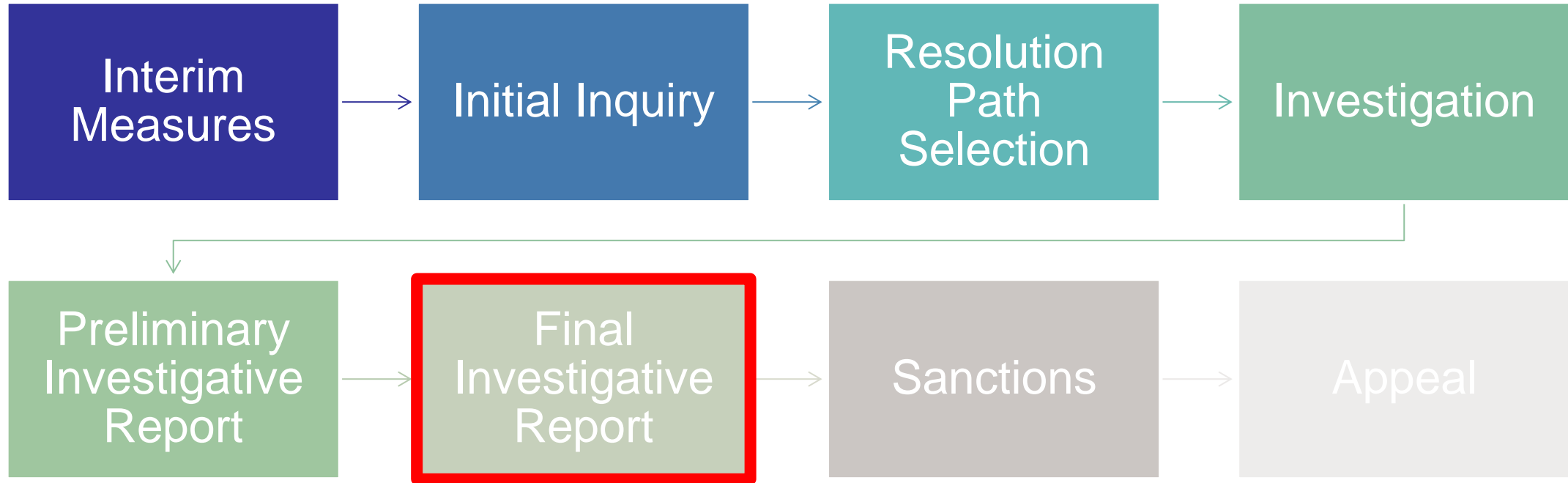


Time to Resolution: 60 Business Days

# Preliminary Investigative Report

- **After witness interview and evidence review, investigator will prepare Preliminary Investigative Report. This report is to remain confidential and not shared by the parties.**
- **Preliminary Investigative Report may not include findings.**
- **Parties receive Preliminary Investigative Report in writing and may respond within 10 business days. Extension of additional 10 business days may be granted upon request.**
- **Investigator will review responses, conduct additional investigation as needed.**

# Drexel Policy: Process Overview



Time to Resolution: 60 Business Days

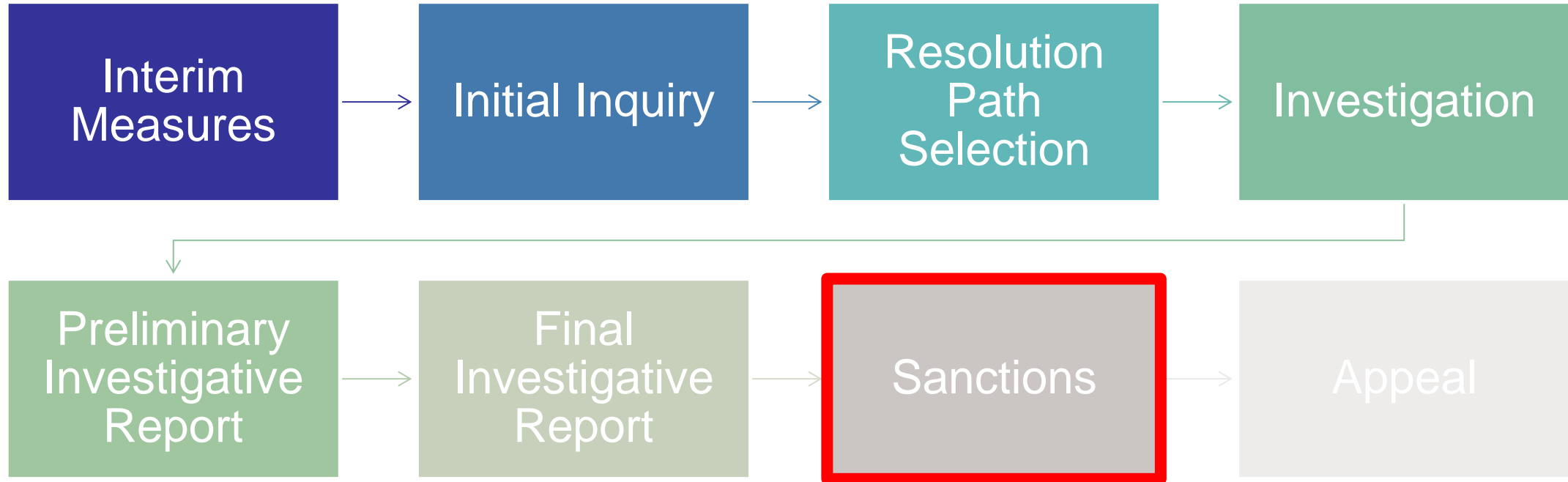
# Final Investigative Report

- **After the Preliminary Investigative Report review is complete, along with any necessary follow up investigation, investigator issues Final Investigative Report. Report must be reviewed by Assistant Vice President, EEO/TIX in advance of circulation to the parties.**
- **Final Investigative Report includes determination as to responsibility applying preponderance of the evidence standard.**
- **Final Investigative Report will include full rationale for all findings.**
- **Report must be provided simultaneously in writing to the parties.**

# Final Investigative Report

- **Where no violation is found in the Final Investigative Report, Parties will be notified of their appeal rights and appeal procedures.**
- **Where a violation is found in the Final Investigative Report, the notification of findings will include information regarding the sanctioning process.**
- **Within 5 business days of Final Investigative Report, Parties may submit an Impact or Mitigation statement for consideration during sanctioning process.**

# Drexel Policy: Process Overview



Time to Resolution: 60 Business Days

# Sanctioning Offices

- **Student Respondents:** Office of Student Conduct and CARE are responsible for determining sanctions.
- **Professional Staff Respondents:** Office of Human Resources and the Respondent's manager(s), are responsible for deciding what sanctions or corrective actions should be imposed on the Respondent, in accordance with sanctioning guidelines.
- **Faculty Respondents:** The Provost's Office and Dean determine sanctions and corrective action imposed.
- **For Respondents holding any other status:** sanctions and/or corrective actions will be determined by the appropriate University office, depending on the status of the Respondent.

# Sanctioning Considerations

- **In determining sanctions, the decision maker(s) for sanctions has the following objectives:**
  - **Promoting safety and protecting the University community.**
  - **Sanctioning individuals for violating University Policy and deterring them from similar future behavior.**
  - **Ending conduct.**
  - **Taking steps to prevent the future reoccurrence of the conduct.**
  - **Restoring the Complainant to their pre-deprivation status, to an extent practical and possible.**

# Sanctioning Considerations

- In determining the appropriate sanction, the following factors will be considered:
  - The nature and degree of violence of the conduct at issue.
  - The impact of the conduct on the Complainant or other appropriate parties.
  - Whether a power differential existed between the Complainant and the Respondent.
  - The impact or implications of conduct on the community or the University.
  - Prior misconduct by the Respondent, including the Respondent's relevant prior discipline history, both at the University or elsewhere (if known), including criminal convictions.
  - Whether the Respondent has accepted responsibility for the conduct.
  - Maintenance of a safe and respectful environment conducive to learning.
  - Protection of the University community; and
  - Any other mitigating, aggravating, or compelling circumstances in order to reach a just and appropriate resolution in each case.

# Available Sanctions

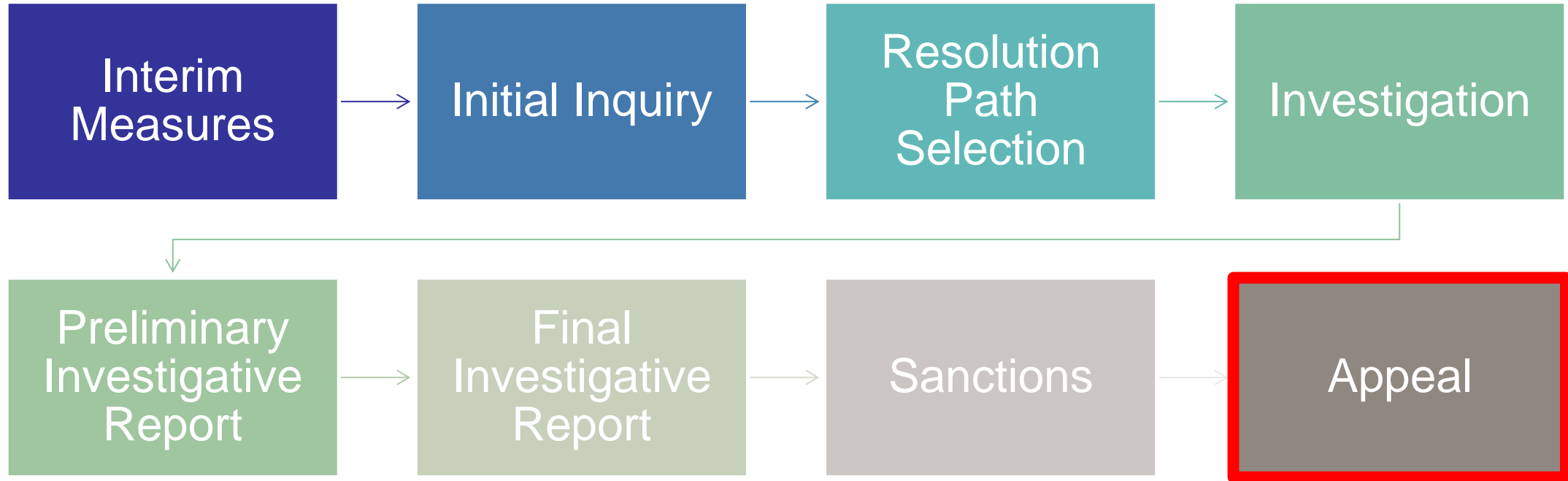
## For Students

- **Warning**
- **Educational Requirements**
- **Disciplinary Probation**
- **Restitution**
- **Housing Restrictions**
- **Suspension**
- **Expulsion**
- **Revocation of Admission/Degree**
- **Withholding Degree**

## For Professional Staff/Faculty

- **Warning**
- **Educational Requirements**
- **Formal Performance Improvement Plan**
- **Suspension**
- **Termination**

# Drexel Policy: Process Overview



Time to Resolution: 60 Business Days

# Appeals

- Appeals may be filed within 10 days of sanction.
- Documentation must be filed within 15 days.
- Appeals may be heard on the following grounds:
  - Severity of the sanction imposed
  - Improper procedure
  - New information not reasonably available during the investigation
  - Inconsistence between investigative determination and Faculty-student conduct review board

# Additional Drexel Policy Provisions



# Formal Resolution: Acceptance of Responsibility

- **Prior to the conclusion of an investigation, the Respondent may elect to take responsibility for the prohibited conduct by contacting the Civil Rights Compliance Team in writing.**
- **The Civil Rights Compliance Team may solicit additional information, and then will issue determination to the parties summarizing the allegations and stating the Respondent has accepted responsibility.**
- **Matter referred to appropriate office for sanctioning.**
- **Parties may appeal the sanctions imposed but not the finding of responsibility.**
- **If Respondent decides to accept responsibility for some but not all of the allegations, the Civil Rights Compliance Team may sever the matter, or proceed with the formal resolution process.**

# Formal Resolution: Withdrawal of Complaint

- **At any time prior to the conclusion of an investigation, the Complainant may request to withdraw the complaint, or any discrete allegations in the complaint, by contacting the Civil Rights Compliance Team in writing.**
- **The EO Coordinator or designee will determine whether to close the case or whether it is necessary to continue with the formal resolution process with regard to any or allegations without the complainant's continued participation.**

# Formal Resolution: Dismissal

- **The EO Coordinator or designee may dismiss a complaint or any allegations therein at any point during the investigation process if:**
  - **The University is unable to identify the Respondent after taking reasonable steps to do so;**
  - **The Respondent is no longer enrolled at, affiliated with, or employed by the University;**
  - **The complainant voluntarily withdraws the complaint (or all portions constituting a Policy violation)**
  - **The conduct alleged in the complaint, if true, would not constitute a Policy violation.**
  - **All parties must be notified of dismissal.**

# Faculty-Student Conduct Review Board

- **If the complaint involves an allegation of Prohibited Conduct in an academic setting created a hostile educational environment either Party to the complaint may request review by a Faculty-Student Conduct Review Board.**
  - **Equal number of faculty and student members**
  - **No members of the parties' respective schools/colleges**
  - **All members receive annual training.**
- **Faculty-Student Conduct Review Board reviews Civil Rights Compliance Team investigative report and makes written recommendation to Office of the Provost and EEO/TIX Coordinator regarding whether hostile environment was created.**
  - **Panel's Recommendations will be considered by EEO/TIX Coordinator**

# Remedies

- **Where there is a finding of responsibility for Discrimination, Harassment, or Retaliation, the Civil Rights Compliance Team will take appropriate remedial action to:**
  - **eliminate the conduct;**
  - **prevent its recurrence; and**
  - **address its effects on the Complainant, including restoring the Complainant's access to the University's educational program and activities.**
- **The Civil Rights Compliance Team will also identify remedies to address the effects of the conduct on any other affected members of the University community, including actions to address any impacts on culture and climate.**

# Retaliation



# Drexel Policy: Retaliation Definition

- **Retaliation is defined as any adverse action, intimidation, threat, coercion, or discrimination against an individual taken for the purpose of interfering with any right or privilege secured by this Policy or federal, state, or local laws or ordinances, and their implementing regulations, or because the individual has made a report or Formal Complaint of Prohibited Conduct, testified, assisted, or participated or refused to participate in any manner in any investigation or proceeding related to this Policy.**

# Drexel Policy: Retaliation Prohibition

- **It is a violation of University Policy to retaliate in any way against an individual or a group because the individual or group reported an allegation or participated in an investigation or resolution of a complaint of Discrimination, Harassment and/or Retaliation.**
- **The University recognizes that Retaliation can take many forms, may be committed by an individual or a group against an individual or a group, and that a Respondent can also be the subject of Retaliation by the Complainant or a Third Party.**
- **The University will take immediate and responsive action to any report of Retaliation and may pursue disciplinary action as appropriate.**