



STUDENT CONDUCT INSTITUTE

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York

Mishka Woodley, J.D., LL.M.
Assistant Counsel, OGC

Alexander Wheeler, M.S.Ed
Assistant Director, SCI

March 2023

S

LIVE@ DISTANCE BASIC COMPLIANCE TRAINING, DAY 1

C

WELCOME TO DAY ONE – MEET YOUR TRAINERS



Mishka Woodley, J.D., LL.M.
Assistant Counsel

SUNY Office of General Counsel

Mishka.Woodley@suny.edu



Alexander Wheeler,
M.S.Ed

Assistant Director
Student Conduct Institute
Alexander.Wheeler@sun

CREDIT AND ATTENDANCE

Training Goals

- ✓ Complete **ALL** annual compliance requirements through **full attendance** over the course of four sessions.
- ✓ **Earn 8 hours of training credit** and fulfill all required SCI training topics upon completion of this training.
- ✓ Receive credit on your online **transcript** and download your annual compliance certificate directly from your SCI **dashboard**.



Slides will be posted at
system.suny.edu/sci/postedtraining

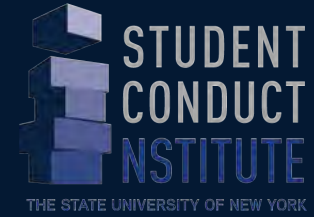
LIVE@DISTANCE TRAININGS

- Title IX Investigations
- Clery!
- Hazing
- Restorative Justice
- Trauma Informed Practice

Live@DISTANCE 2023
SPRING TRAINING

JANUARY 17, 19	1:00-4:30pm ET each day	TITLE IX INVESTIGATIONS Two-Part Training (Total: 7 hrs)
JANUARY 30 FEBRUARY 1, 3	1:00-4:00pm ET each day	SCI CLERY WEEK, SAVE THE DATE! Keep an eye out for more details
FEBRUARY 15, 16	1:00-3:00pm ET each day	RESTORATIVE JUSTICE IN HIGHER EDUCATION STUDENT CONDUCT PROCESS Two-Part Training (Total: 4 hrs)
FEBRUARY 22, 23	1:00-4:00pm ET each day	HAZING INVESTIGATIONS Two-Part Training (Total: 6 hrs)
MARCH 7, 9, 14, 16	1:00-3:00pm ET each day	BASIC COMPLIANCE TRAINING Two-Week Cohort (Total 8: hrs)
MARCH 22, 23	1:00-4:00pm ET each day	NEUROBIOLOGY OF SEXUAL ASSAULT: EXPERIENCE, THINKING, BEHAVIOR, & MEMORY Two-Part Training (Total: 6 hrs)
APRIL 18, 20, 25, 27	1:00-3:00pm ET each day	BASIC COMPLIANCE TRAINING Two-Week Cohort (Total 8: hrs)
MAY 3, 4	1:00-3:00pm ET each day	TITLE IX INVESTIGATOR TRAINING FOR HR PROFESSIONALS Two-Part Training (Total: 4 hrs)

For more information and to register visit system.suny.edu/sci/training



ONLINE TRAINING



Home

https://scidigital.suny.edu/ultra/institution_page

Getting Started K-12 Research Research Projects Regs TIX Docs SCI Docs

scidigital.suny.edu

Welcome!

WELCOME TO THE STUDENT CONDUCT INSTITUTE ONLINE LEARNING PLATFORM

We are excited to have you learning with us! Click the link below to get started.

NEW to SCI? [CLICK HERE!](#) [Introduction to the Online Learning Platform](#)

8.27.21 SCI MEMBERSHIP UPDATES, including our Fall 2021 Live@Distance schedule can be viewed [here](#).

Student Conduct Institute Online Training Dashboard

ONLINE TRAINING DASHBOARD

- ✓ Sign-up for Courses
- ✓ Check Progress
- ✓ Complete Modules
- ✓ Print Transcripts

EARN YOUR SUNY SCI CERTIFICATE

[Click Here to Access the Online Training Dashboard](#)

ONLINE TRAINING: TOPICS AND HOURS

Logged in as Learner
Learner

Dashboard

Sign-Up for Course

Print Transcript

Competency Legend

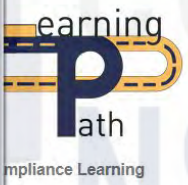
- Law
- Foundations of Practice
- Conduct Theory
- Content Area Expertise



Search for Courses... **Find Course** **Proceed to Enrolled Courses >>>**

Title IX: Conflicts of Interest and Bias | All Content Creators | All Delivery Methods | All locations

- All Training Topics
- Title IX: Conflicts of Interest and Bias
 - Title IX: Investigation & Grievance Procedures
 - Title IX: Investigative Reports
 - Title IX: Jurisdiction
 - Title IX: Relevant Evidence
 - Title IX: Sexual Harassment
 - Title IX: Technology
 - Adjudication Process*
 - Conflict of Interest & Bias (NY, MA)*
 - Consent*
 - Cultural Awareness*
 - Disability (MA, NH)*
 - Federal Legal Requirements*
 - Investigation Process*
 - Remedial Actions (NY, MA, OR)*
 - Reporting & Confidentiality (NY, IL, MA)*
 - State Legal Requirements*
 - Trauma-Informed Practice (NY, IL, MA, NH, CT, MN)*
 - Understanding Sexual & Interpersonal Violence*



2021-2022: Law & The Hearing Panel
Online | Jul 1, 2021
99601 seats available
Hours: 0.5

Sign-up **Info** **Sign-up**



2021-2022: Legal Framework for Understanding Conflicts of Interest and Bias
Online | Jul 1, 2021
99234 seats available
Hours: 0.5

Sign-up **Info** **Sign-up**



2021-2022: Title IX Final Rule Basics
Online | Jul 1, 2021
99138 seats available
Hours: 0.75

Sign-up **Info** **Sign-up**

TRAINING TOPICS

Title IX Training Topics

(at least one time; annually as best practice):

- TIX Conflicts & Bias
- TIX Investigative Reports
- TIX Relevant Evidence
- TIX Technology
- TIX Investigation & Grievance Procedures
- TIX Jurisdiction
- TIX Sexual Harassment

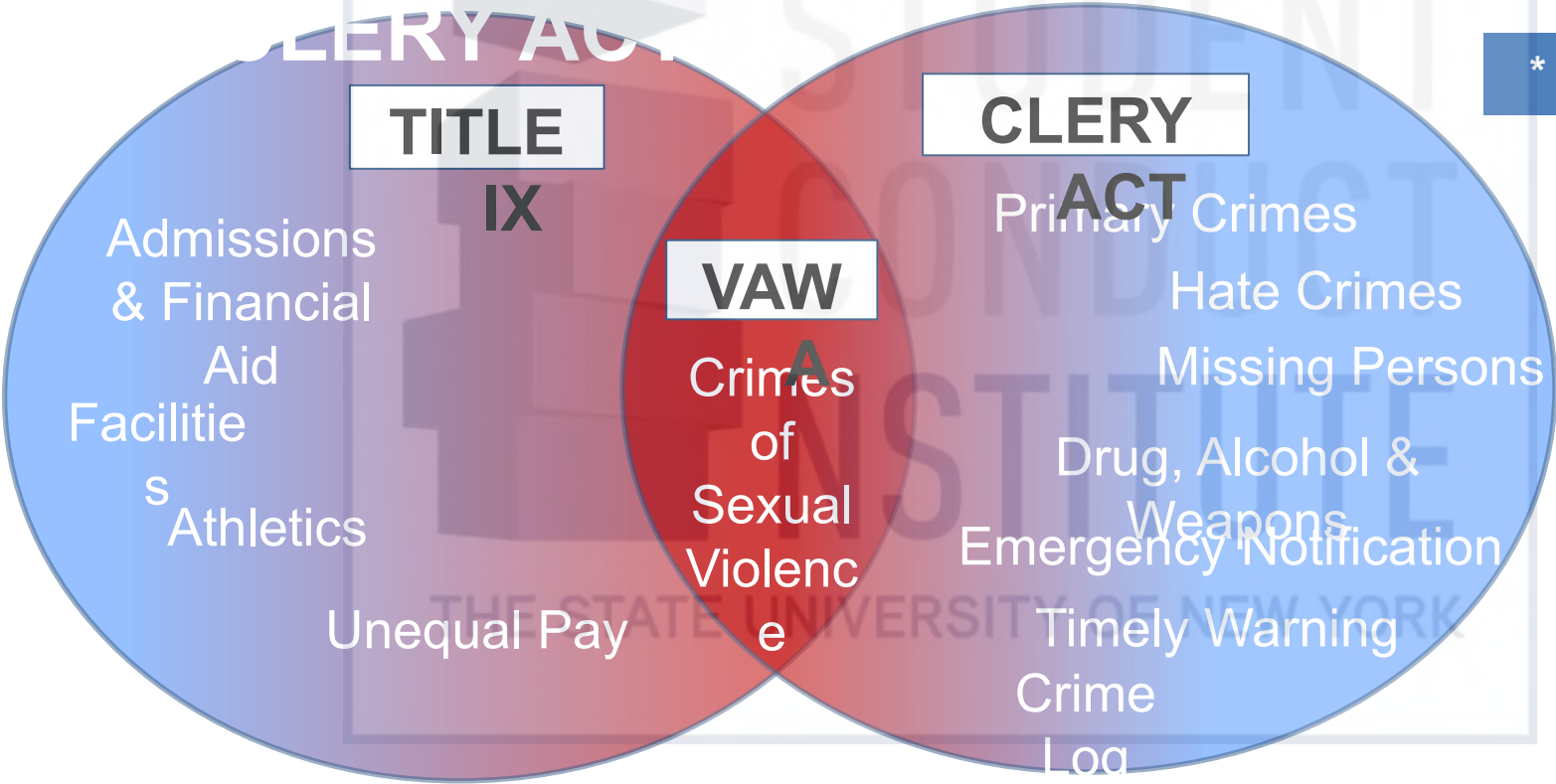
VAWA/Clery Training Topics

(annual):

- Understanding Sexual & Interpersonal Violence
- Investigation Process
- Adjudication Process
- Consent
- Cultural Awareness
- Understanding the Conduct Participant Experience*
- Federal Legal Requirements

THE VIOLENCE AGAINST WOMEN ACT (VAWA) &

*** State Law?**



CLERY ACT / VAWA TRAINING MANDATE

Campus Investigators must be trained annually in:

- Conducting investigations of sexual violence
- Issues involved with domestic violence, dating violence, stalking or sexual assault
- Promoting victim safety and accountability
- Impartiality and avoiding “actual” and “perceived” conflicts of interest

VIOLENCE AGAINST WOMEN ACT (VAWA)

KEY REQUIREMENTS

- Disciplinary procedures must include a fair, prompt, and impartial investigation and resolution and be conducted by “officials” who receive “annual training”
- Must publish all available sanctions for Clery crimes
- Mandatory written notifications
- Access to an advisor, who may be an attorney
- Publish a statement of the standard of evidence



Reauthorized
in
March 2022

TRAINING SCHEDULE

Day 1 (TODAY)

Hour 1: Due Process Basics

Hour 2: Title IX Laws & Regulations

Day 2

Incident Reported

Conduct Process Initiated

Day 3

Investigations

Pre-Hearing Preparations

Hearings

Day 4

Decisions



Appeals

Implementation & Wrapping Up

CODE WORD

Do This

Not That

Verification #1 - Live@Distance Basic Compliance #1(Day 2-4)  

Questions Responses

Verification #1 - Day 2 - Open to all

Thank you for joining us for our Live@Distance Basic Compliance Training series. To obtain SCI credit for attending this training, please fill in the code word and submit this form when prompted during the presentation. You have 15 minutes to submit your response.

Email *

Valid email

This form is collecting emails. [Change settings](#)


First Name

Exactly as listed on your training registration

Short answer text

Chat

To: Everyone 

More 

Type message here...



STUDENT
CONDUCT
INSTITUTE

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York

Mishka Woodley, J.D., LL.M.
Assistant Counsel
Office of General Counsel

S

LEGAL COMPLIANCE
BASICS:

DUE PROCESS BASICS

C

DISCLAIMER

This presentation is for informational purposes only. These materials do not constitute an attorney-client privilege and shall not be construed to create an attorney-client relationship. This PowerPoint should not be used as legal advice.


Any legal questions should be directed to your appropriate institutional legal counsel.

CONSTITUTIONAL STANDARD- DUE PROCESS

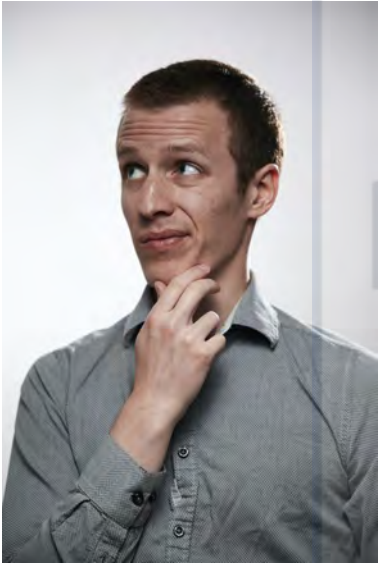


No state shall
“deprive any person of life,
liberty, or property, without
due process of law.”

*14th Amendment,
Section 1,
U.S. Constitution*



DUE PROCESS- WHAT IS IT???



THE STATE UNIVERSITY OF NEW YORK

DUE PROCESS: WHEN & HOW MUCH?

Greater
Process
Owed

General Conduct
Charge

Academic disciplinary charge
(e.g., Academic dishonesty)

Less
Process
Owed

Lack of academic progress dismissal
(e.g., Academic Performance)



DUE PROCESS: ACCOMMODATION CONSIDERATIONS

- Advise at intake or charge
- Equity vs. equality
- Fundamental alteration of programming is not a required accommodation.
- Disability does not excuse misconduct
- Disability cannot be basis for discipline
- Individuals posing as a “direct threat” are not entitled to accommodation.



THE LEGAL FOUNDATIONS OF DUE PROCESS: CONSTITUTION, STATUTES & REGS

U.S. Constitution: 14th Amendment, Section 1

- *Prohibits the deprivation of life, liberty, or property*
- *Prohibits denial to any person the equal protection of laws.*

Statutes

- Title IX of the Education Amendments of 1972
- The Clery Act (federal)
- Violence Against Women Act (VAWA) (federal)
- Family Educational Rights and Privacy Act (federal)
- NYS Education Law 129-B (state)
 - *(Sexual assault, dating violence, domestic violence and stalking prevention response policies and procedures.)*

Rules & Regulations: (State /Federal)

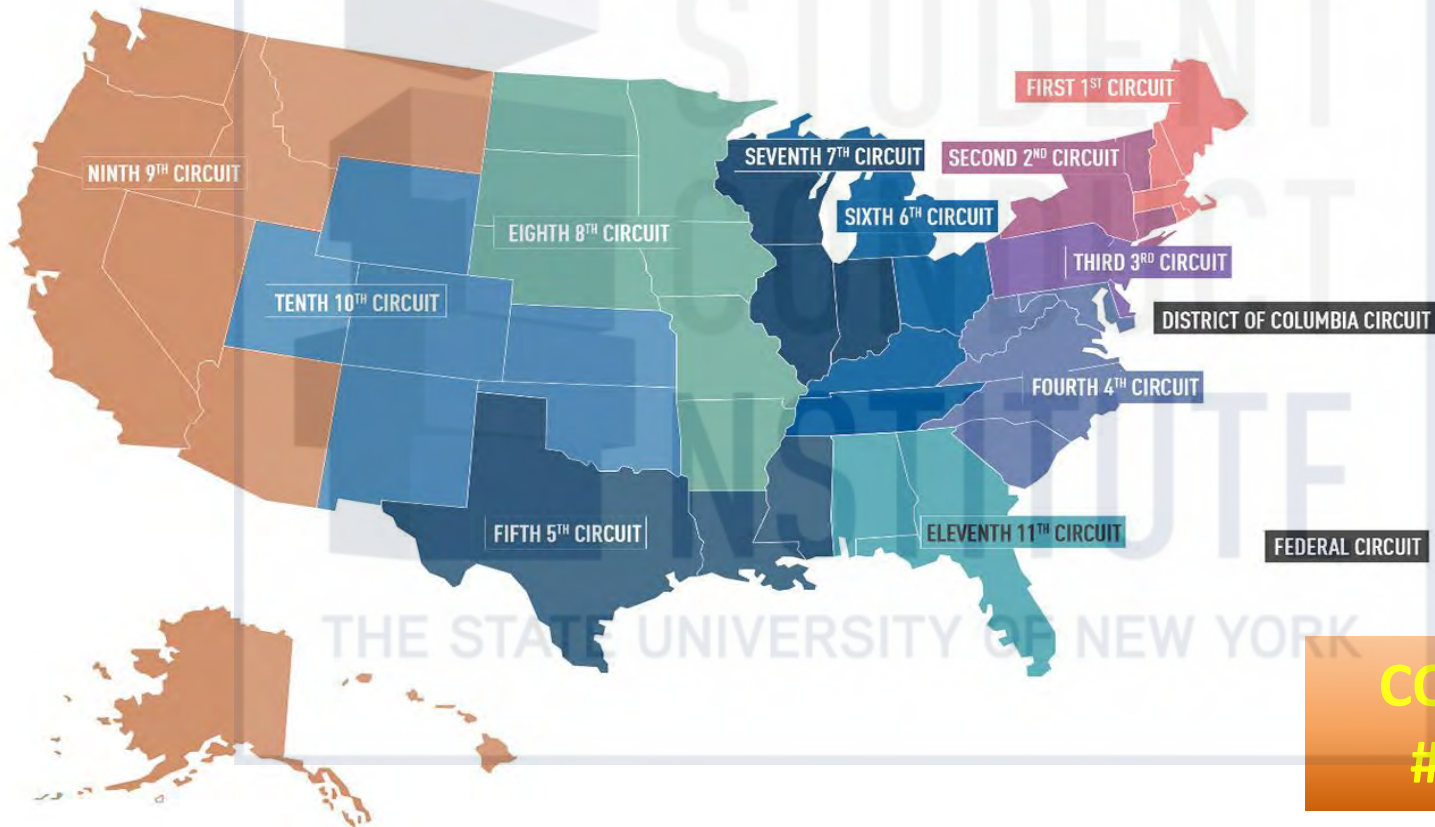
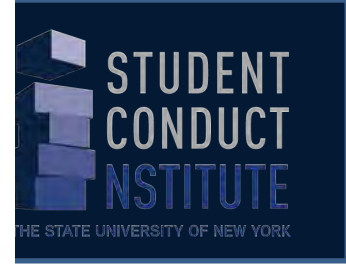
- Title IX of the Education Amendments of 1972



**CODE WORD
#1: MOXIE**

CIRCUIT COURTS

UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS



**CODE WORD
#1: MOXIE**

CONDUCT RESPONSE: LEGAL FOUNDATIONS- CASE LAW

Goldberg v. Kelly, 397 U.S. 254 (1970)- Supreme Court

- Welfare benefits case that established a due process right to a full hearing before termination of benefits deemed
- Individual interest in the benefit significantly outweighed the interest in the government to adjudicate eligibility in a more expedited manner.

Wisconsin v. Constantineau, 400 U. S. 433 (1971)- Supreme Court

- Established a due process right to notice and an opportunity to be heard where a person's good name, reputation, honor or integrity is at stake.

Mathews v. Eldridge, 424 U.S. 319 (1976) – Supreme Court

- Established a balancing test when assessing procedural due process rights.
 - *The interests of the individual*
 - *The interest in limiting procedural burdens*
 - *The risk of curtailing individual interests under the current processes*
 - *The degree that additional procedures would reduce risk of error*

CONDUCT RESPONSE: LEGAL FOUNDATIONS- CASE LAW

Dixon v. Alabama . 293 F.2d 150 (5th Cir. 1961) – (Alabama, Florida Georgia, Texas, Louisiana, Mississippi)

- **LANDMARK DECISION-** Leading case on due process for students in public education
- Outlines due process requirements before removal from a public institution
- Must include notice and an opportunity to be heard
- Goodbye to in *loco parentis* to discipline and expel students

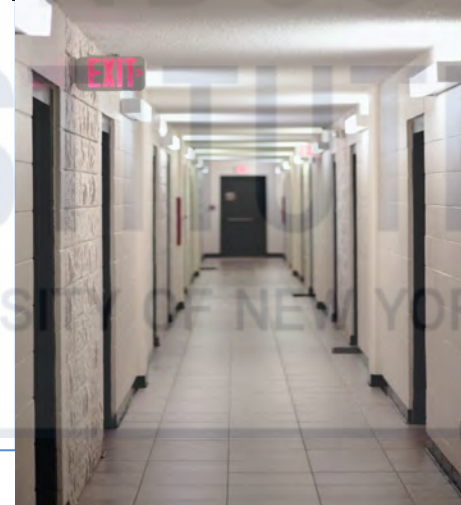
Goss v. Lopez, 419 U. S. 565 (1975)- Supreme Court

- Further clarified due process rights related to rights to a hearing and reasonable sanction timelines when suspensions and expulsions are at issue.
- **10+ Day suspension-** compulsory public schools must conduct a hearing before suspending a student for more than 10 days.
- **Fewer than 10 Days-** notice and a “hearing” is requirement prior to student suspension.
- U.S. Supreme Court’s last word on due process in public schools

TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

No person in the United States shall . . .

- On the basis of sex,
- Be excluded from participation in,
- Be denied the benefits of, or
- Be subjected to discrimination under
- Any education program or activity
- Receiving federal financial assistance.



TITLE IX DISCRIMINATION PROHIBITION ON THE BASIS OF SEX IN EDUCATIONAL PROGRAMS/ACTIVITIES

Title 34 OF THE CFR Part 106 Subpart D

Sexual harassment = Sex discrimination in educational programs or activities

Effective
implementation of
remedies for victims

Prompt & supportive responses to
alleged victims

Due process protections for
alleged victims & alleged
perpetrators.

Prompt resolutions to allegations

Predictable & fair grievance processes

THE JOURNEY TO COMPLIANCE- DUE PROCESS



Neutrality **Competence**

Consistency **Accuracy**

EQUITY **Clarity** **Balance**

Confidentiality/ Privacy

THE STATE UNIVERSITY OF NEW YORK

CONDUCT RESPONSE TOOLKIT



COMPETENCE: Know Your Policies and Codes- especially as related to student rights.

ACCURACY: Ensure that all forms of media, including websites, social media, etc. reflect your current institutional details, policies, procedures, etc.

CONSISTENCY: Ensure policies and codes are maintained and routinely updated across facilities, departments, and programs.

BALANCE: Strategically balancing student rights and responsibilities, employee rights and responsibilities, and administrative efficiency is key to long-term success.

NEUTRALITY : Always keep fairness, equity, and ethics at the forefront of all policy and decision making.

TITLE IX REQUIREMENTS: RIGHTS & PROTECTIONS

- ✓ Right to an Advisor
- ✓ Right to have Access to Disability Accommodations
- ✓ Right to Equitable Treatment for Complainants AND Respondents
- ✓ Conflicts of Interest and Bias are prohibited
- ✓ Retaliation is Prohibited
- ✓ Confidentiality/ Privacy are Required with Caveats
- ✓ Right to Appeal under Specified Circumstances



TITLE IX: SEXUAL HARASSMENT SCOPE

- **Quid Pro Quo** : A school employee conditioning education benefits on participation in unwelcome sexual conduct; or
- **Unwelcome conduct** that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the educational institution's education program or activity; or
- **Sexual assault** (as defined in the Clery Act), or
- **Dating violence, domestic violence, or stalking** (as defined in the Clery Act as amended by the Violence Against Women Act (VAWA))

TITLE IX: SEXUAL HARASSMENT SCOPE

- **Sexual Assault** (*Clery Act Definition*)
- **Dating Violence** (*Clery Act/VAWA*)
- **Domestic Violence** (*Clery Act/VAWA*)
- **Stalking** (*Clery Act/VAWA*)
- **Sex offenses**- any sexual act directed against another person without the consent of the victim, including instances where the victim is incapable of giving consent.
 - *Rape*
 - *Sodomy*
 - *Sexual assault with an object*
 - *Fondling*
 - *Incest*
 - *Statutory Rape*
 - **As defined by FBI Uniform Crime Reporting System*



TITLE IX: SEXUAL HARASSMENT KEY CONSIDERATIONS



- On the basis of sex (gender-based harassment)
- Severe, pervasive and objectively offensive standard
 - Free speech considerations
- Reasonable person standard
- Denial of a person's equal access to an education
- *Per se* harassment

TITLE IX GRIEVANCE PROCESS – THE FOUNDATION

- **Formal Complaint**
- **Jurisdiction** (only within the United States)
- **Educational Programs & Activities:** (on-campus/ off-campus)
 - Locations (including buildings owned or controlled by institutions and used by officially-recognized campus organizations), Events, or Circumstances
- **School must have substantial control over both:**
 - the *respondent* and
 - the *context* in which the sexual harassment occurs.
- **Actual Knowledge**
 - Notice to Title IX Coordinator or school official with authority to institute corrective measures on behalf of the school.





STUDENT
CONDUCT
INSTITUTE

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York

Mishka Woodley, J.D., LL.M.
Assistant Counsel
Office of General Counsel

S

FEDERAL LAWS &
REGULATIONS GOVERNING
TITLE IX INVESTIGATIONS

C

TITLE IX: NOTICE & KNOWLEDGE

“(b) (1) (A)”

“**Actual knowledge**” is defined as:

Notice of sexual harassment or allegations of sexual harassment to:

- A school’s Title IX Coordinator or
- Any official of the school who has authority to institute corrective measures on behalf of the school

NOTE: “Notice” includes, but is not limited to, a report of sexual harassment to a Title IX Coordinator as described in

the final rule.



TITLE IX: JURISDICTION (34 CFR §106.44(A))

- **Only** within the United States
- Educational programs & activities: (on-campus/
off-campus)
 - Locations,
 - Events, or
 - Circumstances
- Over which the school exercised substantial control over both:
 - the respondent and
 - the context in which the sexual harassment occurs.



NOTE: Includes any building owned or controlled by institution and used by officially-recognized campus organization

SEXUAL HARASSMENT: SEXUAL ASSAULT

An offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.

- Failing to obtain informed consent
- Could involve using force in committing a sexual act
- Inability to consent
- A sleeping state and/or heavily intoxicated person cannot consent = forcible offense

SEXUAL HARASSMENT: STALKING

Engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- fear for his or her safety or the safety of others; or
- suffer substantial emotional distress.”

THE STATE UNIVERSITY OF NEW YORK

SEXUAL HARASSMENT: DOMESTIC VIOLENCE

Felony or misdemeanor crimes of violence under the family or domestic violence laws of the jurisdiction receiving funding committed by:

- a current or former spouse or intimate partner of the victim
- a person with whom the victim shares a child in common,
- a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner,
- a person similarly situated to a spouse of the victim
- any other person against an adult or youth victim who is protected from that person's acts

SEXUAL HARASSMENT: DATING VIOLENCE

Violence committed by a person who is or have been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such relationship shall be determined by on consideration of the following factors:

- the length of the relationship,
- the type or relationship,
- the frequency of interaction between the persons involved in the relationship.

INTAKE PROCESS AND SUPPORTIVE MEASURES

Title IX Coordinator is responsible for “coordinating the effective implementation of supportive measures,” even where no formal complaint is filed. 34 C.F.R. § 106.30(a).

Examples of **supportive measures** (See, 85 Fed. Reg. 30026, 30401)

- ✓ counseling
- ✓ extensions of deadlines or other course-related adjustments
- ✓ modifications of work or class schedules and locations
- ✓ Campus escort services
- ✓ changes in housing locations
- ✓ Mutual restrictions on contact between parties
- ✓ increased security & monitoring of areas of the campus



EMERGENCY REMOVALS/ INTERIM SUSPENSIONS

- Emergency Removal may be used where:
 - Person poses threat of **immediate physical harm**
 - Threat arises from allegations of sexual harassment
 - Depends on individualized safety and risk assessment
- Must provide opportunity for “immediate” opportunity to challenge the removal (need not be a formal hearing)



THE STATE UNIVERSITY OF NEW YORK

Interim suspensions are prohibited for Title IX

TITLE IX: FORMAL COMPLAINTS (34 CFR §106.30)

Who can file a formal complaint?

- A person who is currently participating in the education programs or activities of the institution
- A person who is attempting to participate in those programs or activities
- The Title IX Coordinator



Institutions **must** investigate all “formal complaints” filed with the Title IX Coordinator

MANDATORY AND DISCRETIONARY DISMISSAL

- Institutions **must dismiss** formal complaints that **don't fall within the statutory criteria** for the Title IX grievance process.
- Institutions **may dismiss** complaints that do meet the criteria if:
 - A complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any allegations in it;
 - The respondent is not enrolled/ employed by the institution; or,
 - If specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

Note: Institution may still investigate through a non-Title IX process

TITLE IX: PROMPT PROCESS (34 CFR §106.45(B)(1)(V))

All time frames must be published based on a specific number of days with room for “good cause” delay.

Rules (and case law) balance prompt resolution and adequate time to prepare and respond to charges.

Courts have identified the following delays as unjustified:

- *Year-long delay in finishing the investigation*
- *Attributable to winter/summer break*
- *Attributable to athletics events/eligibility*
- *Institutional operational/admin error*
- *Physical harm to respondent/complainant*

TITLE IX INVESTIGATION: IMPARTIAL PROCESS

- Must collect *exculpatory* and *inculpatory* evidence
- Exculpatory = *increases probability of a finding of non-responsibility/ non-liability*
 - Inculpatory = *increases probability of a finding of responsibility/ liability*

Must follow code

Cannot have bias or conflict of interest

REMINDER: *Investigations and findings of innocence and guilt are not applicable to Title IX grievances. Title IX procedures are administrative processes and are not civil or criminal in nature!*



INVESTIGATIVE PROCESS

Evidence Collection

Interviews of parties & witnesses must take place after Notice of Allegations

Both inculpatory & exculpatory evidence must be collected

Evidence will be directly related to the allegations

The collection process may include evidence that institution does not intend to rely on

Evidence Sharing

Parties may review evidence with advisors present

May set reasonable rules around evidentiary review and sharing

Redaction of “irrelevant” evidence

Mandatory inspection process with 10-day min. review period

Investigative Report

Summarizes relevant evidence directly related to allegations

Cannot make determination regarding responsibility- sole role of the hearing panel

Parties must have opportunity to review at least 10 days before hearing

NOTICE REQUIREMENTS: SUBSTANCE

- Allegations of sexual harassment
- Identities of parties, if known, including the complainant's name
- Date, time, and location of the incident, if known
- Parties' basic procedural rights
- Presumption of non-responsibility

NOTICE REQUIREMENTS: ADVISORY SUPPORT

- Notice must inform parties of right to advisor, who may be attorney
- School does not need to pay for attorney
- Reasonable restrictions ok...
- Unless they conflict with cross-examination role

LIVE HEARING PROCESS FUNDAMENTALS

All parties, advisors, witnesses, and decision-makers must be present at the same time either physically or remotely via secure technology.

- Decision-makers

- Must be able to see and hear parties and witnesses (either physically or via secure technology).
- Ask questions of the parties and witnesses.
- Decide whether or not question is relevant.

- Advisors

- ask relevant cross-examination questions. (*Does the question make a fact at issue more or less likely to be true?*)

- “No Adverse Inference” Rule –

- No inference of responsibility from decision not to testify



LIVE HEARING PROCESS FUNDAMENTALS

The opportunity for an advisor to cross-examine parties and witnesses is a Title IX mandate

The Title IX “Suppression Rule” has been VACATED

- *Victims Rights Law Center v. Cardona* (D. Mass. 2021)
 - Check out SCItations Blog for more
- Office of Civil Rights (OCR) Letter, August 24, 2021
 - [https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VR-LC.pdf](https://www2.ed.gov/about/offices/list/ocr/docs/202108-titleix-VR-<u>LC.pdf</u>)
- OCR Q&A Update June 28, 2022
 - <https://www2.ed.gov/about/offices/list/ocr/docs/202107-ga-titleix>

LIVE HEARING PROCESS EXCLUSIONS

Specific exclusions governing Title IX hearings:

- **“Rape Shield”** (with two exceptions). 34 C.F.R. § 106.45(6)(i).
 - Offered to prove someone else committed alleged conduct
 - Offered to prove consent
- **Privileged information.** 34 C.F.R. § 106.45(1)(x).
- **Undisclosed medical records.** See, 85 Fed. Reg. 30026, 30294
- **Duplicative questions.** See, 85 Fed. Reg. at



RESPONSIBILITY DETERMINATION PROCESS

- Identify the **allegations** potentially constituting sexual harassment
- Describe the **procedural steps** taken.
- Identify **findings of fact** supporting the determination.
- Identify which **section of the Code of Conduct** respondent has/has not violated.
- **For each allegation**, provide statement of and rationale.
 - Responsibility determination
 - Disciplinary sanctions
 - Remedies
- Describe the recipient's **appeal** procedures

TITLE IX: CONFLICTS & BIAS

Prohibited

Conflicts of Interest and Bias

- For or against complainants and respondents generally
- For or against the specific parties
- Overlapping investigator, decision-maker, and appeals roles

Not a *per se* conflict or bias

- Gender, research interests, work history
- Advocacy background
- Title IX Coordinator serving as Title IX Investigator
- Title IX Coordinator serving as facilitator in informal resolution process

TITLE IX: CONFLICTS & BIAS

“In the intimate setting of a college or university, prior contact between the participants is likely and does not per se indicate bias or partiality.”

Gorman v. Univ. of Rhode Island,
837 F.2d 7, 15 (1st Cir. 1988).

ACTUAL VS. PERCEPTION OF BIAS

Actual bias is a high *legal* standard, but *perception* of bias is in the eyes of the parties to the process and should be avoided.

- **Liability** arises from:
 - truly lop-sided investigations and adjudications, or
 - statements of investigator or panelist showing presumption of responsibility based on sex stereotypes, or
 - misapplying trauma-informed practice to explain away all inconsistencies in complainant's statements



APPEALS PROCESS

Three (3) mandated grounds for appeal:

1. **Procedural irregularity** that affected the outcome of the matter (i.e. a failure to follow the institution's own procedures);
2. **New evidence** that was not reasonably available at the time the determination regarding responsibility or dismissal was made, that could affect the outcome of the matter;
3. The Title IX Coordinator, investigator(s), or decision-maker(s) had a **conflict of interest or bias** for or against an individual party, or for or against complainants or respondents in general, that affected the outcome of the matter.

RETALIATION PROHIBITION

Title IX prohibits retaliation against people who seek to assert their Title IX rights. (Section 106.71):

- Where the individual has made a report or complaint
- Where the individual testified, assisted, or participated in the Title IX Grievance Process
- Where the individual refused to participate in any manner in the Title IX Grievance Process

ZERO TOLERANCE!

- X Intimidation
- X Threats
- X Coercion
- X Discrimination
- X Charges for a code of conduct violation for the purpose of interfering with any right or privilege secured by Title IX

SEXUAL HARASSMENT: ADMINISTRATION/ STUDENT

- Review your campus Title IX grievance policy and become very familiar with its associated definitions for sexual harassment.
- Student should know who the Title IX Coordinator is on campus
- Help students identify / clarify your campus policies
- Work with student groups that focus in this area
- Proactively encourage and cultivate a college environment of safety and for all



THE LEGAL FOUNDATIONS OF TITLE IX DUE PROCESS:

U.S. Department of Education Laws & Policy Page-

<https://www2.ed.gov/policy/>

- ~~○ 1997/2001 Sexual Harassment Guidance~~
- ~~○ April 2011 Dear Colleague Letter and April 2014 Q&A~~
- ~~○ September 2017 Dear Colleague Letter~~
- November 2018 Notice of Proposed Rulemaking (“NPRM”)
- **May 19, 2020: Title IX Final Rules (effective August 14, 2020)**
- April 6, 2021: Dear Stakeholders Letter
- July 2021 Q&A + August 24, 2021 Letter to Stakeholders
 - Q&A Updated June 28, 2022

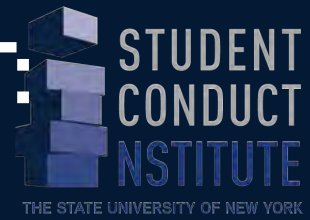


SEXUAL HARASSMENT: 2022 TITLE IX NPRM –

- The definition of “sexual harassment” changes to “sex-based harassment”
- “Sex discrimination” includes “sex-based harassment”
- The formal complaint requirement is removed.
- The geographic coverage is expanded
- The Title IX Coordinator’s role is expanded
- The live hearing requirement is relaxed
- Removes the “deliberate indifference standard”
- Expands training requirements



CONDUCT RESPONSE ASSESSMENT: BUILDING THE FRAMEWORK



Institutional Responsibility *(Legally, Ethically, Etc.)*

- ✓ What is the institution's legal role and responsibility related to the matters at issue?
- ✓ What laws, policies, and procedures must be followed to fulfill the legal requirements?
- ✓ What is the institution's role and responsibility from of mission, values, vision, and/or ethics standpoint?

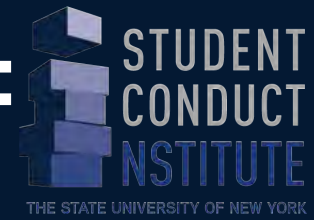
Due Process: Grievance Processes *(Formal/Informal)*

- ✓ Investigations
- ✓ Interviews/ Meetings
- ✓ Panels/ Hearings
- ✓ Communications/ Notices

Support & Remedy Mechanisms

- ✓ Supportive Measures
- ✓ Interim/Emergency Removals/ Suspensions
- ✓ Informal Resolutions/ Sanctions

CONDUCT RESPONSE ASSESSMENT: BUILDING THE FRAMEWORK



Knowledge/ Notice of Alleged Conduct *(Formal/ Informal)*

- ✓ What is the subject-matter of the overarching issue?
- ✓ Are there sub-parts to the issue?
- ✓ What is the harm alleged?
- ✓ What is the remedy sought?

Jurisdiction: People

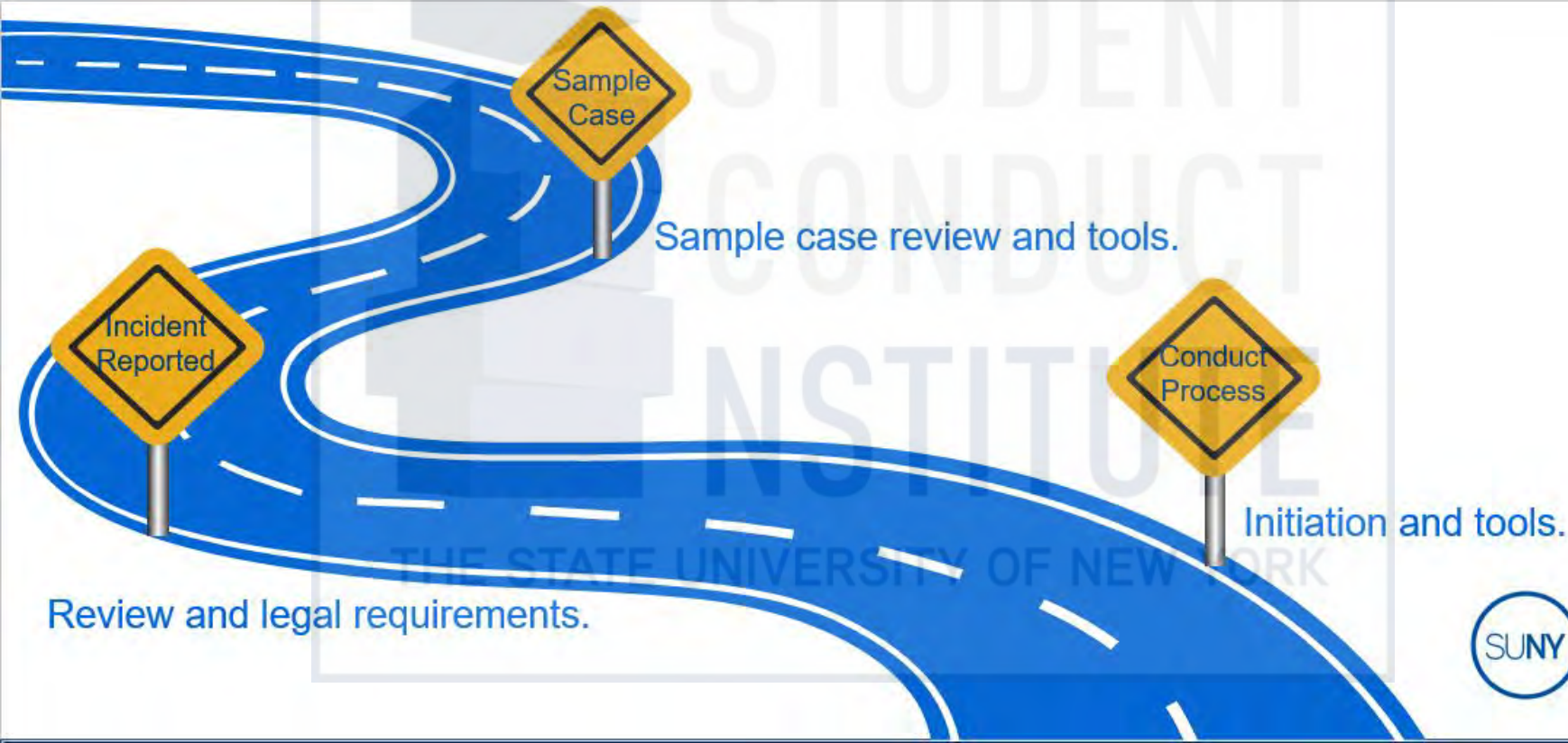
- ✓ Who are the complainant/respondent?
- ✓ Are there other parties involved?

Jurisdiction: Place & Time

(on-campus/ off-campus)

- ✓ Where and when did the conduct occur?
 - Buildings owned or controlled by the campus?
 - Used by officially recognized organizations?
 - Events?
 - Circumstances?
 - Public perception of affiliation?

WHAT'S NEXT?



QUESTIONS



suny.edu

system.suny.edu/sci/new

system.suny.edu/sci/tix2

system.suny.edu/sci/tixnprm



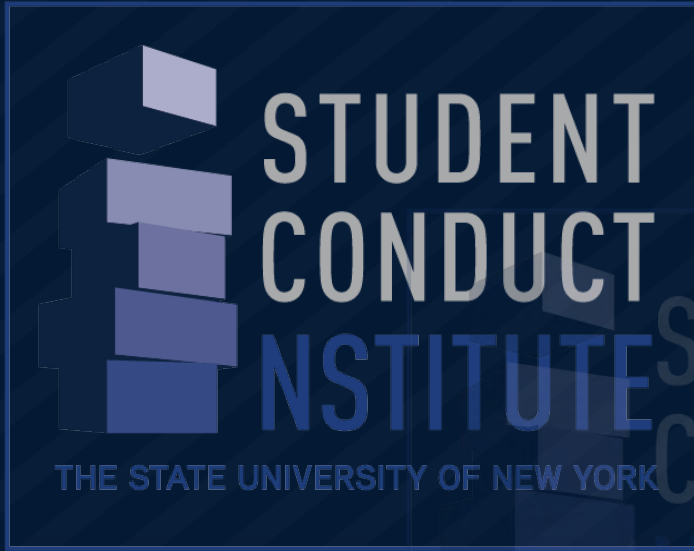
STUDENT
CONDUCT
INSTITUTE

THE STATE UNIVERSITY OF NEW YORK

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York



Alexander Wheeler
Assistant Director, SCI

Mishka Woodley, J.D., LL.M.
Assistant Counsel, OGC

March 2023

SCI LIVE@ DISTANCE BASIC COMPLIANCE TRAINING, DAY 2

SEXUAL HARASSMENT: ADMINISTRATION/ STUDENT COLLABORATION

- Review your campus Title IX grievance policy and become very familiar with its associated definitions for sexual harassment.
- Student should know who the Title IX Coordinator is on campus
- Help students identify / clarify your campus policies
- Work with student groups that focus in this area
- Proactively encourage and cultivate a college environment of safety and for all



CONDUCT RESPONSE ASSESSMENT: BUILDING THE FRAMEWORK

**Knowledge/ Notice of
Alleged Conduct**
(Formal/ Informal)

- ✓ What is the subject-matter of the overarching issue?
- ✓ Are there sub-parts to the issue?
- ✓ What is the harm alleged?
- ✓ What is the remedy sought?

Jurisdiction: People

- ✓ Who are the complainant/respondent?
- ✓ Are there other parties involved?

Jurisdiction: Place & Time
(on-campus/ off-campus)

- ✓ Where and when did the conduct occur?
 - Buildings owned or controlled by the campus?
 - Used by officially recognized organizations?
 - Events?
 - Circumstances?
 - Public perception of affiliation?

CONDUCT RESPONSE ASSESSMENT: BUILDING THE FRAMEWORK

Institutional Responsibility *(Legally, Ethically, Etc.)*

- ✓ What is the institution's legal role and responsibility related to the matters at issue?
- ✓ What laws, policies, and procedures must be followed to fulfill the legal requirements?
- ✓ What is the institution's role and responsibility from of mission, values, vision, and/or ethics standpoint?

Due Process: Grievance Processes *(Formal/Informal)*

- ✓ Investigations
- ✓ Interviews/ Meetings
- ✓ Panels/ Hearings
- ✓ Communications/ Notices

Support & Remedy Mechanisms

- ✓ Supportive Measures
- ✓ Interim/Emergency Removals/ Suspensions
- ✓ Informal Resolutions/ Sanctions

DAY 2'S ROADMAP



Review and legal requirements.



Sample case review and tools.



Initiation and tools.

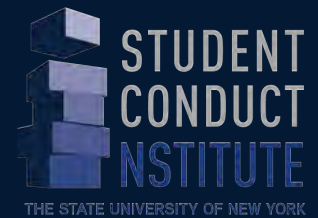
CAMPUS/PROCESS SELF ASSESSMENT

Area	Considerations
Capacity	Staff, caseload, threat assessment team, care team, technology needs – who do you lean on/collaborate with?
Policy Updates	Where are your policies? Are they updated?
Processes	Are your processes and process paperwork up-to-date and compliant?
Facilities	What does physical and technological space on your campus look like?
Training	Who do you identify in this work on your campus?
Awareness	What is your office's/processes perception on campus?

Report Receiver	Intake.
Title IX Coordinator	Oversight and Assistance.
Investigator	Investigate.
Informal Resolution Facilitator	Facilitate.
Student Conduct Administrator	Oversight and Assistance.
Advisor	Advise.
Hearing Panel Member	Chair. Determinations.
Appeal Panel Member	Chair. Appeal Determinations.
Resources Offices/Units	Supportive Measures.

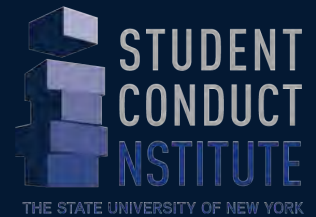


ROLES IN THE PROCESS



SAMPLE CASE REVIEW

THE STATE UNIVERSITY OF NEW YORK



Date/Time of Incident:

March 15, 2021
at ~ 2:00a.m.

Date/Time of Report:

March 15, 2021
at ~ 10a.m.

Location(s) of Incident:

Smith Hall on
campus

Complainant:

Sidney Jones

Accused:

Jaime Carter

Witnesses:

Ebba Kallax & Elan
Kersvan

Issue:

The RA reports that the Complainant says the Accused put their hand under her shirt and then moved their hand to her vagina without the Complainant's consent.

SAMPLE CASE: IS IT TITLE IX?



Incident Report Structure

First How was the issue brought to your attention?

Second Detail observable facts and behaviors

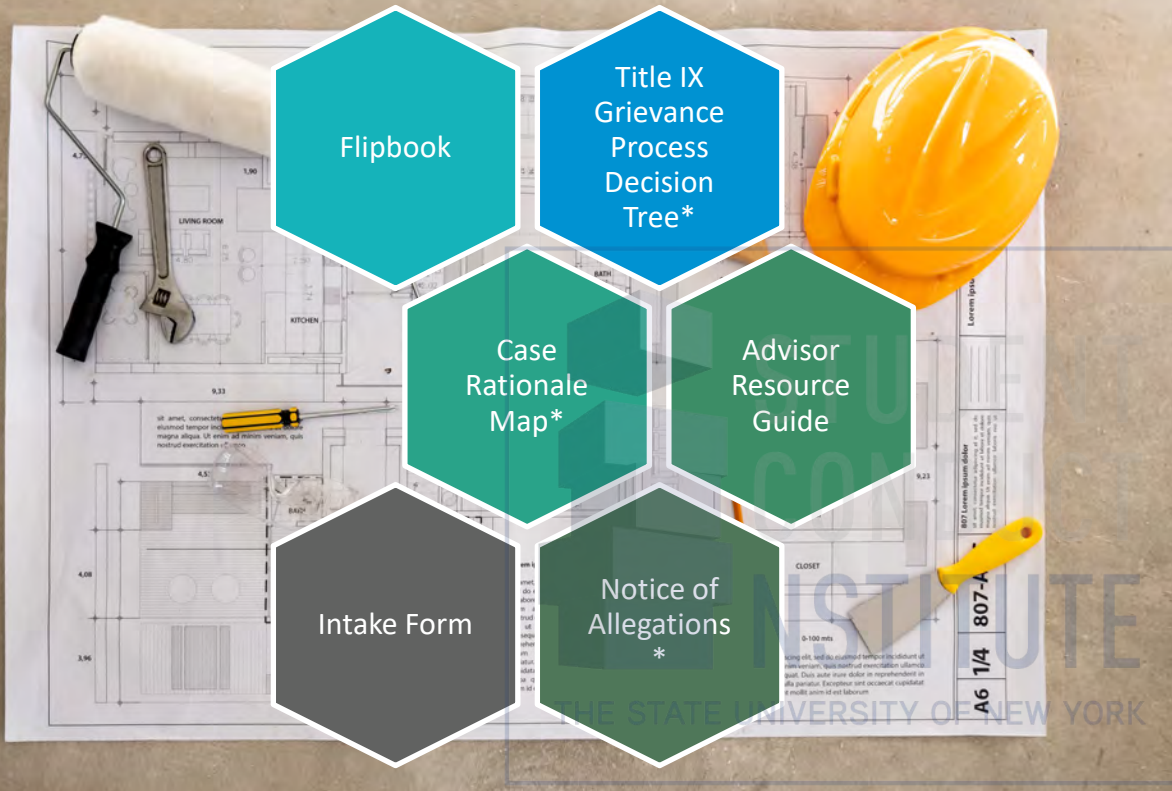
- Objective observations
- Avoid opinions
- Details

Third What occurred from the Reporting student(s) perspective?

- Direct quotes

Lastly Resolution – What actions you took to resolve the incident?

INCIDENT REPORT WRITING



Flipbook

Title IX
Grievance
Process
Decision
Tree*

Case
Rationale
Map*

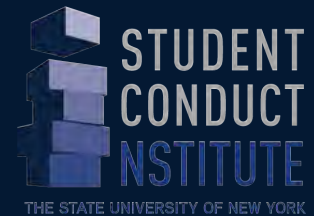
Advisor
Resource
Guide

Intake Form

Notice of
Allegations
*



TOOLS & RESOURCES TO SUPPORT YOUR PROCESS



Model Title IX Policies

**Training Guides for
Officials and Advisors**

**Intake and Supportive
Measurers**

**Charges and
Investigation**

Hearing



TITLE IX COMPLIANCE TOOL KIT ✂



Home



Michelly Pena



Activity Stream



Active Modules

SCI Support &
Resources

Calendar



Messages



Grades



User Dashboard



Sign Out

Privacy

Terms

Title IX Final Rule Toolkit

NEW: Restorative Justice Implementation Resources

SCI is proud to partner with Janelle A. Brooks, Assistant Dean, Student Conduct and Community Standards, Buffalo State University, to develop a resource guide for implementing a campus restorative justice program. Along with reviewing her restorative justice module, users can adapt the following sample documents to implement the policy.

Timeline [Download](#)

Program Flyer [Download](#)

Informational Packet [Download](#)

Participant Informational Packet [Download](#)

Program Survey [Download](#)

Referral Form [Download](#)

Confidentiality Agreement [Download](#)

Resolution Agreement [Download](#)

Evaluation [Download](#)

[Foundational Principles](#)[Title IX and the Courts](#)[Reporting Process](#)[Supportive Measures](#)[Investigation](#)[Pre-hearing Procedures](#)[Hearing Procedures](#)[Decisions and Appeal](#)[Implementation](#)

 WHERE IS THE TOOLKIT? [HTTPS://SCIDIGITAL.SUNY.EDU](https://scidigital.suny.edu)



Is This a Title IX Grievance Process Case?*

Report made to Title IX Coordinator

Is the complainant currently participating in or attempting to participate in your programs (i.e. an employee, student, applicant, etc.?)

Yes

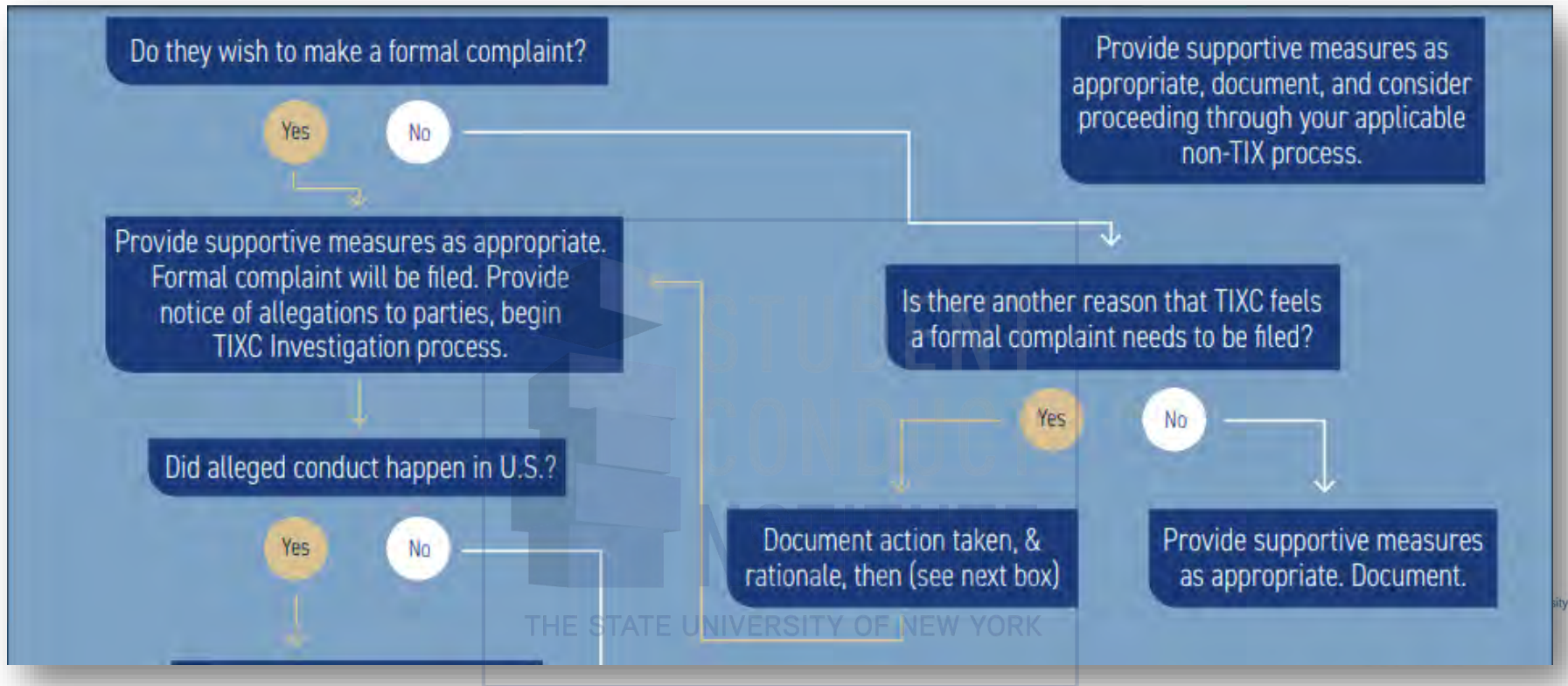
No

Do they wish to make a formal complaint?

Yes

No

Provide supportive measures as appropriate, document, and consider proceeding through your applicable non-TIX process.



DECISION TREE

Did alleged conduct happen in U.S.?

Yes

No

Did it happen on campus, or otherwise in your education program or activity?

Yes

No

Would the alleged conduct constitute (1) quid pro quo harassment by an employee, (2) severe, persistent and objectively offensive sexual harassment, or (3) sexual assault, domestic violence, dating violence, or stalking?

Yes

No

Proceed through TIXC investigation process, documenting each step.

Document action taken, & rationale, then (see next box)

Provide supportive measures as appropriate. Document.

Dismiss complaint for TIX process, consider proceeding through any applicable non-TIX process. Notify parties, continue to provide supportive measures as appropriate, and document actions taken.
Note: This may be appealed by parties!

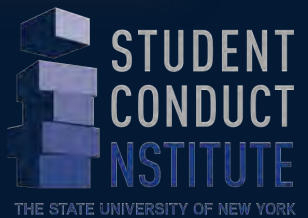
If at any point during the investigatory process, (1) complainant notifies in writing desire to withdraw complaint or any allegations, (2) respondent no longer enrolled/employed, (3) circumstances prevent gathering sufficient evidence, complaint *may* be dismissed.
Note: This may be appealed by parties!

If multiple formal complaints arise out of same facts or circumstances, you *may* consolidate complaint & investigation.

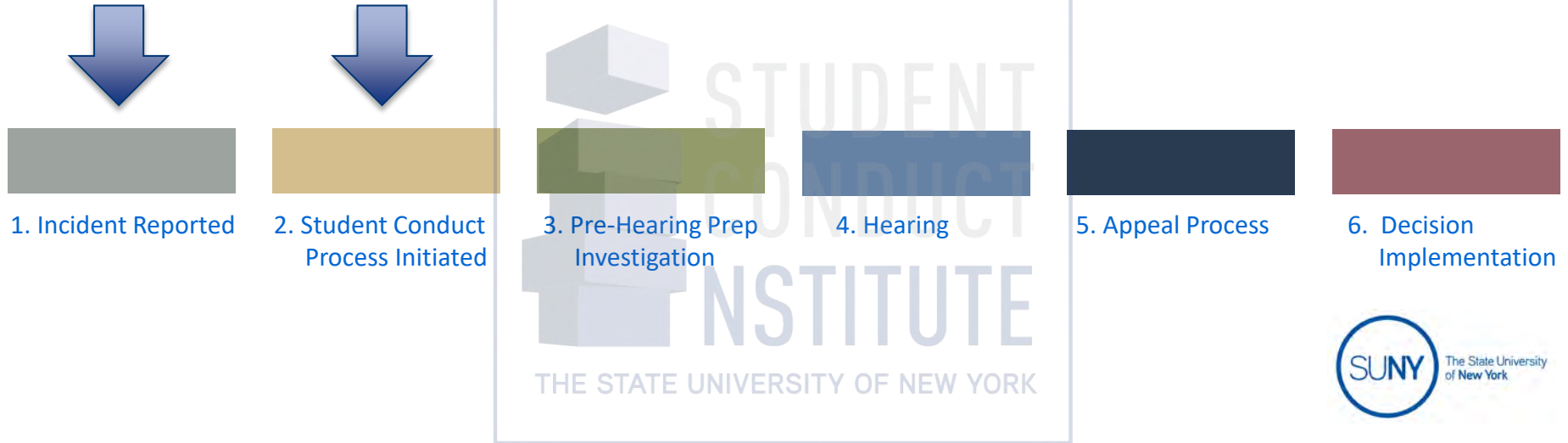
**This Decision Tree is intended to capture the most foreseeable routes that a matter may take, but it cannot cover every circumstance that may arise. Please consult with your campus counsel for specific circumstances and questions.*

The State University of New York

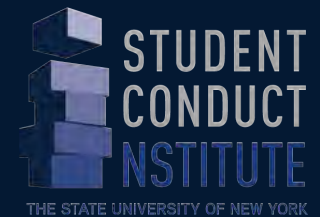
DECISION TREE: IS IT TITLE IX?



CASE PROCESS DECONSTRUCTED

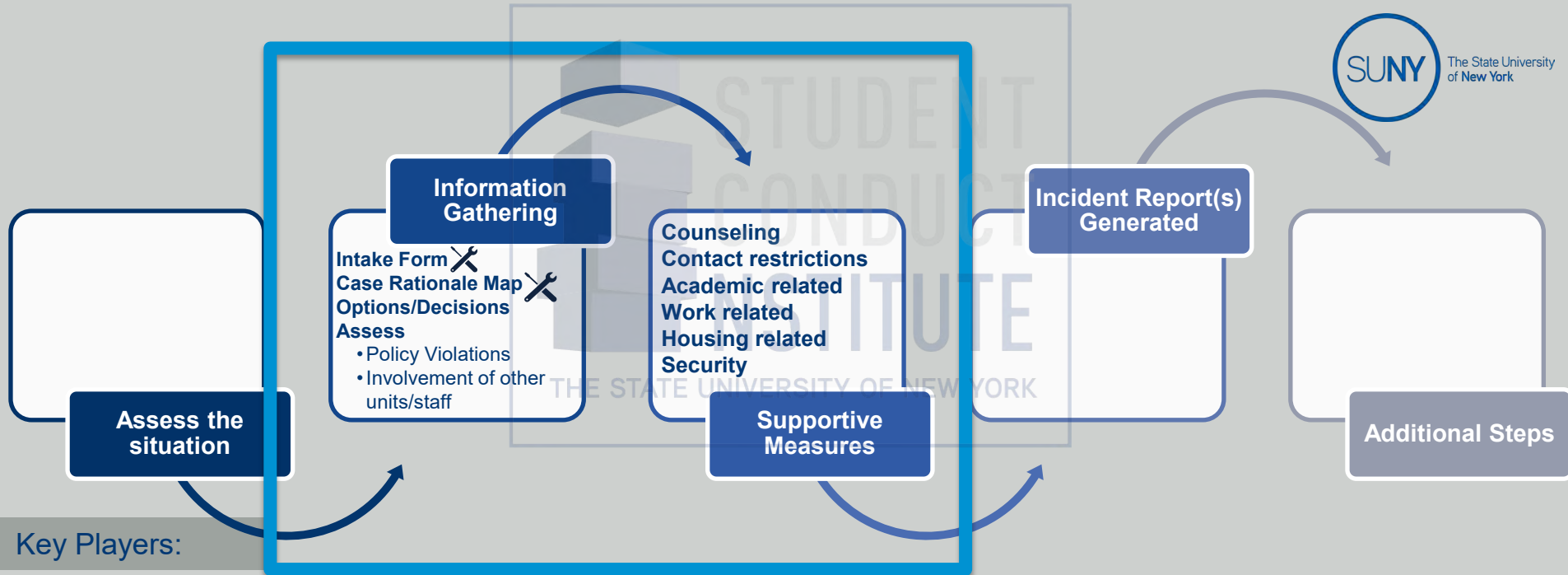


INCIDENT REPORTED OVERVIEW



CASE PROCESS DECONSTRUCTED

1. INCIDENT REPORTED

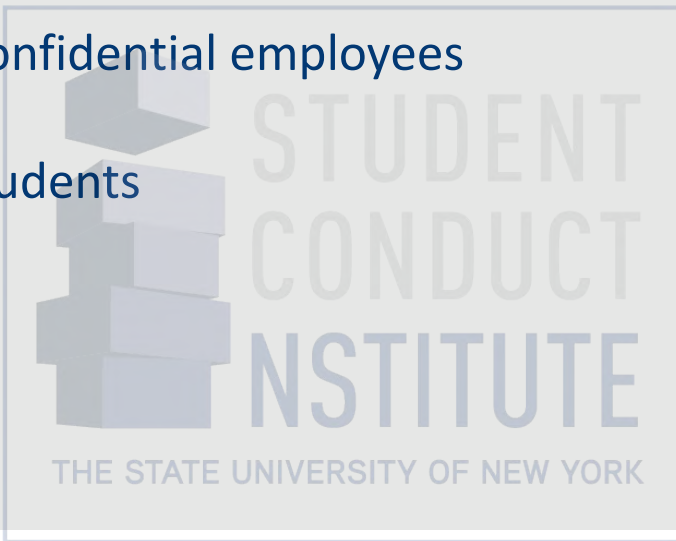


Key Players:

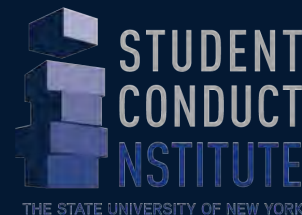
- TIXC
- Conduct Staff
- UPD
- Hall Staff
- Hearing Board
- Appeals Board
- Registrar

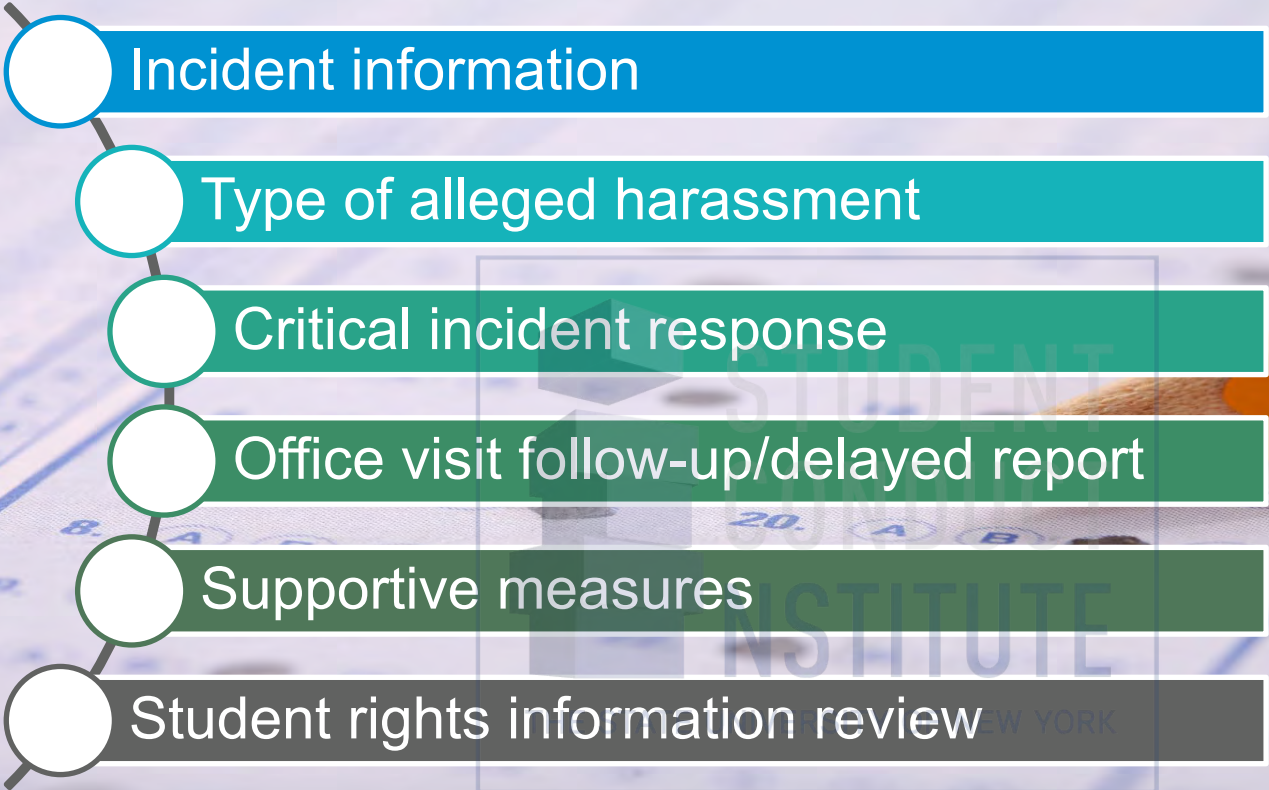


- ✓ Designating responsible and confidential employees
- ✓ Included in your policy
- ✓ List of responsible and confidential employees
- ✓ Disclosure of status to students
- ✓ FERPA
- ✓ Training



CONFIDENTIALITY IN ACTION




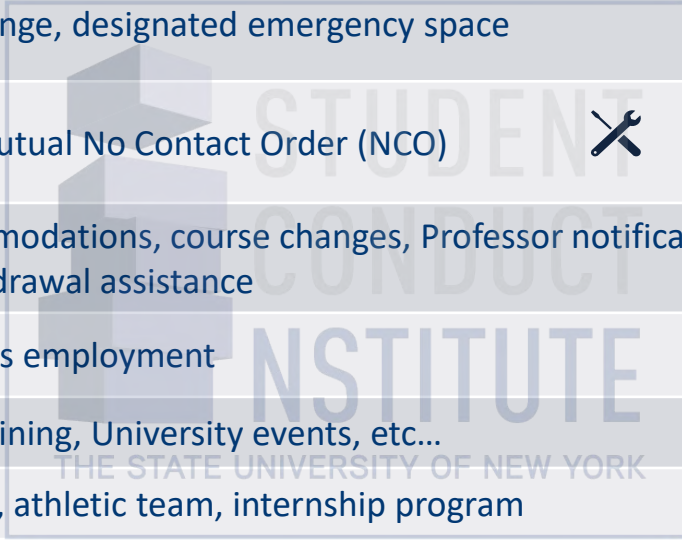
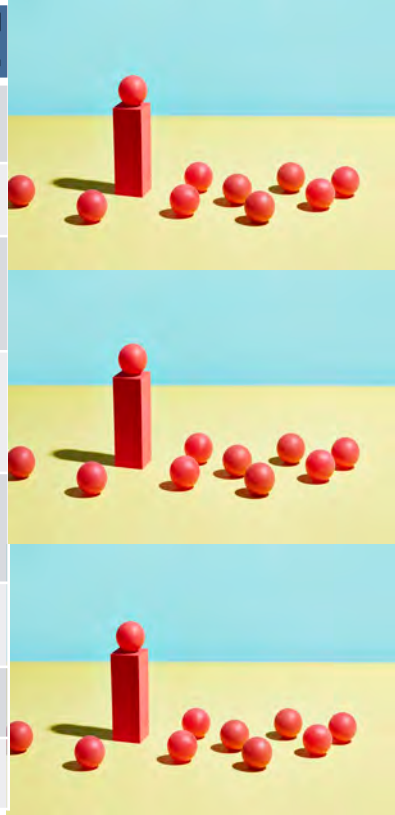


TITLE IX: INTAKE FORM



WHAT'S A CASE RATIONALE MAP? ✂

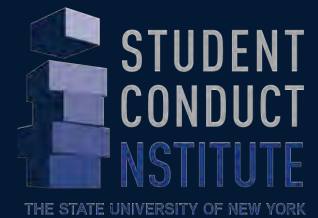
Type	Considerations
Safety	Reasonable accommodations
Health	Medical, Mental
Housing	Room lock change, designated emergency space
Contact restrictions	One-way or Mutual No Contact Order (NCO) 
Academic	Course accommodations, course changes, Professor notifications, leave of absence, withdrawal assistance
Work	On/Off Campus employment
Facility based	Gym, library, dining, University events, etc...
Recreational	Student group, athletic team, internship program



TITLE IX: SUPPORTIVE MEASURES

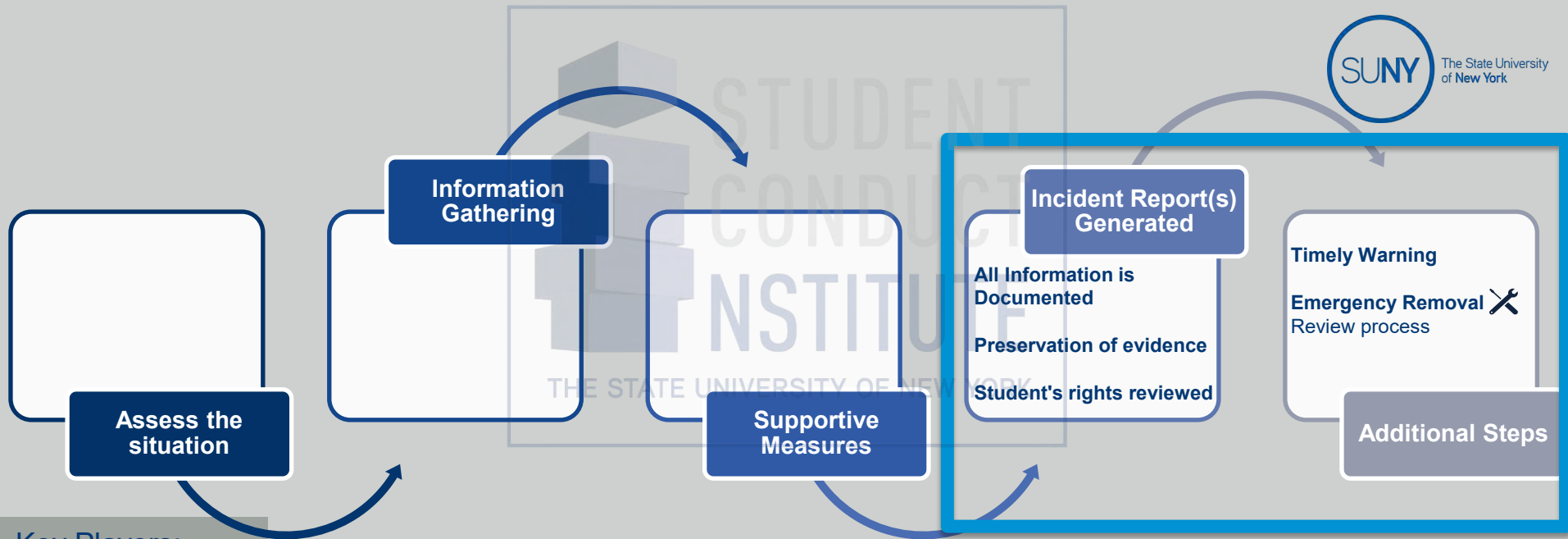


10-MINUTE BREAK



CASE PROCESS DECONSTRUCTED

1. INCIDENT REPORTED



Key Players:



TIXC



Conduct
Staff



UPD



Hall Staff



Hearing
Board

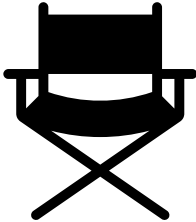
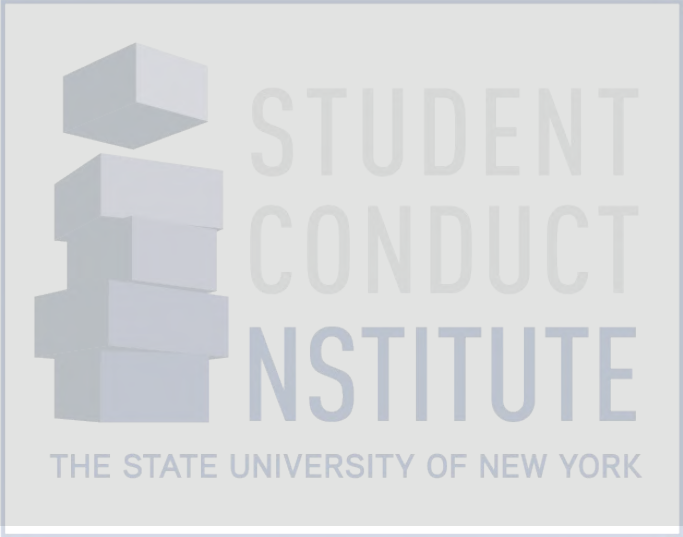


Appeals
Board

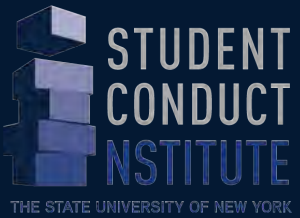


Registrar

- ✓ Who makes the final call?
- ✓ How will you assemble staff?
- ✓ Documents and Form Templates
- ✓ Review:
 - ✓ Meeting with student
 - ✓ Process/tech considerations
 - ✓ Process determination
- ✓ Notification to parties
- ✓ Supportive Measures

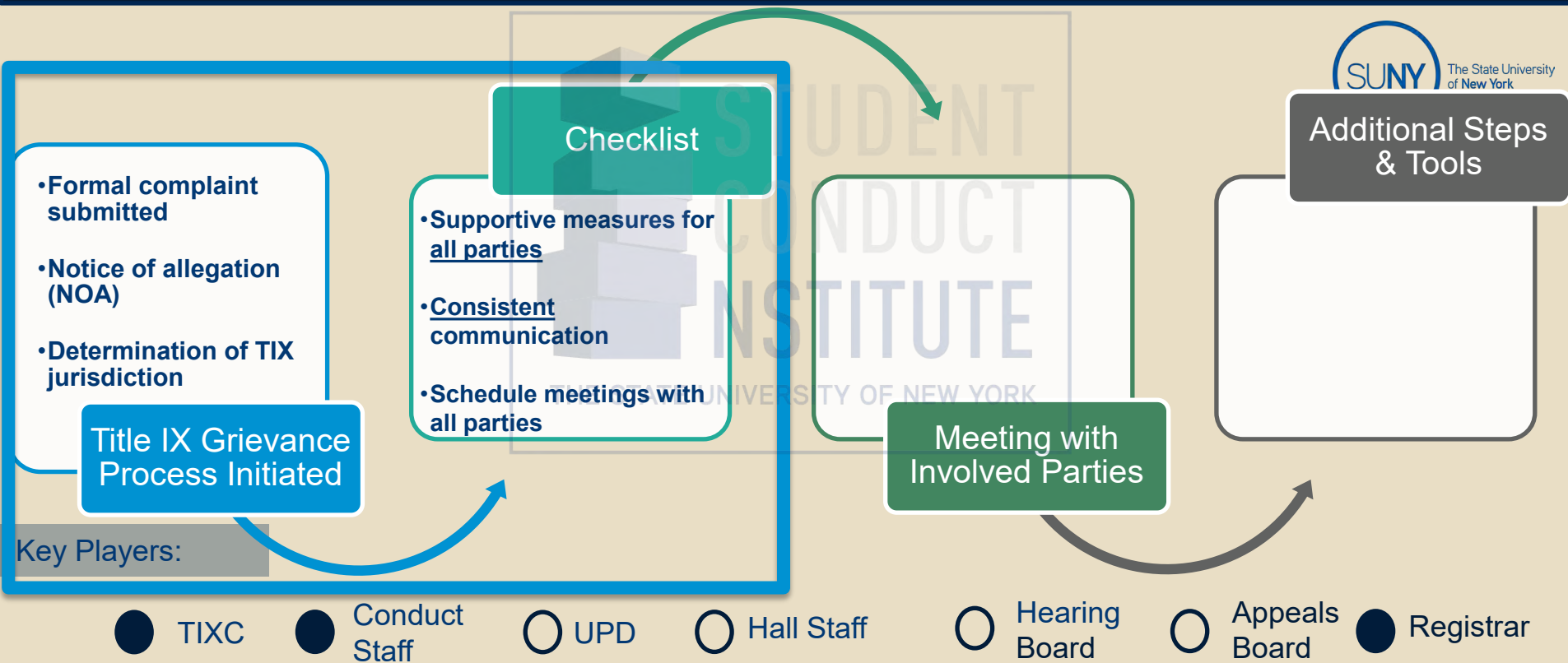


TITLE IX: EMERGENCY REMOVALS IN ACTION



CASE PROCESS DECONSTRUCTED

2. STUDENT CONDUCT PROCESS INITIATED



Institutions **must** investigate all “formal complaints” filed with the Title IX Coordinator

Who can file a formal complaint?

- A person who is currently participating in the education programs or activities of the institution
- A person who is **attempting** to participate in those programs or activities
- The Title IX Coordinator

Multiple complaints arising from same incidents can be consolidated

Action Items

- ✓ Preparation
 - Challenges of virtual work
 - Varied familiarity of the process
 - Delayed report
 - Non-responsive
- ✓ If non-responsive
 - Determination on next steps



Institutions **may dismiss** complaints that do meet the criteria if:

- A complainant notifies the TIXC in writing that they would like to withdraw the formal complaint or any allegations in it;
- The respondent is not enrolled/ employed by the institution; or,
- If specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

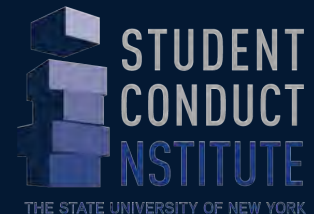
Institutions **must dismiss** formal complaints that don't fall within the statutory criteria for the Title IX grievance process.

Note: Institution may still investigate through a non-Title IX process

THE STATE UNIVERSITY OF NEW YORK

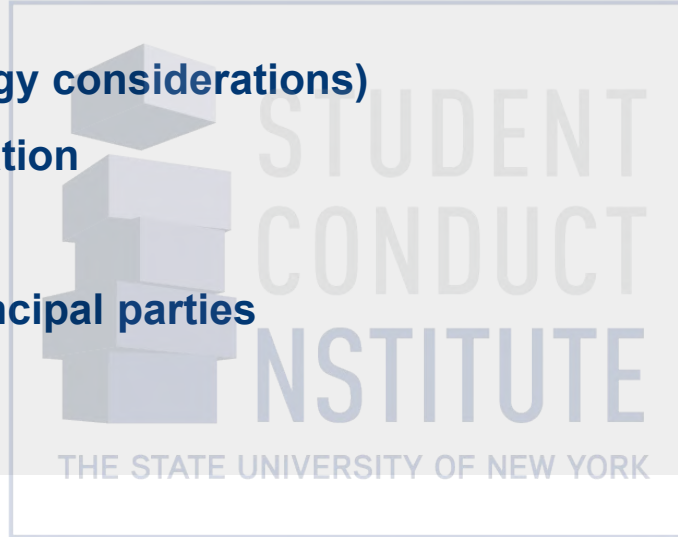


MANDATORY & DISCRETIONARY DISMISSAL

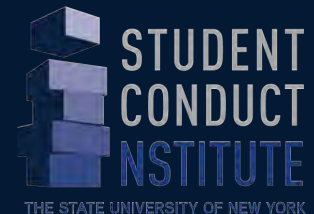




- **Who makes the dismissal determination?**
- **Who issues the notification?**
- **Template(s)**
- **Appeal process (technology considerations)**
- **Appeal process determination**
- **Notification to parties**
- **Safety and reaction of principal parties**



**MANDATORY & DISCRETIONARY
DISMISSAL IN ACTION**



NOTICE REQUIREMENTS

Contents

Allegations of sexual harassment

Identities of parties, if known, including the complainant's name

Date, time, and location of the incident, if known

Parties' basic procedural rights

Presumption of non-responsibility

Timing

Send to parties as soon as practicable after filing of formal complaint

No investigative interviews until parties have sufficient time to review allegations

Advisor

Notice must inform parties of right to advisor, who may be attorney

School does not need to pay for attorney

Reasonable restrictions ok...

Unless they conflict with cross-examination role

Date/Time of Formal Complaint and who filed the complaint

References to policy and procedures

Parties involved

Conduct alleged

Date/location of the alleged conduct

Upcoming meeting date/time/location

Notice of advisor of choice

Presumed not responsible until a determination is made clause

Copy sent to complainant

NOTICE OF ALLEGATIONS – WHAT IS IN IT?



Advisor Resource Guide

for Title IX Investigations and Hearings

SEPTEMBER 2021

Abbey Marr, Esq.
Jessica Morak, Esq.
Gemma Rinefierd, Ed.D.
Adam J. Wolkoff, J.D./Ph.D.



Introduction: Serving as an Advisor in Title IX Proceedings

The Role of the Advisor

Pre-Hearing Preparations

Hearing

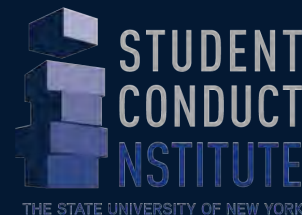
Cross Examination & Relevance

After the Hearing

Checklist

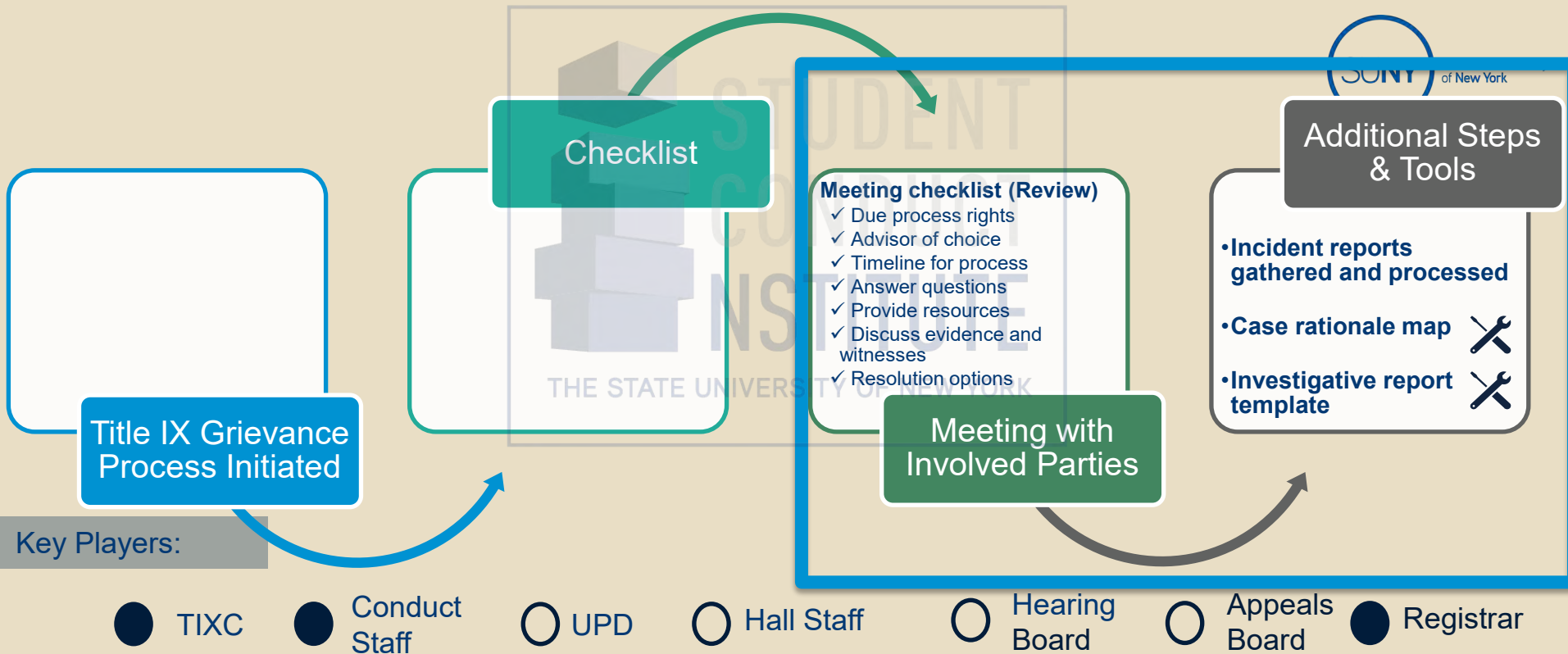


bit.ly/TIXadvisor



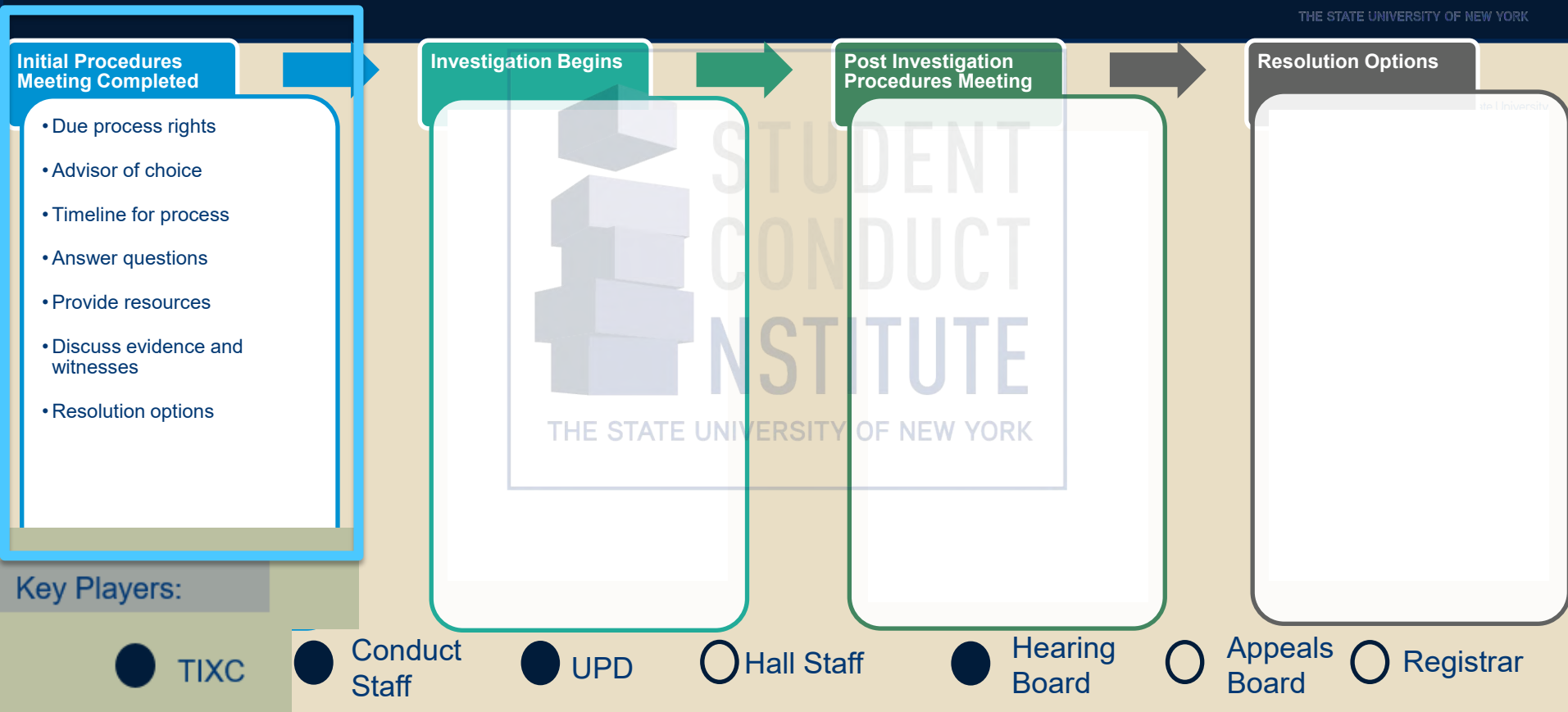
CASE PROCESS DECONSTRUCTED

2. STUDENT CONDUCT PROCESS INITIATED



CASE PROCESS DECONSTRUCTED

2. STUDENT CONDUCT PROCESS INITIATED





Overview

- Detail due process rights
- Indicate right to advisor of choice
- Describe timeline for process
- Answer questions
- Provide resources
- Discuss evidence and witness procedures
- Offer resolution options
- Describe potential sanction outcomes
- Share their appeal rights



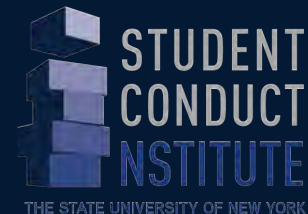
STUDENT
CONDUCT
INSTITUTE

THE STATE UNIVERSITY OF NEW YORK

- ✓ Virtual vs in-person meetings
- ✓ Location of meeting and privacy concerns
- ✓ Preparation of materials in advance
- ✓ Schedule with adequate time
- ✓ Build in flexibility and anticipate challenges



MEETING WITH STUDENTS



When Informal Resolutions are allowed under the Final Rule:

- After a formal complaint;
- When all parties and the TIXC coordinator consent;
- Any party can withdraw at any time

Not allowed in cases involving employee Respondents

TIXC *can* run the process, but it is not recommended

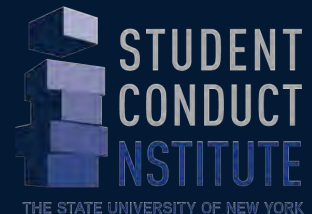
Examples:

- Administrative resolution
- Restorative justice
- Mediation

THE STATE UNIVERSITY OF NEW YORK



INFORMAL RESOLUTIONS

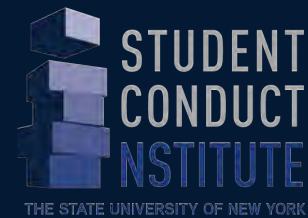


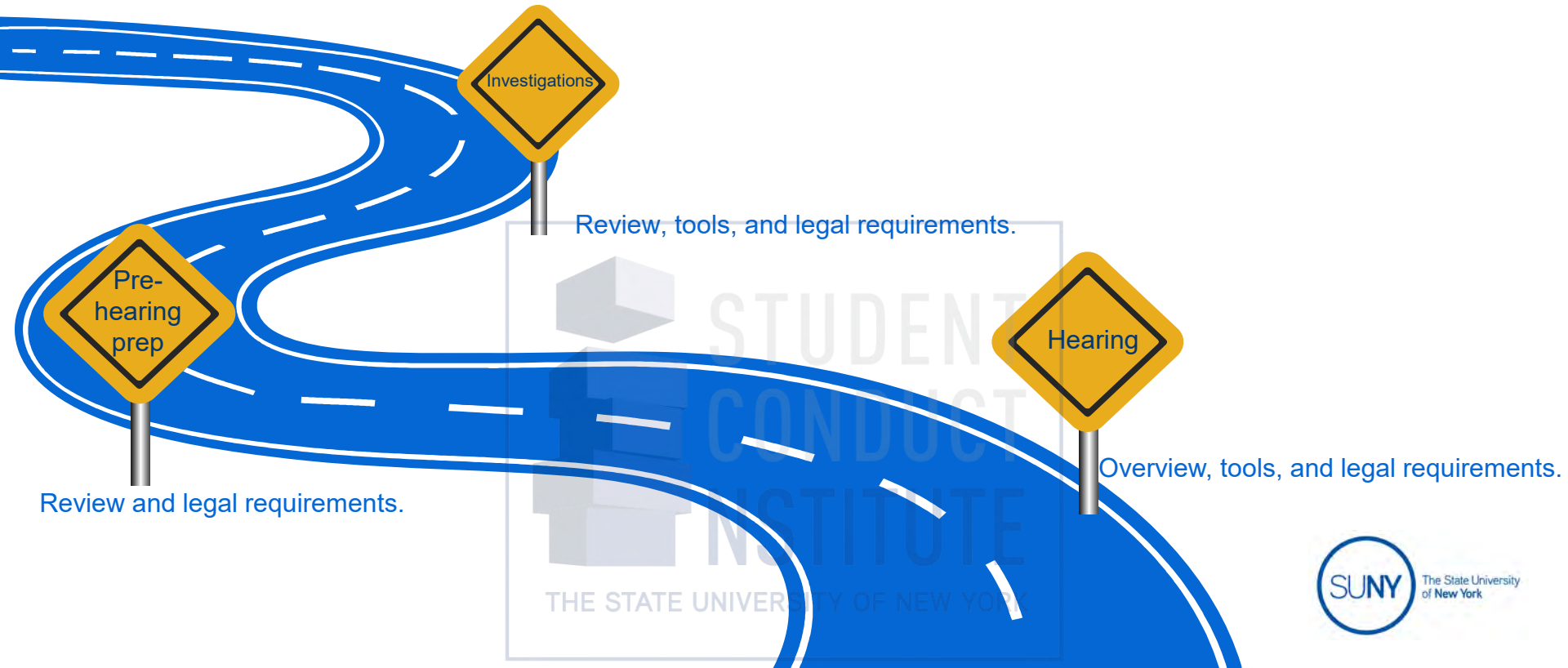


Area	Considerations
Capacity	Staff and technology needs
Policy Updates	Website, code, promotional materials
Process	Conceptualization, implementation, criteria, execution, form creation
Facility	Physical and Virtual
Training	Facilitators and Stakeholders
Awareness	Marketing & outreach

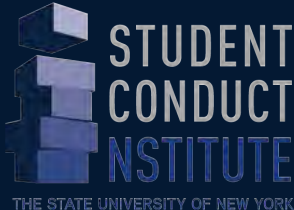


INFORMAL RESOLUTION





DAY 3 ROADMAP





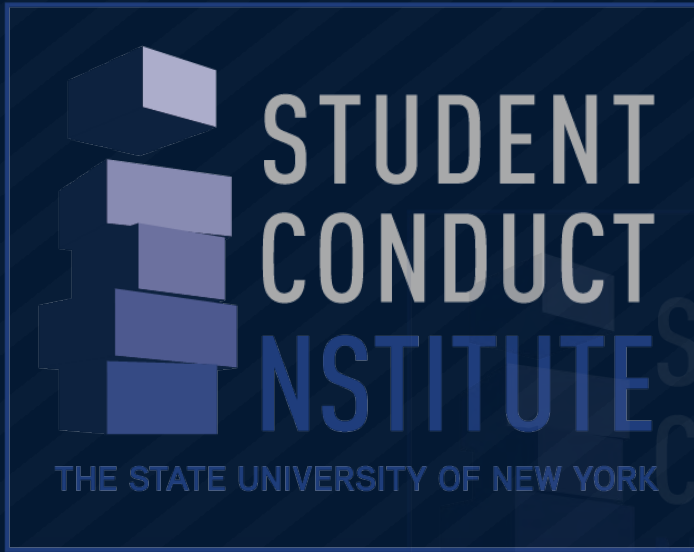
STUDENT CONDUCT INSTITUTE

THE STATE UNIVERSITY OF NEW YORK

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York

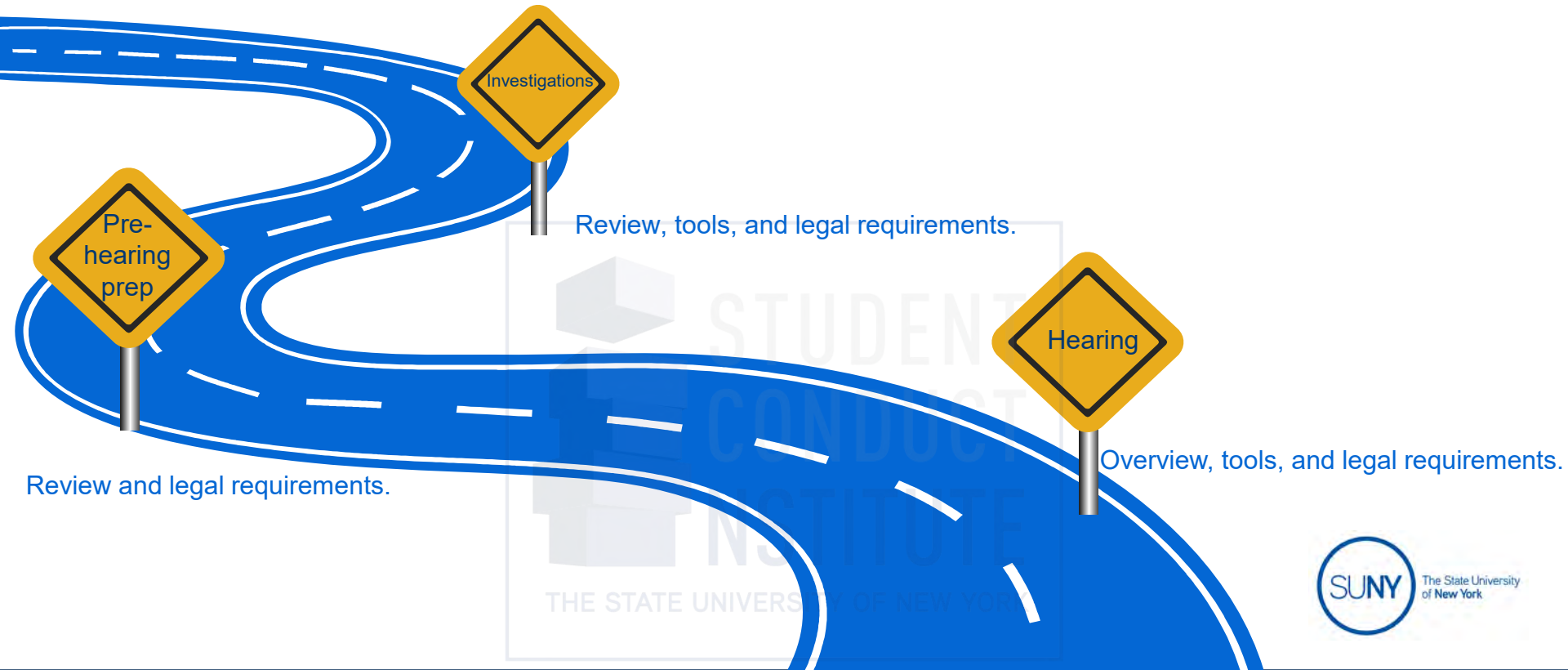


Alexander Wheeler
Assistant Director, SCI

Mishka Woodley, J.D., LL.M.
Assistant Counsel, OGC

March 2023

SCI LIVE@ DISTANCE BASIC
COMPLIANCE TRAINING, DAY 3



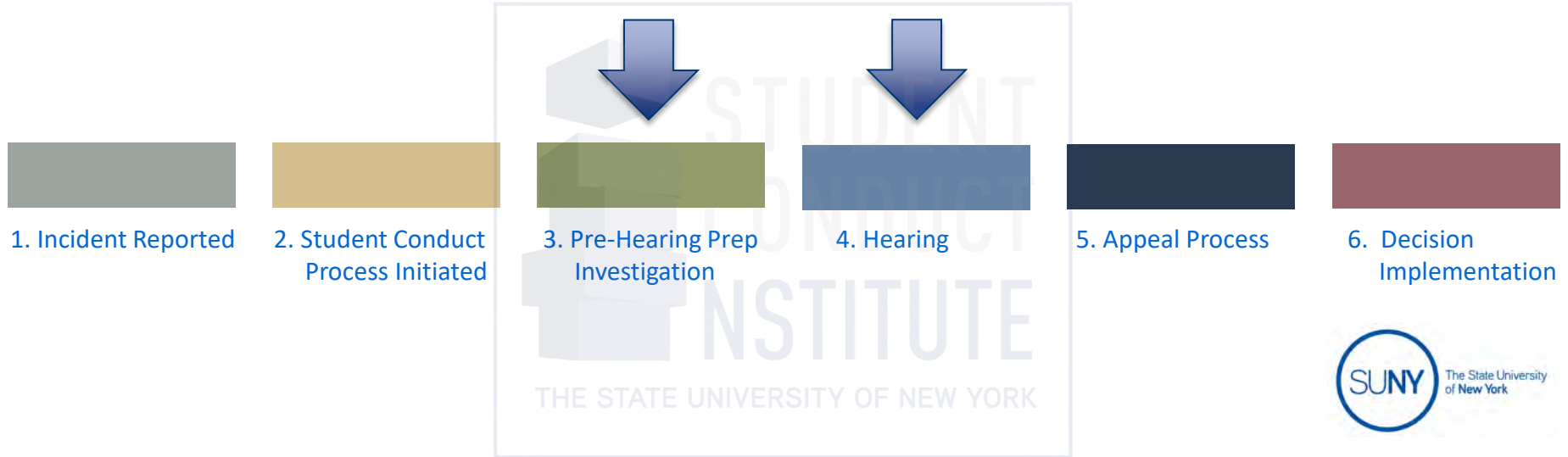
Review and legal requirements.

Review, tools, and legal requirements.

Overview, tools, and legal requirements.



CASE PROCESS DECONSTRUCTED



Investigator
For the duration of the
Investigation process.

Advisor
Ideally assists the student
throughout the entire process.

**Student Conduct
Administrator**
Assists the student through
the resolution of the process.

**Informal Resolution
Facilitator**
Can be any individual with
significant training in this
area.

Hearing Board Members
Decision-maker; may also
serve as the Hearing Chair.

ROLES IN THE PROCESS

CASE PROCESS DECONSTRUCTED

3. PRE-HEARING PREP INVESTIGATION MODEL

Initial Procedures Meeting Completed

- Due process rights
- Advisor of choice
- Timeline for process
- Answer questions
- Provide resources
- Discuss evidence and witnesses
- Resolution options

Investigation Begins

- Investigation Report Template
- Notice of Investigatory Interview Template
- Collection of evidence
- Witness interviews
- Review of evidence by Respondent and Complainant
- Written response from Respondent and Complainant
- Once completed the information is sent to the Student Conduct office.

Post Investigation Procedures Meeting

- Detail due process rights
- Indicate right to advisor of choice (advisor guide) ✕
- Describe timeline for process
- Answer questions & provide resources
- Discuss **new** evidence and witness procedures
- Discuss charges and allegations
- Offer resolution options (Informal Resolution & Hearing process)
- Disability accommodations
- Retaliation policy reminder
- Describe potential sanction outcomes
- Decorum policy ✕
- Determining relevance guide ✕
- Share their appeal rights
- Correspondence communication

Resolution Options

Informal Resolution

- Complainant has agreed in writing.
- Title IX Coordinator agrees.
- Respondent has agreed to participate.
- Facilitator reaches out to both parties.
- Both parties agree to the resolution.
- Informal Resolution Model ✕

Hearing

- Managing all schedules
- Notice of Hearing
- Parties confirm attendance with advisors
- Pre-Hearing preparation & logistics
- Selection of Board Members
- Order of Hearing
- Determination

Key Players:



Reviewing Today

Case Rationale
Map

Conflict of
Interest Chart

Investigative
Report
Template

Guide for
Determining
Relevance

Model Script
for Title IX
Hearings

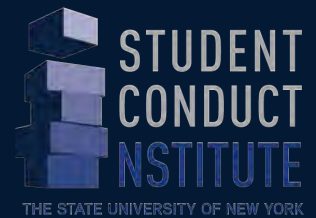
Model Decorum
Policy

TOOLS FOR TODAY 





INVESTIGATIONS



Avoid repeated disclosures

Consider the impact of trauma:

Training and procedure review

Check your body language and demeanor

Questioning and word usage (Help me understand... and what are you able to tell me about what you experienced?)

- Describing another individual's experience
- Framing your questions, avoiding why questions



2021-2022: Neurobiology of Sexual Assault Trauma (Part 3) - Introduction
Online | Jul 1, 2021
98685 seats available

Hours: 0.25

Info



2021-2022: Neurobiology of Sexual Assault Trauma (Part 3) - When Attack Is Detected Stress Kicks In
Online | Jul 1, 2021
98589 seats available

Hours: 0.25

Info

Sign up



2021-2022: Neurobiology of Sexual Assault Trauma (Part 3 of 3) - Reflexes and Habits
Online | Jul 1, 2021
98527 seats available

Hours: 0.25

Info

Sign up

TRAUMA INFORMED PRACTICES FOR INVESTIGATIONS

Evidence Collection

Interviews of parties & witnesses must take place after Notice of Allegations

Both inculpatory & exculpatory evidence must be collected

Evidence will be directly related to the allegations

The collection process may include evidence that institution does not intend to rely on

Evidence Sharing

Parties may review evidence with advisors present

May set reasonable rules around evidentiary review and sharing

Redaction of “irrelevant” evidence

Mandatory inspection process with 10-day min. review period

Investigative Report

Summarizes relevant evidence directly related to allegations

Cannot make determination regarding responsibility- sole role of the hearing panel

Parties must have opportunity to review at least 10 days before hearing

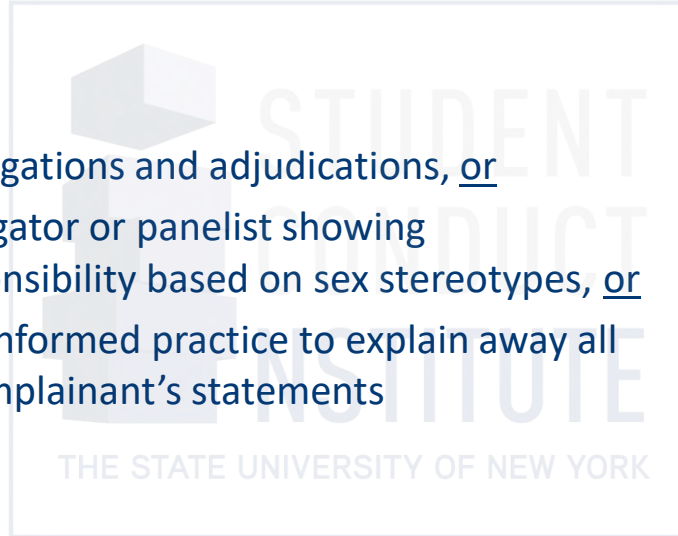


INVESTIGATIVE PROCESS

- Actual bias is a high legal standard, but *perception* of bias is in the eyes of the parties to the process and should be avoided.

- *Liability* arises from:

- truly lop-sided investigations and adjudications, or
- statements of investigator or panelist showing presumption of responsibility based on sex stereotypes, or
- misapplying trauma-informed practice to explain away all inconsistencies in complainant's statements

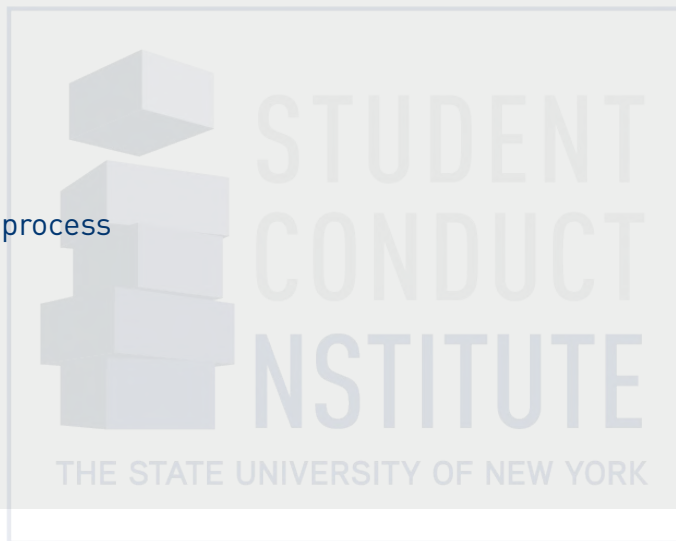


TITLE IX: CONFLICTS & BIAS

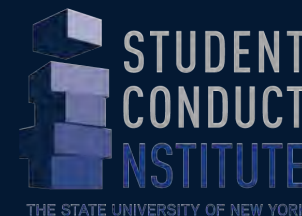


Action Items

- Included in your policy
- Opportunity for assessment
- Evidence collection steps reviewed
- Policy related to reasonable delays in process



TITLE IX INVESTIGATION: PROMPT AND IMPARTIAL PROCESS IN ACTION



TITLE IX TOOLKIT

Student Conduct Institute

Is it Bias? Guide

Question

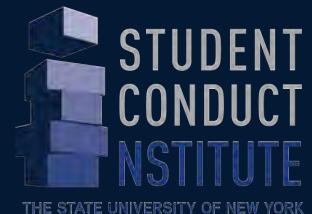
Yes/No

Regulation Citation

THE STATE UNIVERSITY OF NEW YORK



IS IT BIAS?



Case # and Principal Parties

General Notification of Title IX Resources

Reporting Process

Supportive Measures

Emergency Removal

Administrative Leave
(of Non-Student Employees)

Formal Complaint

Advisor(s) of Choice

Investigation

Hearings

Appeal

CASE RATIONALE MAP

TITLE IX TOOLKIT

Student Conduct Institute Case Rationale Map for Title IX Coordinators



Investigation

16.

Did the institution commence an investigation upon receipt of a formal complaint?

Yes No

Delays:

- There were **no delays** in the investigative process
 There was a **delay** in the investigative process

17.

Date: Click or tap here to enter text.

Length: Click or tap here to enter text.

Reason: Click or tap here to enter text.

Justification: Click or tap here to enter text.

Notice was sent to Complainant (*attach documentation*)

Notice was sent to Respondent (*attach documentation*)

Objection(s) (if any): Click or tap here to enter text.

Response to Objection(s) (if any): Click or tap here to enter text.

CASE RATIONALE MAP

TITLE IX TOOLKIT

Summary of the Relevant Evidence

In this section, include a summary of all relevant evidence. This section can be organized in several ways. It is important that, however organized, the evidence is summarized clearly and accurately, and without opinion or bias. In this section, the writer should cite the evidence and information in the Appendices.

In a case involving one allegation, the report might be organized as follows:

- 1) History between the Parties
 - a) *The Reporting Party's Account*
 - b) *The Responding Party's Account*
 - c) *Witness A's Account*
- 2) The Hours Leading up to the Reported Incident
 - a) *The Reporting Party's Account*
 - b) *The Responding Party's Account*
 - c) *Witness B's Account*
 - d) *Witness C's Account*



THE STATE UNIVERSITY OF NEW YORK

INVESTIGATIVE REPORT TEMPLATE ✂



Investigation Overview

Jurisdiction

Investigator Information

Objective of the Investigation
Report

Prohibited Conduct Alleged

Witness List

Evidence Collected

Procedural Next Steps after
Conclusion of investigation

INVESTIGATIVE REPORT SECTIONS 

Testimony

Text Messages

Social Media Posts

Medical Records

Public Safety/Police Records

Videos / Surveillance Footage

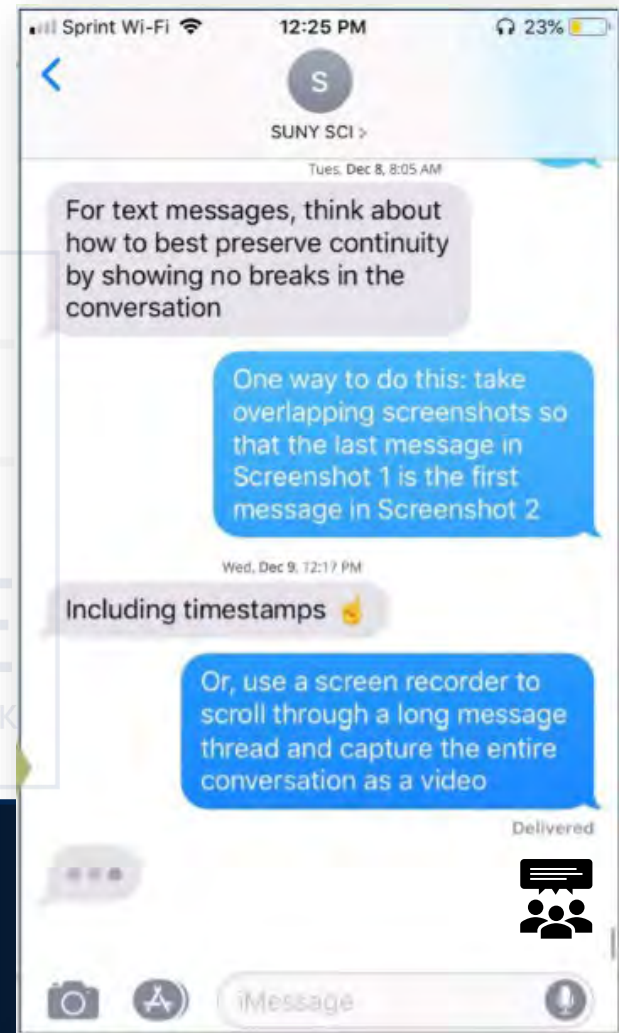
Pictures

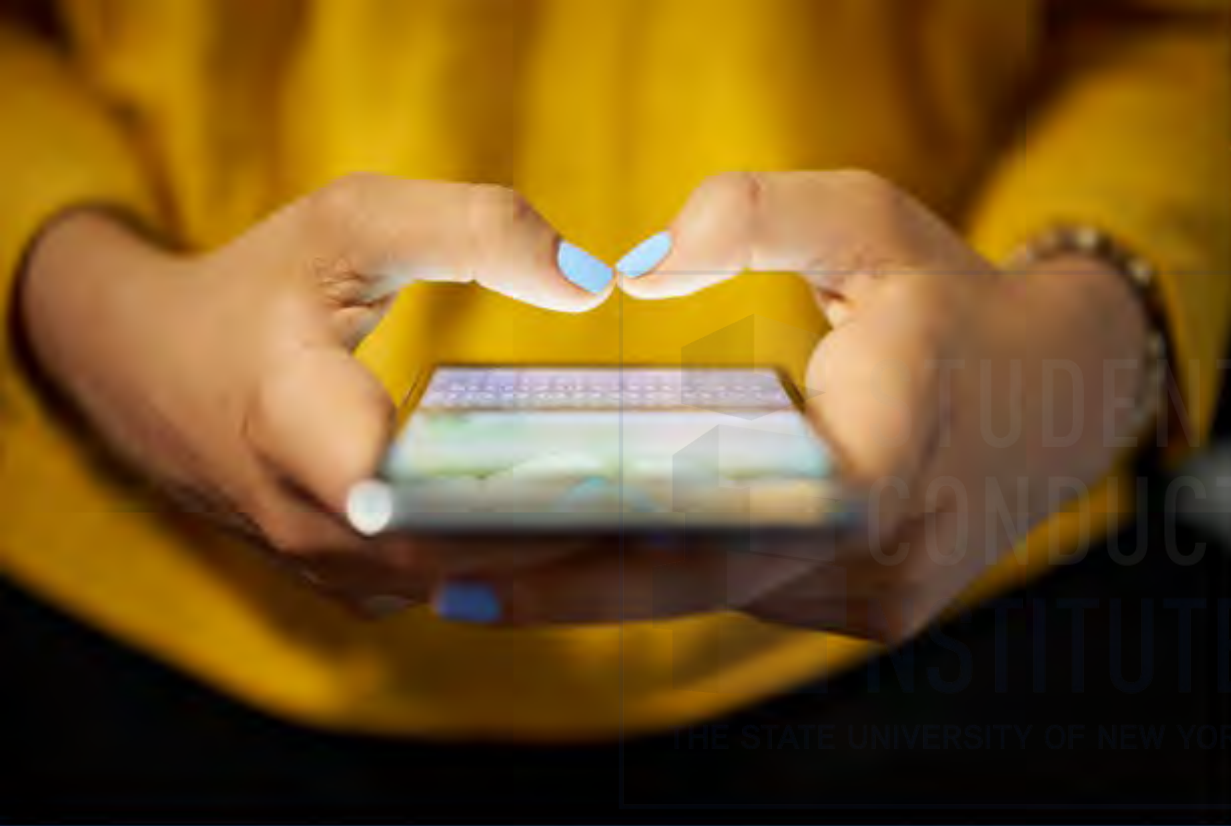
ID Card Data / Network Usage Location Data

Email

Voice notes

EVIDENCE COLLECTION





CASE PROCESS DECONSTRUCTED

3. PRE-HEARING PREP INVESTIGATION MODEL

Initial Procedures Meeting Completed

- Due process rights
- Advisor of choice
- Timeline for process
- Answer questions
- Provide resources
- Discuss evidence and witnesses
- Resolution options

Investigation Begins

- Investigation Report Template
- Notice of Investigatory Interview Template
- Collection of evidence
- Witness interviews
- Review of evidence by Respondent and Complainant
- Written response from Respondent and Complainant
- Once completed the information is sent to the Student Conduct office.

Post Investigation Procedures Meeting

- Detail due process rights
- Indicate right to advisor of choice (advisor guide) ✕
- Describe timeline for process
- Answer questions & provide resources
- Discuss **new** evidence and witness procedures
- Discuss charges and allegations
- Offer resolution options (Informal Resolution & Hearing process)
- Disability accommodations
- Retaliation policy reminder
- Describe potential sanction outcomes
- Decorum policy ✕
- Determining relevance guide ✕
- Share their appeal rights
- Correspondence communication

Resolution Options

Informal Resolution

- Complainant has agreed in writing.
- Title IX Coordinator agrees.
- Respondent has agreed to participate.
- Facilitator reaches out to both parties.
- Both parties agree to the resolution.
- Informal Resolution Model ✕

Hearing

- Managing all schedules
- Notice of Hearing
- Parties confirm attendance with advisors
- Pre-Hearing preparation & logistics
- Selection of Board Members
- Order of Hearing
- Determination

Key Players:



TIXC



Conduct Staff



UPD



Hall Staff



Hearing Board



Appeals Board



Registrar

Overview

- Detail due process rights
- Reminder - right to advisor of choice
- Describe timeline for process
- Review charges and allegations
- Answer questions & provide resources
- Discuss new evidence and witness procedures
- Offer resolution options (Informal Resolution & Hearing process detailed)
- Disability accommodations
- Retaliation policy reminder
- Decorum policy
- Relevance determination policy
- Describe potential sanction outcomes
- Share their appeal rights
- Correspondence clause

Action Items



✓Virtual vs in-person meetings

- Clear expectations and reminders in your meeting notices (e.g. Advisor of choice notice)

✓Location of meeting and privacy concerns

✓Preparation of materials in advance

- Referral Packet
- Visual of hearing space if in person

✓Schedule with adequate time

✓Build in flexibility and anticipate challenges

- Emotional state of all parties
- Breaks may be necessary
- Working with the student's advisor

POST-INVESTIGATION PROCEDURAL MEETING

CASE PROCESS DECONSTRUCTED

3. PRE-HEARING PREP INVESTIGATION MODEL

Initial Procedures Meeting Completed

- Due process rights
- Advisor of choice
- Timeline for process
- Answer questions
- Provide resources
- Discuss evidence and witnesses
- Resolution options

Investigation Begins

- Investigation Report Template
- Notice of Investigatory Interview Template
- Collection of evidence
- Witness interviews
- Review of evidence by Respondent and Complainant
- Written response from Respondent and Complainant
- Once completed the information is sent to the Student Conduct office.

Post Investigation Procedures Meeting

- Detail due process rights
- Indicate right to advisor of choice (advisor guide) ✕
- Describe timeline for process
- Answer questions & provide resources
- Discuss **new** evidence and witness procedures
- Discuss charges and allegations
- Offer resolution options (Informal Resolution & Hearing process)
- Disability accommodations
- Retaliation policy reminder
- Describe potential sanction outcomes
- Decorum policy ✕
- Determining relevance guide ✕
- Share their appeal rights
- Correspondence communication

Resolution Options

Informal Resolution

- Complainant has agreed in writing.
- Title IX Coordinator agrees.
- Respondent has agreed to participate.
- Facilitator reaches out to both parties.
- Both parties agree to the resolution.
- Informal Resolution Model ✕
Policy

Hearing

- Managing all schedules
- Notice of Hearing
- Parties confirm attendance with advisors
- Pre-Hearing preparation & logistics
- Selection of Board Members
- Order of Hearing
- Determination

Key Players:



TIXC



Conduct
Staff



UPD



Hall Staff



Hearing
Board

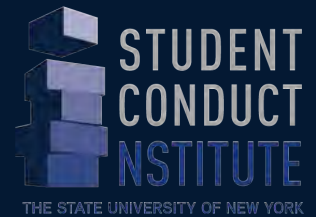


Appeals
Board



Registrar

HEARINGS



Virtually

Technology

- Accessibility needs
- Internet signal strength
- Party access to appropriate equipment – don't make assumptions
- Technology settings
- Recording ability (double check cloud space & storage)
- Double check provided links
- Back up plan & back up tech person role that does not wear other hats in the process
- Access to documents

Hearing Space and Parties

- Physical space for party and advisor
- Hearing board member location
- Your location
- Witness & Investigator invites
- All party and advisor confirmations (back up advisors)
- Confidentiality and privacy of communications (tip pan the room)

In-Person

Technology

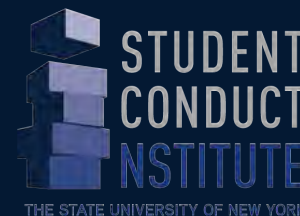
- Accessibility needs
- Recording ability (double check cloud space & storage)
- Smart equipment (e.g. for the purposes of showing evidence)
- Back up tech person role that does not wear other hats in the process

Hearing Space and Parties

- Space considerations for where students will be placed – enter/exit building?
- Space availability (multiple spaces)
- Masks and visitor policies
- Access to documents and evidence
- Proximity to restrooms
- Proximity to a printer
- Fire alarm plan
- Water, tissues, snacks, pens, paper (for all)
- Witness & Investigator invites
- All party and advisor confirmations (back up advisors)



PRE-HEARING PREPARATION





Training check

Availability Expectations

Conflict of Interest and Bias Check

Access to evidence

Board Communication

Select Chairperson

Hearing Script

Reminder of relevant policies & tools

HEARING BOARD PREPARATION

Date/Time/Location(or links)

Consider multiple days for scheduling (depending on the case)

Policy & Tool Reminders

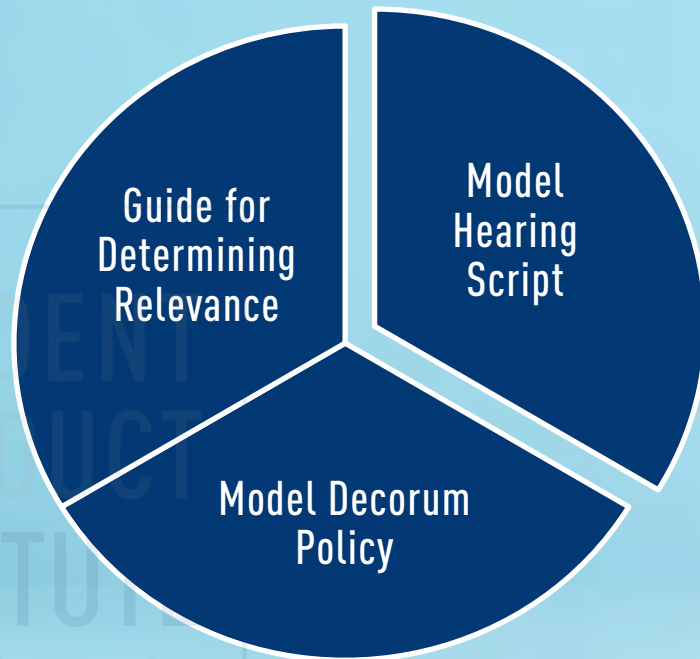
- Title IX Grievance Policy
- Code of Conduct (if applicable)
- Advisor Guide
- Decorum Policy
- Guide for Determining Relevance
- Tech Guide (if applicable for how students and advisors can participate virtually)

Order of the hearing

Failure to appear clause

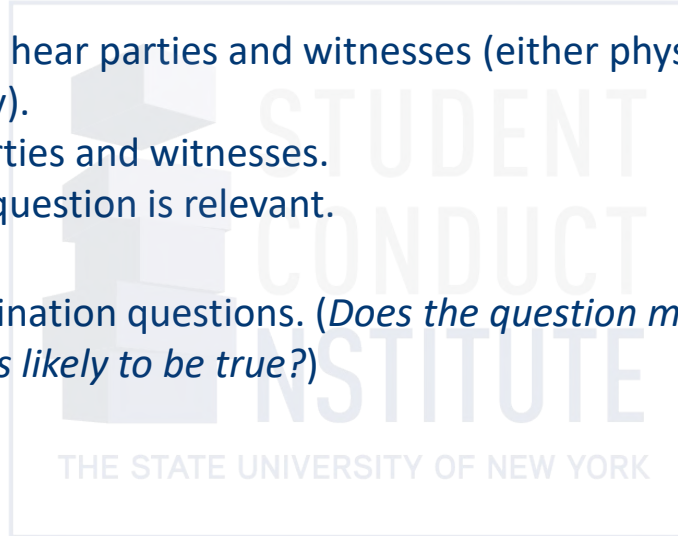
New evidence and witness reminder

HEARING NOTICE TO STUDENTS & ADVISORS

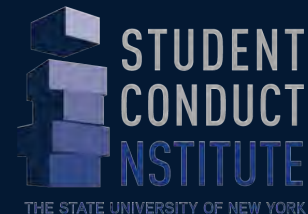


RESOURCE DOCUMENTS

- All parties, advisors, witnesses, and decision-makers:
 - must be present at the same time either physically or remotely via secure technology.
- Decision-makers
 - Must be able to see and hear parties and witnesses (either physically or via secure technology).
 - Ask questions of the parties and witnesses.
 - Decide whether or not question is relevant.
- Advisors
 - ask relevant cross-examination questions. (*Does the question make a fact at issue more or less likely to be true?*)



LIVE HEARING PROCESS FUNDAMENTALS REMINDERS

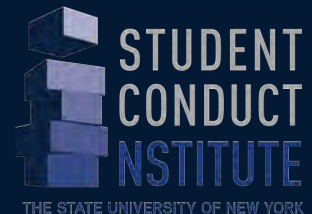


Colleges and universities “are in a better position than the Department to craft rules of decorum best suited to their educational environment” and build a hearing process that will reassure the parties that the institution “is not throwing a party to the proverbial wolves.”

See, 85 Fed. Reg. 30026, 30319.

Advisors who violate the rules of decorum may be removed

DECORUM



Rules to consider

- Questions in neutral tone
- No accusatory questions
- Require parties and advisors to refer to other persons by the name and gender pronoun used by that person
- No "duty of zealous advocacy" inferred or enforced, even for attorney-advisors
- No abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission
- No use of profanity or personal attacks
- No use of repetitive questions





Specific exclusions governing Title IX hearings:

1. ?
2. ?
3. ?
4. ?

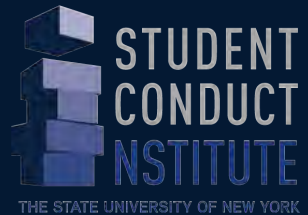


STUDENT
CONDUCT
NSTITUTE

THE STATE UNIVERSITY OF NEW YORK



LIVE HEARING PROCESS EXCLUSIONS

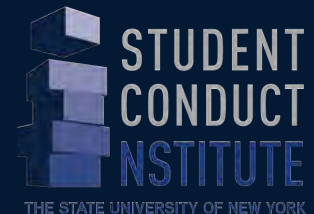


Specific exclusions governing Title IX hearings:

1. “Rape Shield” (with two exceptions). 34 C.F.R. § 106.45(6)(i).
 - Offered to prove someone else committed alleged conduct
 - Offered to prove consent
2. Privileged information. 34 C.F.R. § 106.45(1)(x).
3. Undisclosed medical records. *See*, 85 Fed. Reg. 30026, 30294
4. Duplicative questions. *See*, 85 Fed. Reg. at 30331.



LIVE HEARING PROCESS EXCLUSIONS





Student Conduct Institute Guide for Determining Relevance

Generally probative questions

- The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
- The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true. See, 85 Fed. Reg. 30026, 30343 (May 19, 2020).

Question regarding Privileged Information

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege [identify the privilege].
- The question is relevant because, although it calls for information shielded by a legally-recognized privilege [identify the privilege], that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.

Question about Complainant's Prior Sexual Behavior or Sexual Predisposition

- The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets *one of the two exceptions* to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true [denote which exception].
 - Exception one: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.
 - Exception two: The question concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is asked to prove consent
- The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i).

CASE PROCESS DECONSTRUCTED

4. HEARING

- Recording Made & Script
- Introduction
- Purpose of the Hearing
- Privacy and Decorum Expectations
- Due Process Rights Acknowledgement

Introduction and Expectations

Referral Information, Claims, Opening Statement

- Review of Referral information, submitted Evidence and Witnesses present
- Allegations and Claims
- Opening Statements

- The Complainant
- The Respondent
- The Witness(es)
 - Investigation, Expert, Character
- Board questions

Cross Examination & Board Questions

Conclusion

- Closing Statements
- Impact Statement Submission*
- Decision making process begins

Key Players:



TI XC



Conduct
Staff



UPD



Hall Staff



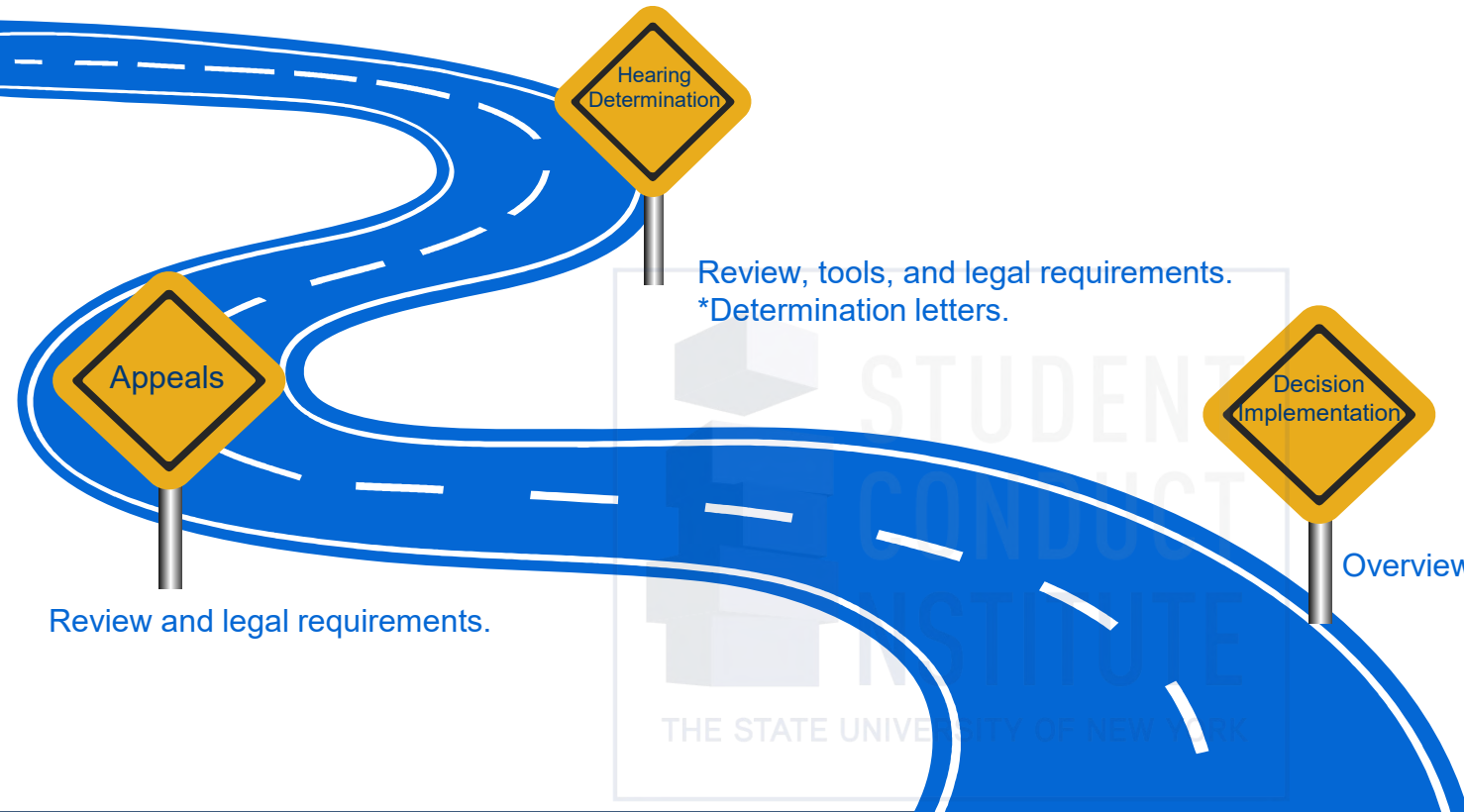
Hearing
Board



Appeals
Board



Registrar



Review and legal requirements.

Review, tools, and legal requirements.
*Determination letters.

Overview



DAY 4 ROADMAP

