

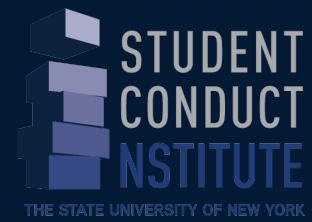
Mishka Woodley, J.D., LL.M.
Assistant Counsel, OGC

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

December 2022

SCI LIVE@ DISTANCE BASIC COMPLIANCE
TRAINING, DAY 1, PART 1

WELCOME TO DAY ONE — MEET YOUR TRAINERS



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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**.

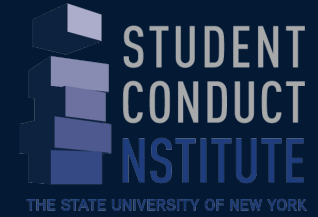
Slides will be posted at
system.suny.edu/sci/postedtraining

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.sunysu.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
- ✓ Complete Modules
- ✓ Check Progress
- ✓ Print Transcripts

EARN YOUR SUNY SCI CERTIFICATE

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

ONLINE TRAINING: TOPICS AND HOURS



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

Loggea 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 >>>

Advanced Filters

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*

Learning Path
Compliance Learning

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

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

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

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

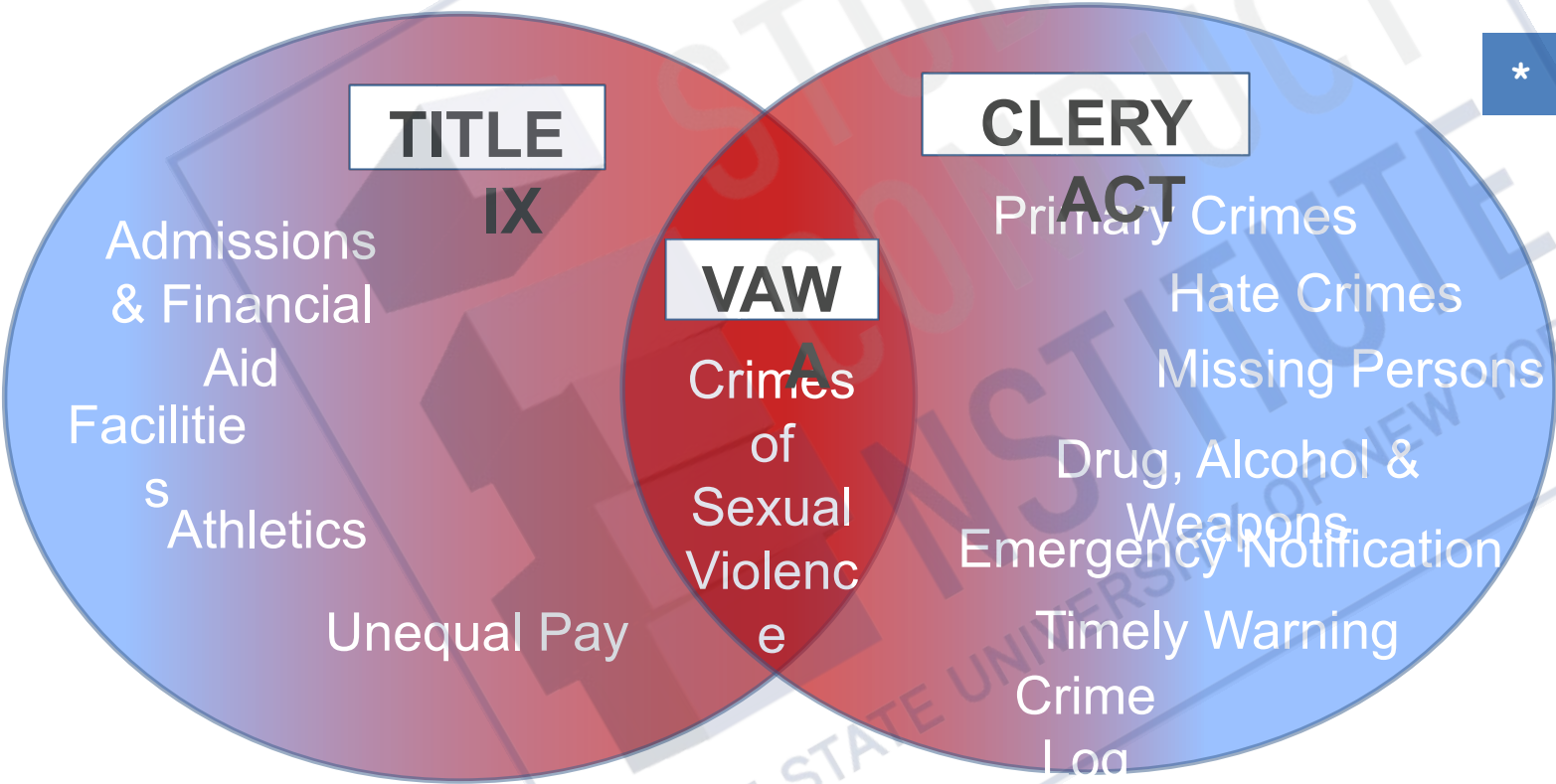
VAWA/Clery Training Topics

(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) & THE CLERY ACT

* State Law?



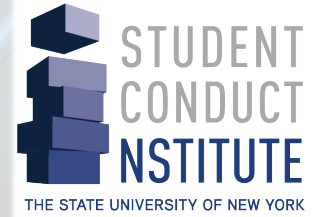
TRAINING SCHEDULE

Part 1 (TODAY)
Due Process Basics
Title IX Laws & Regulations

Part 2
Incident Reported
Conduct Process Initiated




Part 3
Investigations
Pre-Hearing Preparations
Hearings

Part 4
Decisions
Appeals
Implementation & Wrapping Up



CODE WORDS

Do This

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

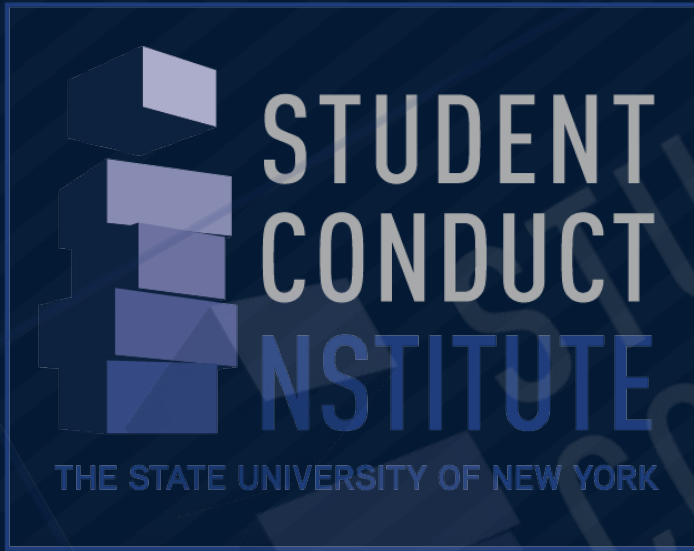
Short answer text

Not That

 Chat

To: **Everyone**  

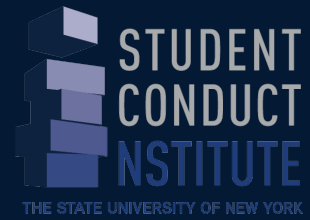
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Office of General Counsel

SCI LEGAL COMPLIANCE BASICS: DUE PROCESS BASICS

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.



THE JOURNEY TO COMPLIANCE- DUE PROCESS

Communication

Community

Clarity

Timeliness

Consistency

Transparency

EQUITY

Confidentiality/ Privacy

What Else?????...

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.)*

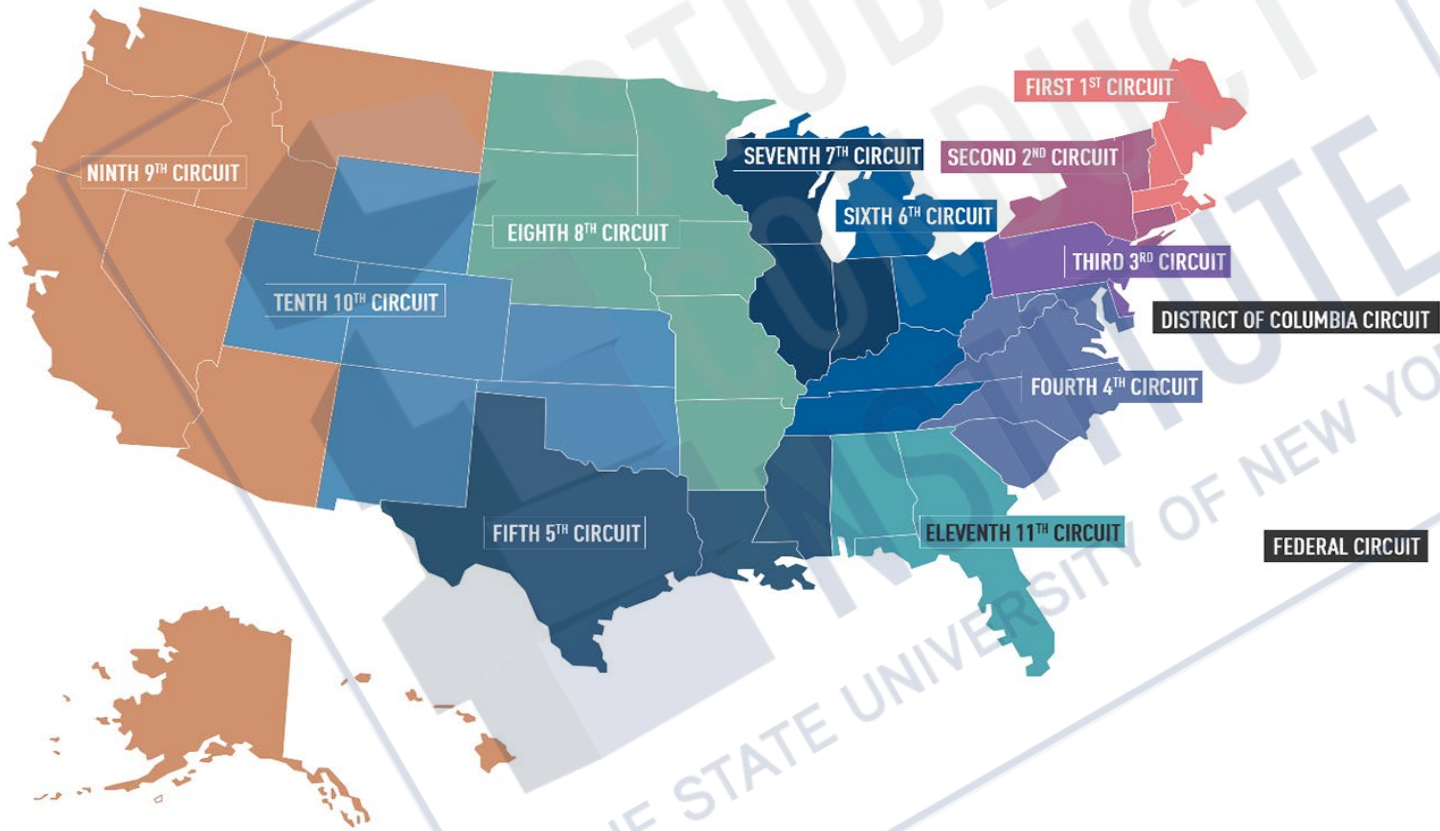
Rules & Regulations: (State /Federal)

- Title IX of the Education Amendments of 1972



CIRCUIT COURTS

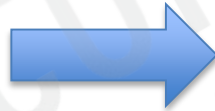
UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS



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



- Denying admission in an educational program based on sex.
- Disqualifying individuals from candidacy for opportunities on the basis of sex -
- Providing unequal access to resources based on sex
- **Engaging in gender-based or sexual harassment, such as unwelcome comments, advances, etc.**

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*



LEGAL FOUNDATIONS- CASE LAW

Dixon v. Alabama . 293 F.2d

LANDMARK DECISION- Leading case on due process for students in public education

(Alabama, Florida Georgia, Texas, Louisiana, Mississippi)

Facts:

- Students were expelled from school after engaging in demonstratio
- The Board of Education and trial court upheld the suspension.
- The case was reversed and remanded.
- There was no legal requirement for formal charges and/or a hearing.
- Usual practice at the college was to provide an opportunity to be heard and a hearing prior to expelling students.



LEGAL FOUNDATIONS- CASE LAW

Dixon v. Alabama . 293 F.2d

LANDMARK DECISION! Leading case on due process for students in public education
(Alabama, Florida Georgia, Texas, Louisiana, Mississippi)



Issue: Does due process require notice and an opportunity to be heard prior to expelling students for misconduct if the institution at issue is a public, tax supported college? YES!

Rule: If an action taken by a government entities harms an individual, the Constitution requires that such action be taken according to appropriate due process. The degree of procedural due process owed to an individual is dependent on the circumstances and interests of the parties.

Conclusion (Why???): The Court's decision against the students was reversed and remanded because the institution gave no notice, no statement of specific charges and/or grounds for expulsion. There appeared to be no fundamental element of fair play and due process prior to expulsion.

Goodbye to in loco parentis to discipline and expel students

LEGAL FOUNDATIONS- CASE LAW

Goss v. Lopez, 419 U. S. 565

Facts:

- Ohio Law provided free education and compulsory attendance for school.
- There were procedural rights for expulsion but none for suspensions up to 10 days.
- Students were being suspended without prior hearing resulting in class action.
- The district court thought that the students' rights had been violated based on procedural due process.
- The school appeals to the Supreme Court.

LEGAL FOUNDATIONS- CASE LAW

Goss v. Lopez, 419 U. S. 565

Issue. Is the suspension of students without prior hearing a violation of procedural due process?
YES!

Rule: An institution's authority to prescribe and enforce standards of conduct in a school is broad but must be executed in a consistent manner in alignment with the constitution. Public education is a property interest protected by the due process clause. Interest may not be taken away without meeting its foundation requirements.

Conclusion (Why???): The liberty interest in education shouldn't be taken away without an opportunity to be heard, with flexibility to be given to a situation.

- **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

U.S. Supreme Court's last word on due process in public schools

LEGAL FOUNDATIONS- CASE LAW

Mathews v. Eldridge, 424 U.S. 319

- Matter regarding the social security disability benefits (SSD) program.
- Addressed whether due process would require the opportunity for an evidentiary hearing prior to the termination of benefits. **NO!**
- A person seeking SSD benefits not as dire as welfare benefits.
- Procedural due process must be evaluated by balancing:
 - The interests of the individual
 - The interest of the government in limiting procedural burdens
 - The risk of curtailing individual interests under the current processes
 - The degree that additional procedures would reduce risk of



LEGAL FOUNDATIONS- CASE LAW NOTICE , OPPORTUNITY TO BE HEARD

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

- Established a due process right to a full hearing before termination of welfare benefits.
- Hearing must be a meaningful time and manner with timely and adequate notice.
- Notice must detail reasons for termination and the individual must have an opportunity to defend oneself by confronting witnesses and presenting arguments and evidence.
- Individual interest in the benefit significantly outweighed the interest in the government to adjudicate eligibility in a more expedited manner.



LEGAL FOUNDATIONS- CASE LAW

GOOD NAME, REPUTATION, HONOR

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

- An individual and his family through extension were exposed without notice or an opportunity to be heard as being or potentially becoming harmful/dangerous to the community.
- 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 due to government action.



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: DISABILITY RIGHTS 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.



CONDUCT RESPONSE TOOLKIT



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

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

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

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

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

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**

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))

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

TITLE IX: SEXUAL HARASSMENT SCOPE

- **Sexual Assault**
- **Dating Violence**
- **Domestic Violence**
- **Stalking**
- **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*



TITLE IX REQUIREMENTS: GRIEVANCE PROCESS HIGHLIGHTS

- **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.
- **Supportive Measures, Removals/Suspensions, Informal Resolutions, Investigation, and Hearings**

TITLE IX REQUIREMENTS: FOUNDATIONAL RIGHTS & PROTECTIONS

- RIGHTS

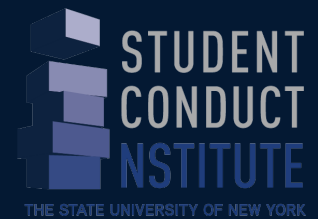
- Confidentiality/ Privacy (with caveats)
- Advisor
- Access to Disability Accommodations
- Equitable Treatment for Complainants AND Respondents
- Evidence Related to the Compliant
- Appeal (under specified circumstances)

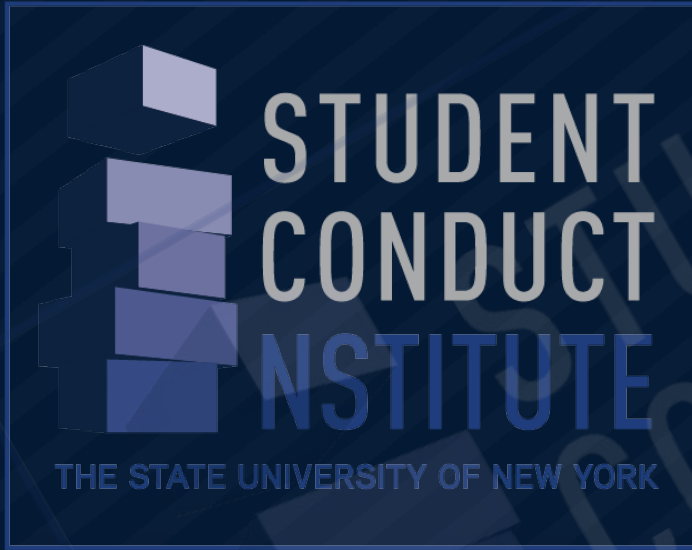
- PROHIBITIONS:

- Conflicts of Interest and Bias
- Retaliation



BREAK





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Office of General Counsel

SCI

FEDERAL LAWS & REGULATIONS
GOVERNING
TITLE IX INVESTIGATIONS

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))

SEXUAL HARASSMENT: KEY DEFINITIONS

“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 (i) the length of the relationship, (ii) the type or relationship, (iii) the frequency of interaction between the persons involved in the relationship.”
- 34 U.S.C. 12291(a)(11) see also 12291(a)(10)

SEXUAL HARASSMENT: KEY DEFINITIONS

“Domestic violence”- “Includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.

- 34 U.S.C. 12291(a)(8)

SEXUAL HARASSMENT: KEY DEFINITIONS

“**Sexual assault**”- “an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.”

- 20 U.S.C. 1092(f)(6)(A)(v)

“**Stalking**” – “engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for his or her safety or the safety of others; or (b) suffer substantial emotional distress.”

- 34 U.S.C. 12291(a)(30)

(Consult with Institutional Counsel Regarding Application of the FBI Uniform Crime Reporting System definitions for Rape, Sodomy, Sexual Assault w/ an object Fondling Incest and Statutory Rape)

JURISDICTION

- 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

TITLE IX: NOTICE TO COLLEGES & UNIVERSITIES “SCHOOLS” OF INCIDENT

“**Actual knowledge**” of an incident 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.

CONFIDENTIALITY CONSIDERATIONS

The college must protect student privacy to the extent possible under the law

- Institutions must inform employees and students of reporter and confidential employee designations.

The Coordinator must **balance** confidentiality with:

- Communications necessary to fulfill legal duties
- The safety of other members of the college community.
- Title IX Coordinators are not confidential employees!

TIX: FORMAL COMPLAINT

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



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



TITLE IX: EMERGENCY REMOVALS

CAUTION: Interim suspensions are prohibited for Title IX student-respondents

- Department of Education considers them disciplinary sanctions

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)



MANDATORY VS. DISCRETIONARY DISMISSAL

MANDATORY DISMISSAL CRITERIA:

- 1) The formal complaint doesn't fall within the statutory criteria for the Title IX grievance process.

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

DISCRETIONARY DISMISSAL CRITERIA:

- 1) Written notice to TIXC from complainant regarding desire to withdraw formal complaint or any allegations in it.
- 2) The respondent is not enrolled/employed by the institution
- 3) If specific circumstances prevent the institution from gathering evidence sufficient to reach a determination

TITLE IX INVESTIGATION: PROMPT PROCESS

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.



Sun	Mon	Tue	Wed	Thu	Fri
	1	2	3	4	5
7	8	9	10	11	12
14	15	16	17	18	19
21	22	23	24	25	26
28	29	30			

TITLE IX INVESTIGATION: PROMPT PROCESS- UNJUSTIFIED DELAYS

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



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

TITLE IX INVESTIGATION: IMPARTIAL PROCESS

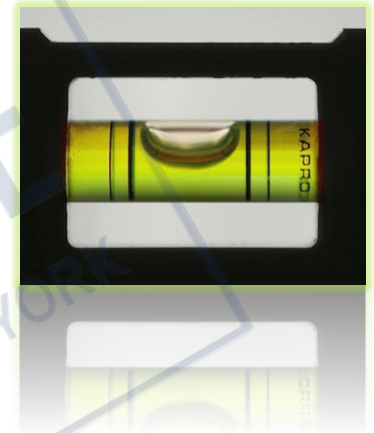
Must collect *exculpatory* and *inculpatory* evidence

- *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!



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: TIMING

- Send to the parties as soon as practicable after filing formal complaint
- No investigative interviews until parties have sufficient time to review allegations



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

SPECIFIC EXCLUSIONS- 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 30331.



RESPONSIBILITY DETERMINATION PROCESS

- ✓ Allegations potentially constituting sexual harassment
- ✓ Procedural steps taken.
- ✓ Findings of fact supporting the determination.
- ✓ Section of the Code of Conduct respondent has/has not violated.
- ✓ Statement of and rationale for each allegation
 - Responsibility determination
 - Disciplinary sanctions
 - Remedies
- ✓ Appeal rights and 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

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 PROHIBITIONS

Title IX prohibits retaliation against people who seek to assert their Title IX rights.

- 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

(Section 106.71):

RETALIATION PROHIBITION

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 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

WHAT'S NEXT?



Incident
Reported

Review and legal requirements.

Sample
Case

Sample case review and tools.

Conduct
Process

Initiation and tools.

QUESTIONS



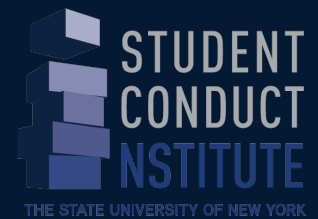
suny.edu

system.suny.edu/sci/news

system.suny.edu/sci/tix2020

system.suny.edu/sci/tixnprm2020

BREAK





Alexander Wheeler
Assistant Director, SCI

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

December 2022

SCI LIVE@ DISTANCE BASIC COMPLIANCE
TRAINING, PART 2

PART 2'S ROADMAP



Review and legal requirements.



Sample case review and tools.



Initiation and tools.

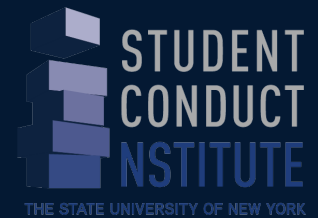
CAMPUS/PROCESS SELF ASSESSMENT

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?

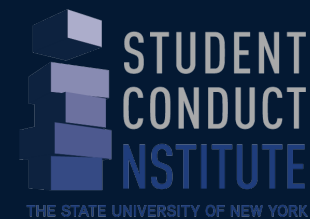
Report Receiver	• Intake.
Title IX Coordinator	• Oversight and Assistance.
Investigator	• Investigate.
Informal Resolution Facilitator	• Facilitate.
Student Conduct Administrator	• Oversight and Assistance.
Advisor	• Advise.
Hearing Panel Member	• Chair. Determinations.
Appeal Panel Member	• Chair. Appeal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



ROLES IN THE PROCESS



SAMPLE CASE REVIEW



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

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
Allegation
S*



The State University
of New York

TOOLS & RESOURCES TO
SUPPORT YOUR PROCESS



THE STATE UNIVERSITY OF NEW YORK

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

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.

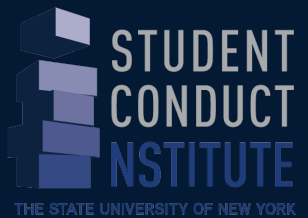
- Timeline [Download](#)
- Program Flyer [Download](#)
- Informational Packet [Download](#)
- Participant Informational Packet [Download](#)
- Program Survey [Download](#)
- Referral Form [Download](#)
- Confidentiality Agreement [Download](#)
- Resolution Agreement [Download](#)
- Evaluation [Download](#)

Search ...

- 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

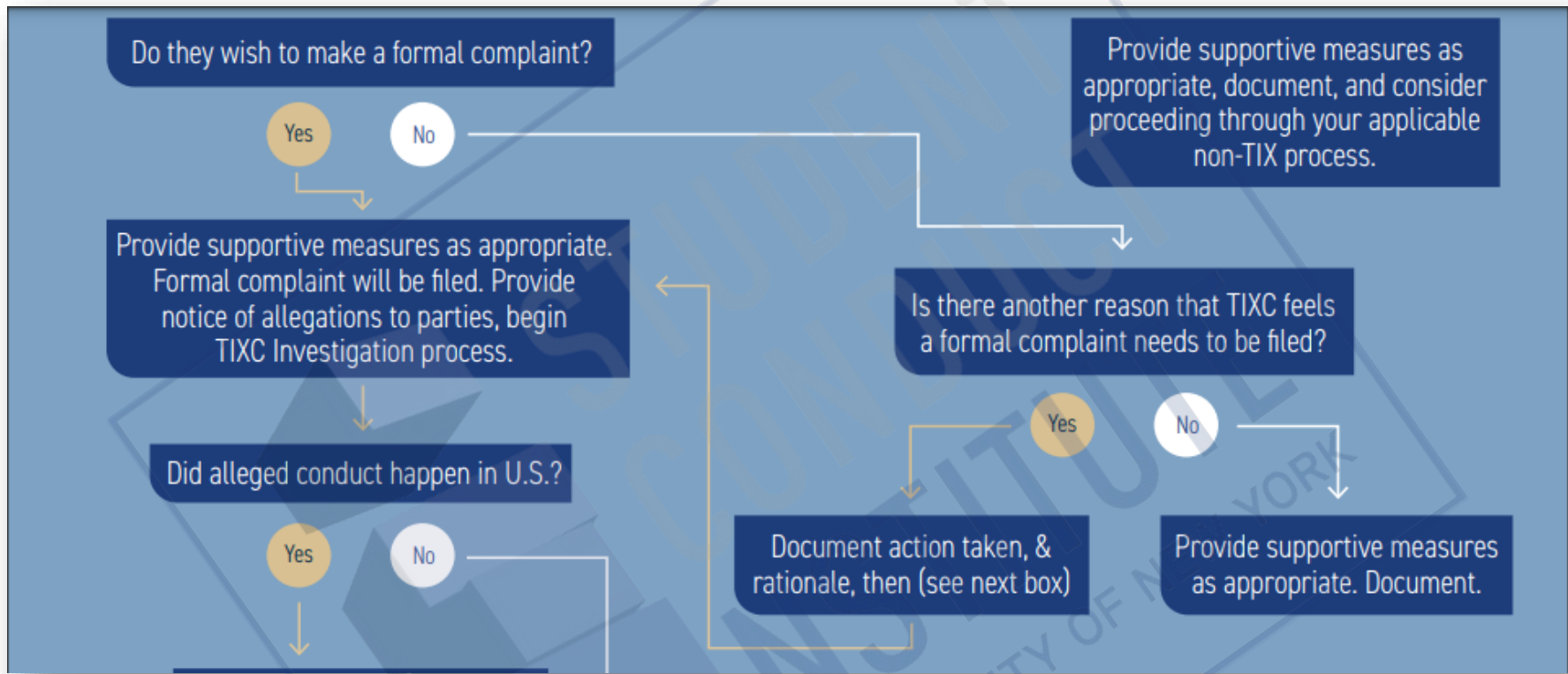
Do they wish to make a formal complaint?

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

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

Provide supportive measures as appropriate. Document.

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

Yes

No

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!

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

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!

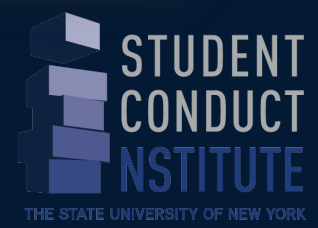
Proceed through TIXC investigation process, documenting each step.

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

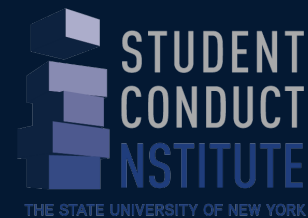
DECISION TREE: IS IT TITLE IX?



CASE PROCESS DECONSTRUCTED

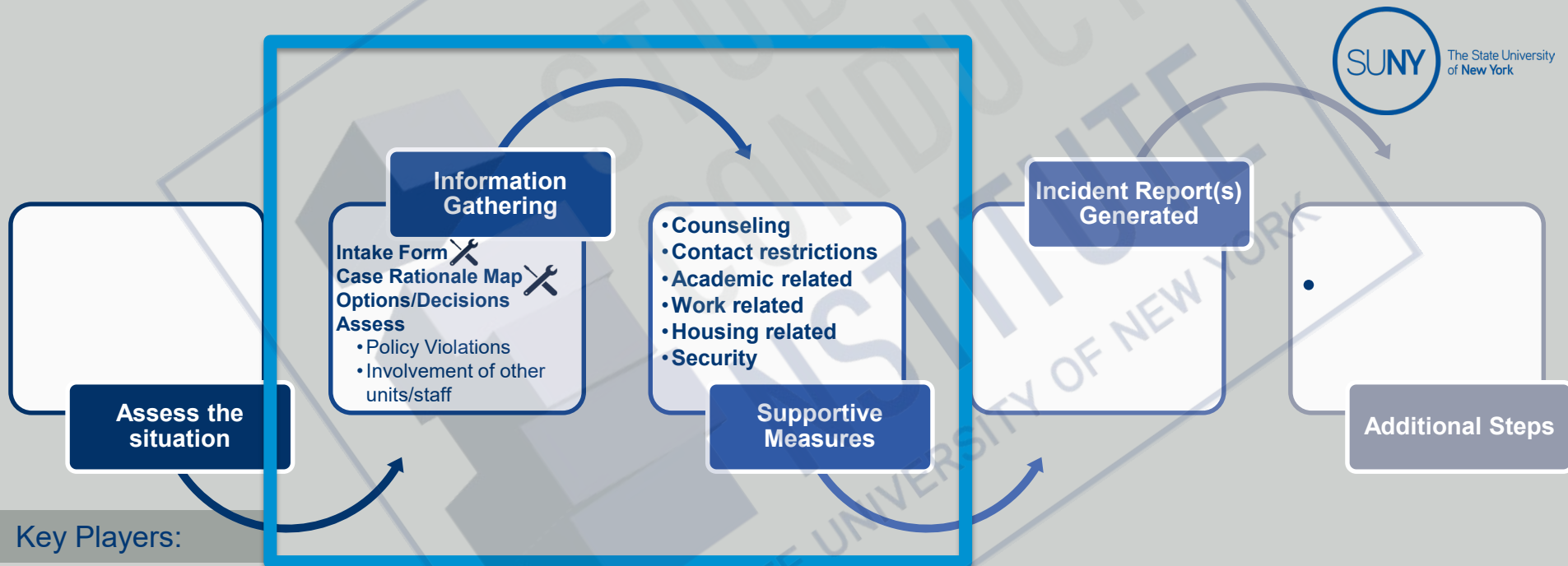


INCIDENT REPORTED OVERVIEW



CASE PROCESS DECONSTRUCTED

1. INCIDENT REPORTED



Key Players:

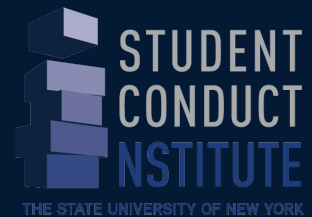




- ✓ Designating responsible and confidential employees
- ✓ Included in your policy
- ✓ List of responsible and confidential employees
- ✓ Disclosure of status to students
- ✓ FERPA
- ✓ Training



CONFIDENTIALITY IN ACTION



- 1 Incident information
- 2 Type of alleged harassment
- 3 Critical incident response
- 4 Office visit follow-up/delayed report
- 5 Supportive measures
- 6 Student rights information review


TITLE IX: INTAKE FORM

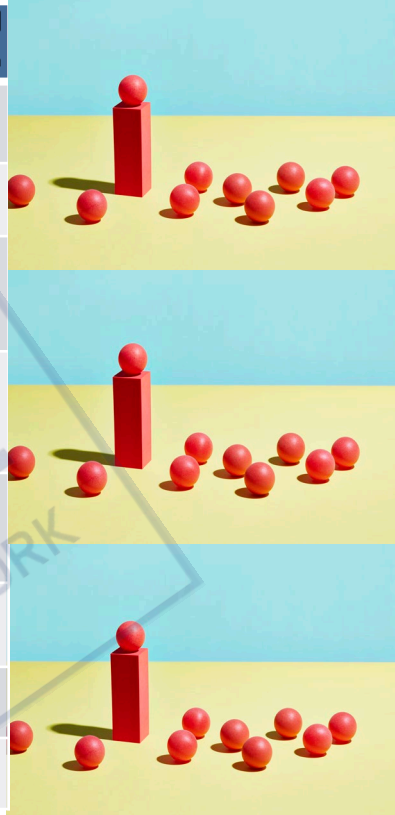




WHAT'S A CASE RATIONALE MAP?

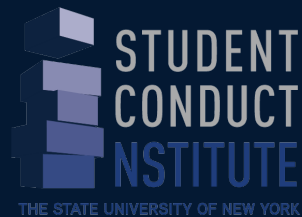


Type	Considerations
Safety	Reasonable accommodations
Health	Medical, Mental
Housing	Room lock change, designated emergency space
Contact restrictions	One-way or Mutual No Contact Order (NCO) 
Academic	Course accommodations, course changes, Professor notifications, leave of absence, withdrawal assistance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



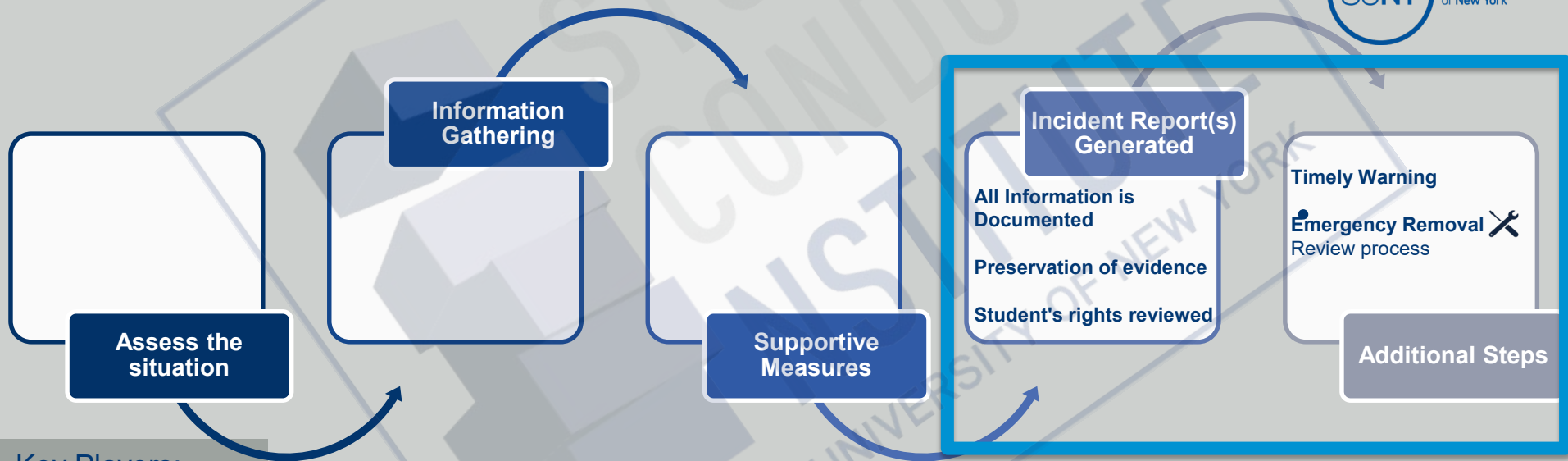
TITLE IX: SUPPORTIVE MEASURES

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

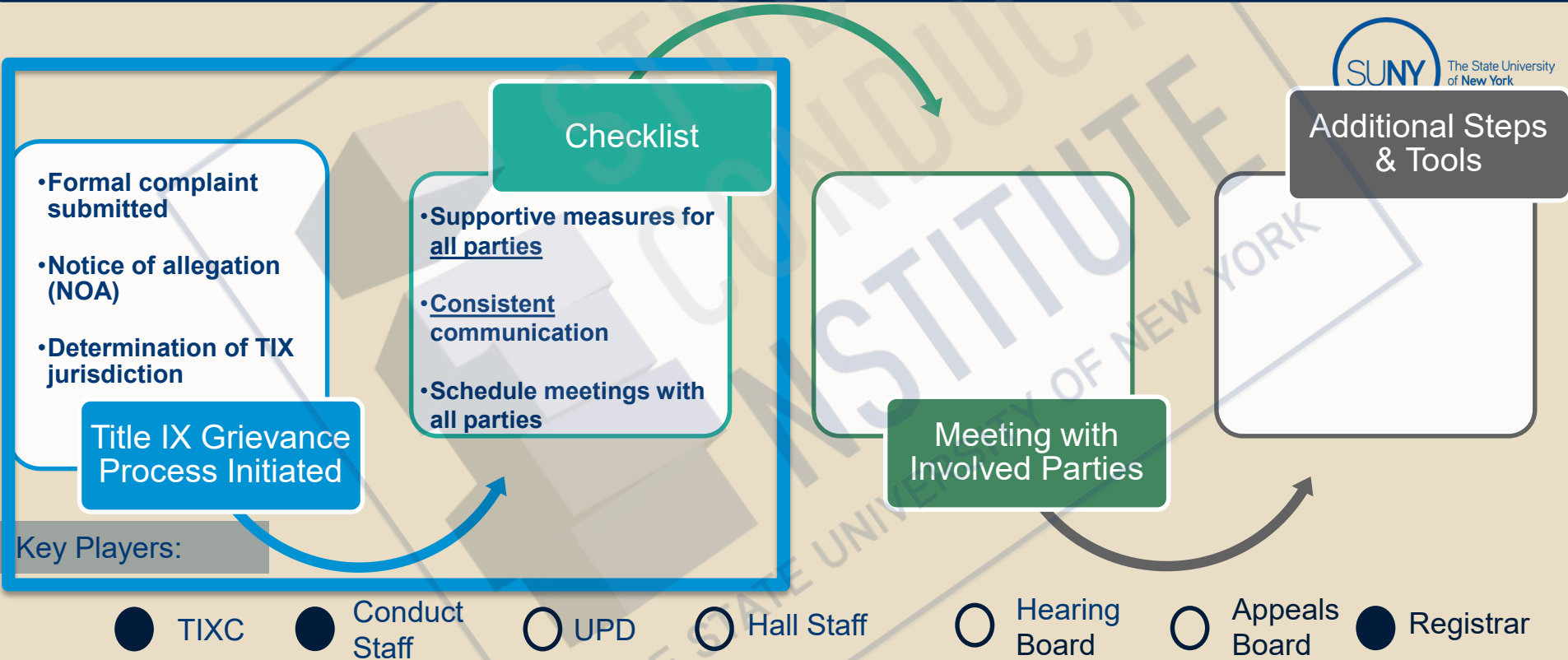


TITLE IX: EMERGENCY REMOVALS IN ACTION

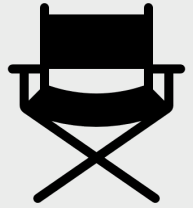


CASE PROCESS DECONSTRUCTED

2. STUDENT CONDUCT PROCESS INITIATED



Action Items

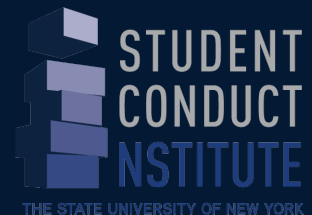


- ✓ Preparation
 - Challenges of virtual work
 - Varied familiarity of the process
 - Delayed report
 - Non-responsive

- ✓ If non-responsive
 - Determination on next steps



TIX: FORMAL COMPLAINT IN ACTION



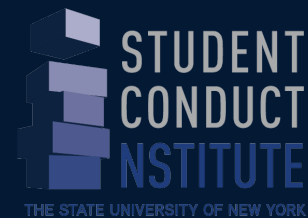
Action Items



- 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

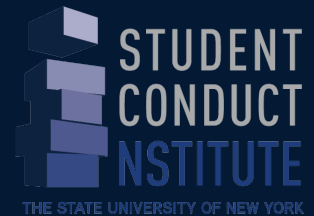
Cross Examination & Relevance

After the Hearing

Checklist

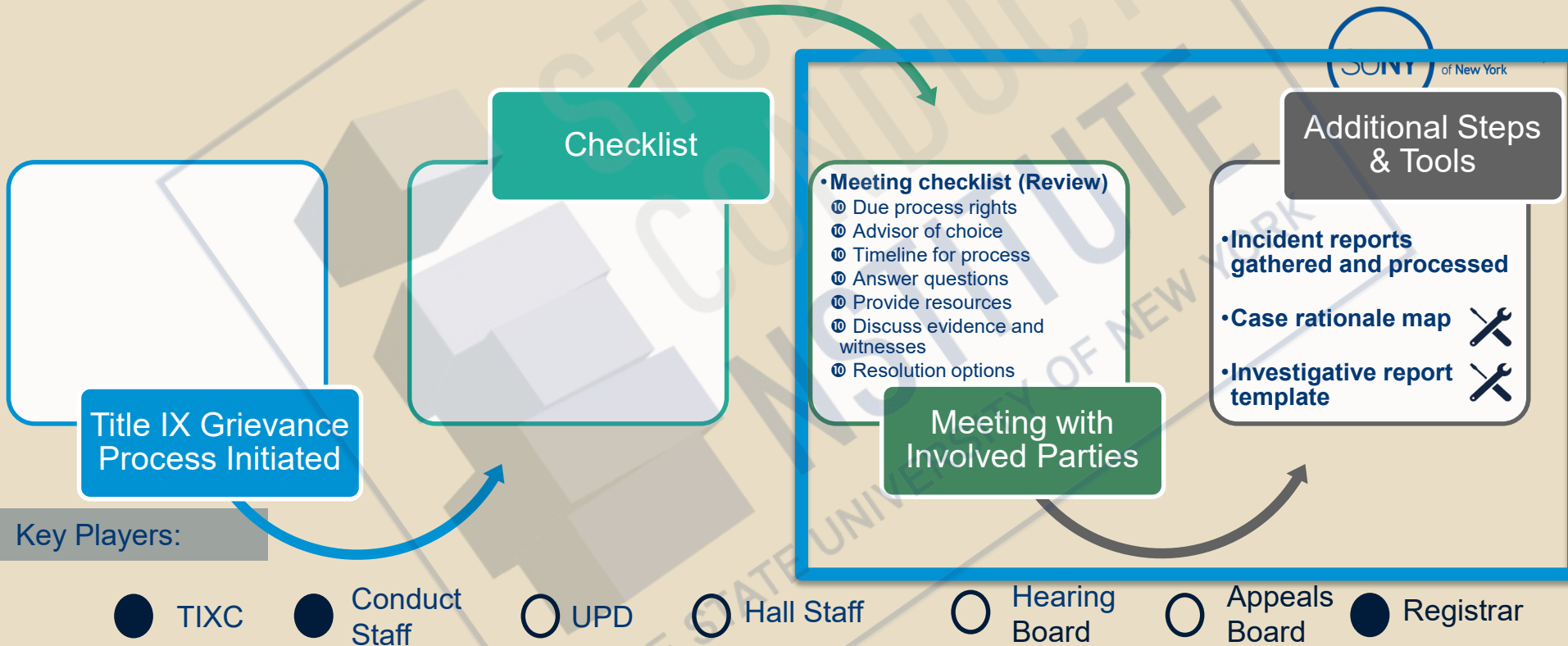


bit.ly/TIXadvisor



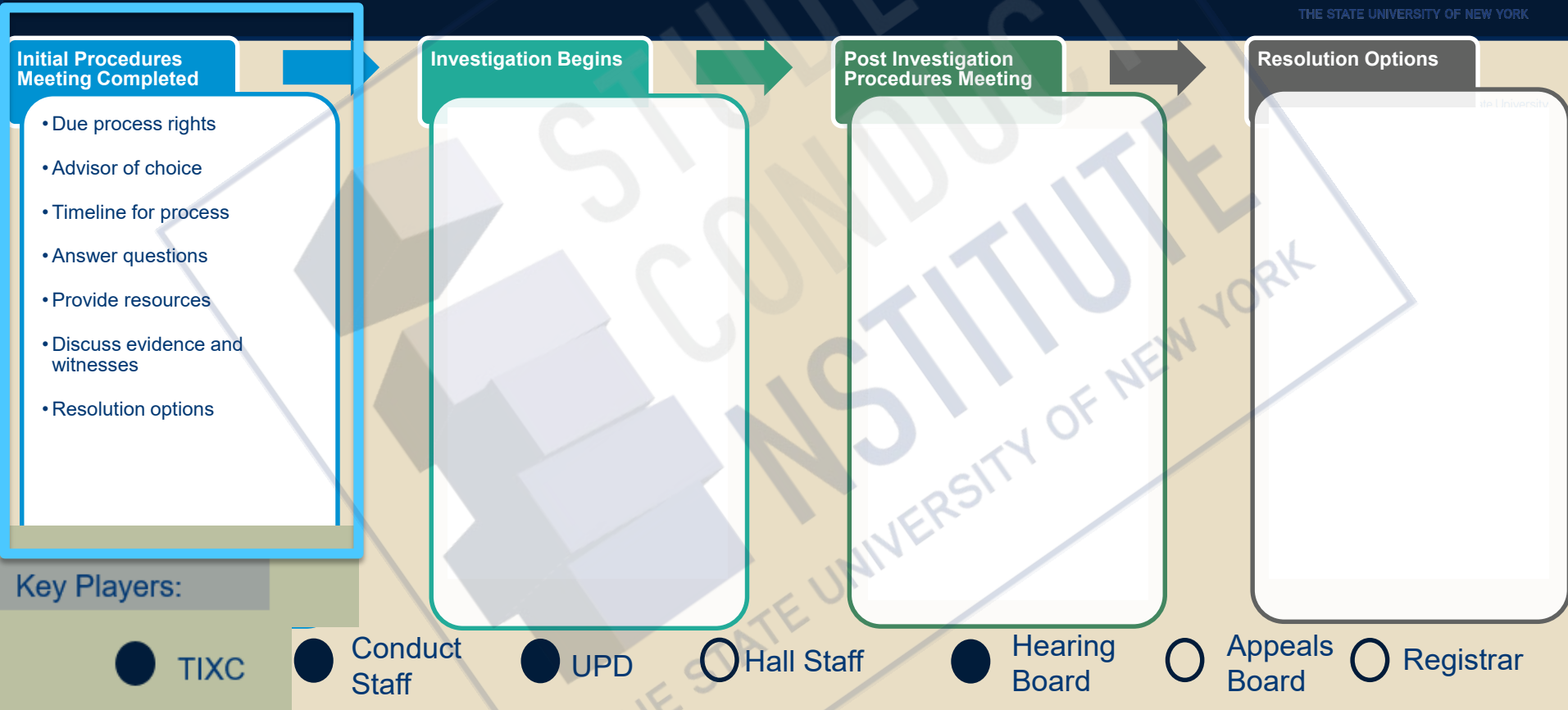
CASE PROCESS DECONSTRUCTED

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

- ✓ **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**



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

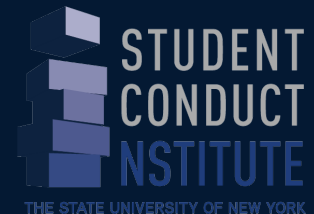
TIXC *can* run the process, but it is not recommended

Examples:

- Administrative resolution
- Restorative justice
- Mediation



INFORMAL RESOLUTIONS

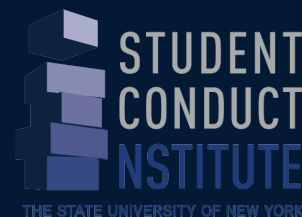




Area	Considerations
Capacity	Staff and technology needs
Policy Updates	Website, code, promotional materials
Process	Conceptualization, implementation, criteria, execution, form creation
Facility	Physical and Virtual
Training	Facilitators and Stakeholders
Awareness	Marketing & outreach

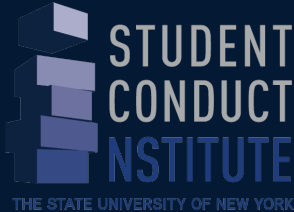



INFORMAL RESOLUTION





DAY 2 ROADMAP





**STUDENT
CONDUCT
INSTITUTE**

THE STATE UNIVERSITY OF NEW YORK



The State University
of New York