

Alexander Wheeler
Assistant Director, SCI

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

November 2022

SCI LIVE@ DISTANCE BASIC COMPLIANCE
TRAINING, DAY 2

TODAY



Sample case review and tools.



Review and legal requirements.



Initiation and tools.

Option #1: Text Voting



Option #2: Web Voting



RESPONDING WITH POLL EVERYWHERE

Would you consider yourself

New professional

Mid-level
professional

Senior-level
professional

Which of these functions best matches your role in the student conduct process?

- Title IX staff **A**
- Residence Life **B**
- Student Conduct Office Staff **C**
- Student Affairs Admin **D**
- Hearing Board Member **E**
- Appeals Board Member **F**
- Human Resources Manager **G**
- Chief Diversity Officer **H**
- Police Officer **I**
- Student Advisor/Advocate **J**
- Other campus professional **K**



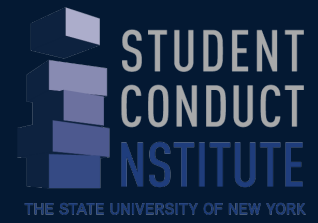
SELF ASSESSMENT

Area	Considerations
Capacity	Staff, caseload, threat assessment team, care team, technology needs
Policy Updates	Website, code, promotional materials
Processes	Incident report update and process related forms
Facilities	Space needs, limitations, reserving space
Training	Staff, faculty, University or local police, public safety, campus security
Awareness	Presentations, flier campaigns, tabling, student leaders, Residential life staff, orientation

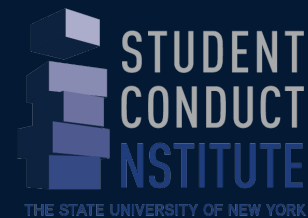
Report Receiver	• Initial intake of report.
Title IX Coordinator	• Oversee Title IX Grievance Process and the investigation process. Assist in the emergency removal process.
Investigator	• Investigate a formal complaint received by the Title IX Coordinator.
Informal Resolution Facilitator	• Assist in the coordination and execution of the informal resolution process.
Student Conduct Administrator	• Oversee the adjudication process and coordination of referral, hearing and appeal review process. Assist in the emergency removal process.
Advisor	• Assist the student throughout the investigation and student conduct process.
Hearing Panel Member	• Serve as a decision-maker on the hearing panel. They may also serve in the capacity of a Hearing Chair who is the lead member of the decision-making panel.
Appeal Panel Member	• Serve on the appeal review panel and make a determination utilizing the appropriate appeal grounds.
Resources Offices/Units	• Staff that assist with enacting supportive measures including external agencies and advocacy centers.



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?

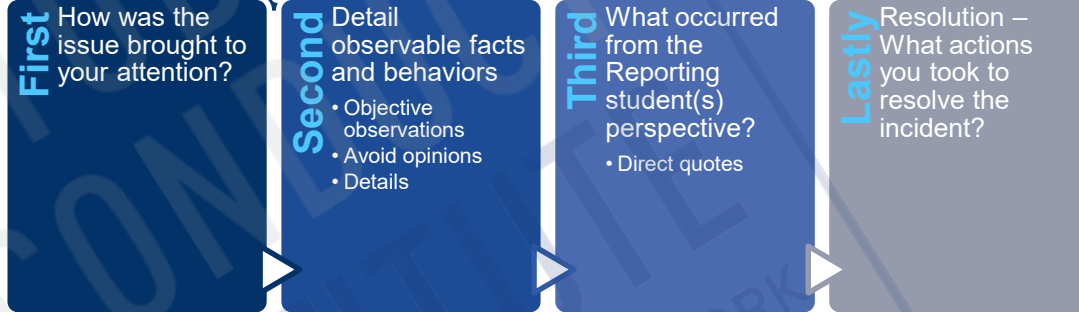
Highlight

- Knowledgeable staff
- Detailed reports – including *observable facts and behaviors*
- Steps taken are articulated throughout the report

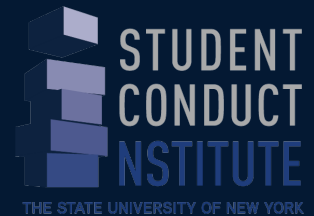
Areas of

- **Mandatory reporter / confidentiality disclosure**
- **Number of disclosures**

Incident Report Structure



INCIDENT REPORT WRITING



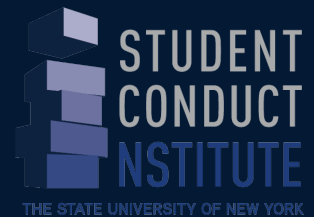
Option #1: Text Voting



Option #2: Web Voting



RESPONDING WITH POLL EVERYWHERE



Have you worked on or received a report similar to the sample case?



Would you know how to approach the case, in your role, if it were to occur at your institution?



Start the presentation to see live content. For screen share software, share the entire screen. Get help at pollev.com/app

Flipbook

Title IX
Grievance
Process
Decision
Tree*

Items with an Asterix
(*) are available in
your training packet.

Case
Rationale
Map*

Advisor
Resource
Guide

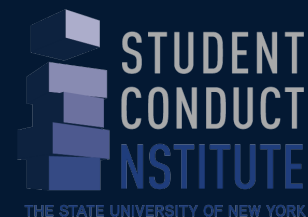
Intake
Form

Notice of
Allegation
s*



The State University
of New York

TOOLS & RESOURCES TO
SUPPORT YOUR PROCESS



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)

Model Title IX Policies

- Model Title IX Policy
- Model Information Resolution Policy

Training Guides for Officials and Advisors

- Training Checklist
- Conflicts of Interest and Bias Checklist
- Advisor Resource Guide

Intake and Supportive Measures

- Decision Tree
- Case Rationale Map for Title IX Coordinators
- Model Title IX Intake Form
- Model No Conduct Order
- Model Emergency Removal Order

Charges and Investigation

- Notice of Allegations Template
- Notice of Removal to Conduct Process Template
- Notice of Investigatory Interview (Respondent & Complainant)
- Investigative Report Template
- Model Agreement Regarding Evidence Disclosure
- File Sharing Platform Options and Pricing Guide
- SCI Tech Guide

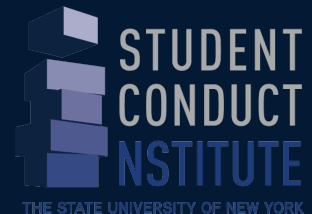
Hearing

- Model Script for Title IX Hearings
- Model Decorum Policy
- Guide for Determining Relevance
- Virtual Hearing Options Comparison Chart
- Determination Regarding Responsibility Template



Posted Training Materials and More!

TITLE IX COMPLIANCE TOOL KIT 





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

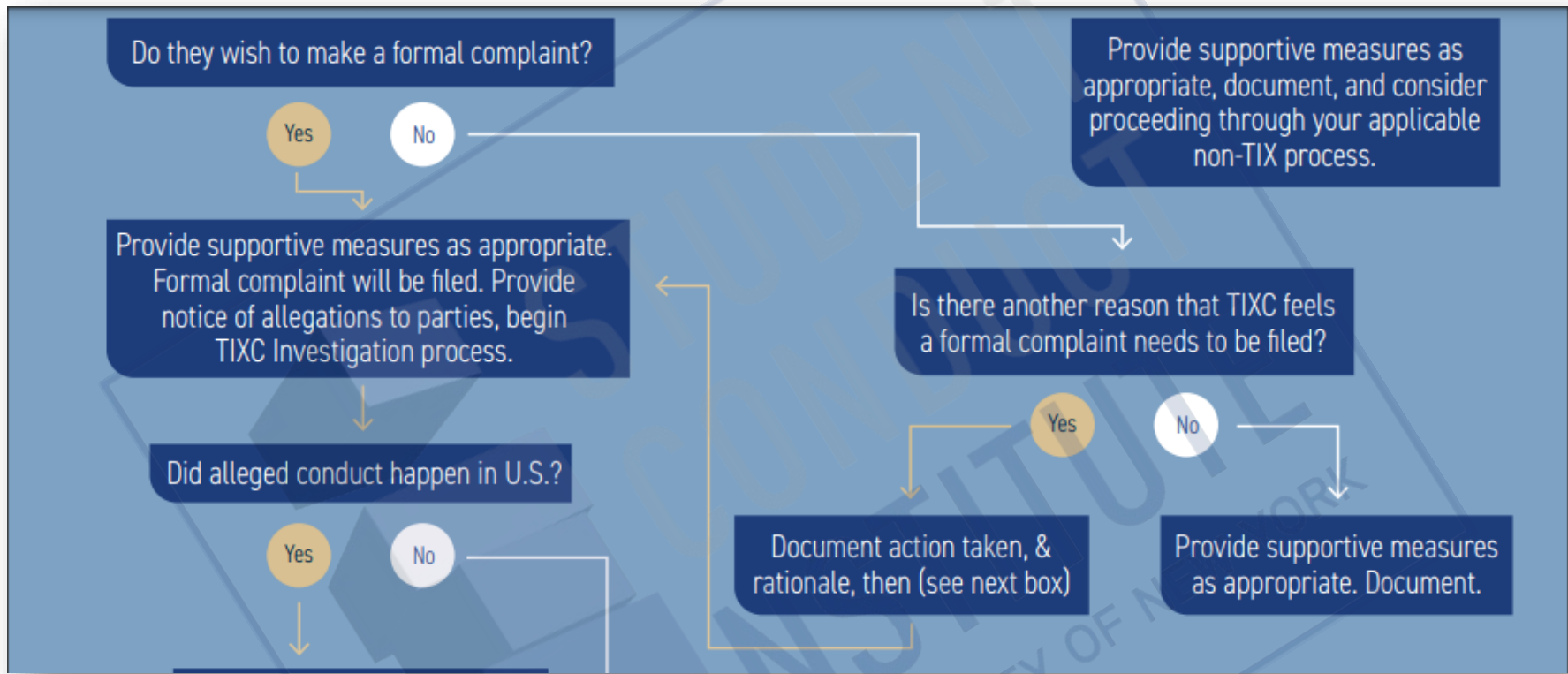
Do they wish to make a formal complaint?

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

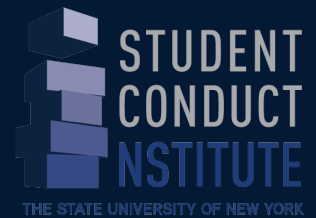
DECISION TREE: IS IT TITLE IX?



CASE PROCESS DECONSTRUCTED



INCIDENT REPORTED OVERVIEW



“**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.

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

Action Items

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



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

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

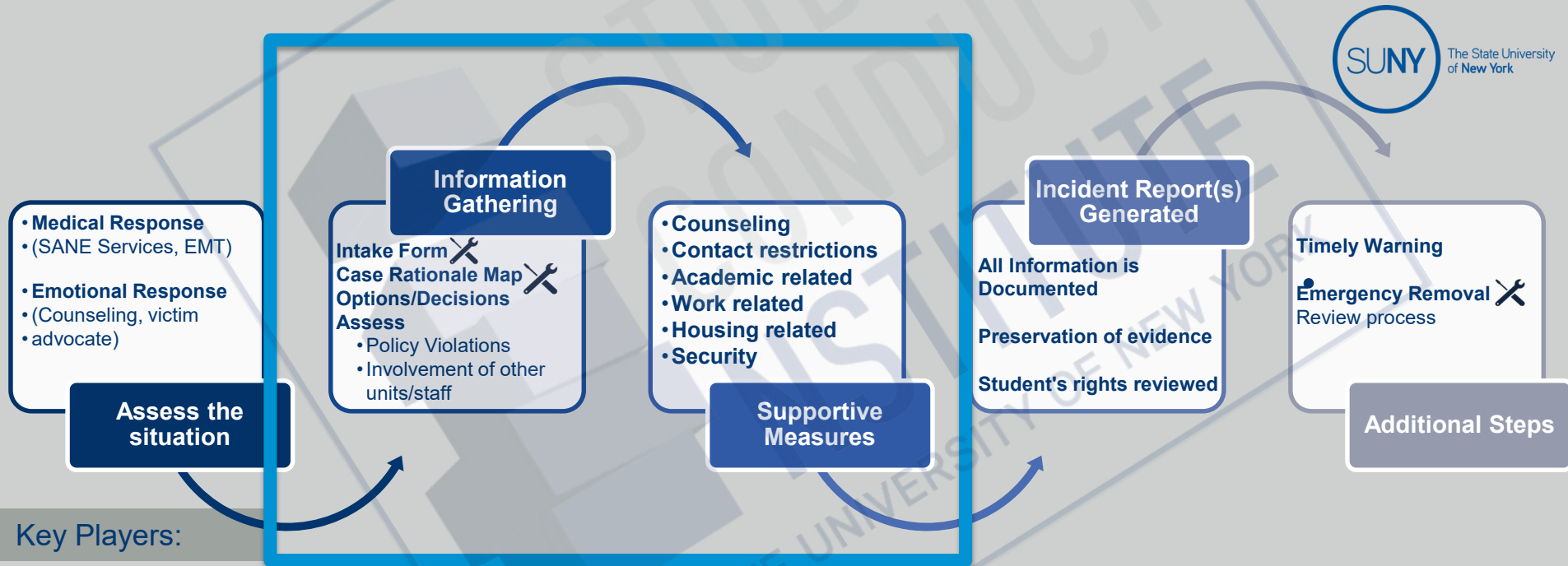
The Coordinator must balance confidentiality with:

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

AVAILABLE CONFIDENTIALITY

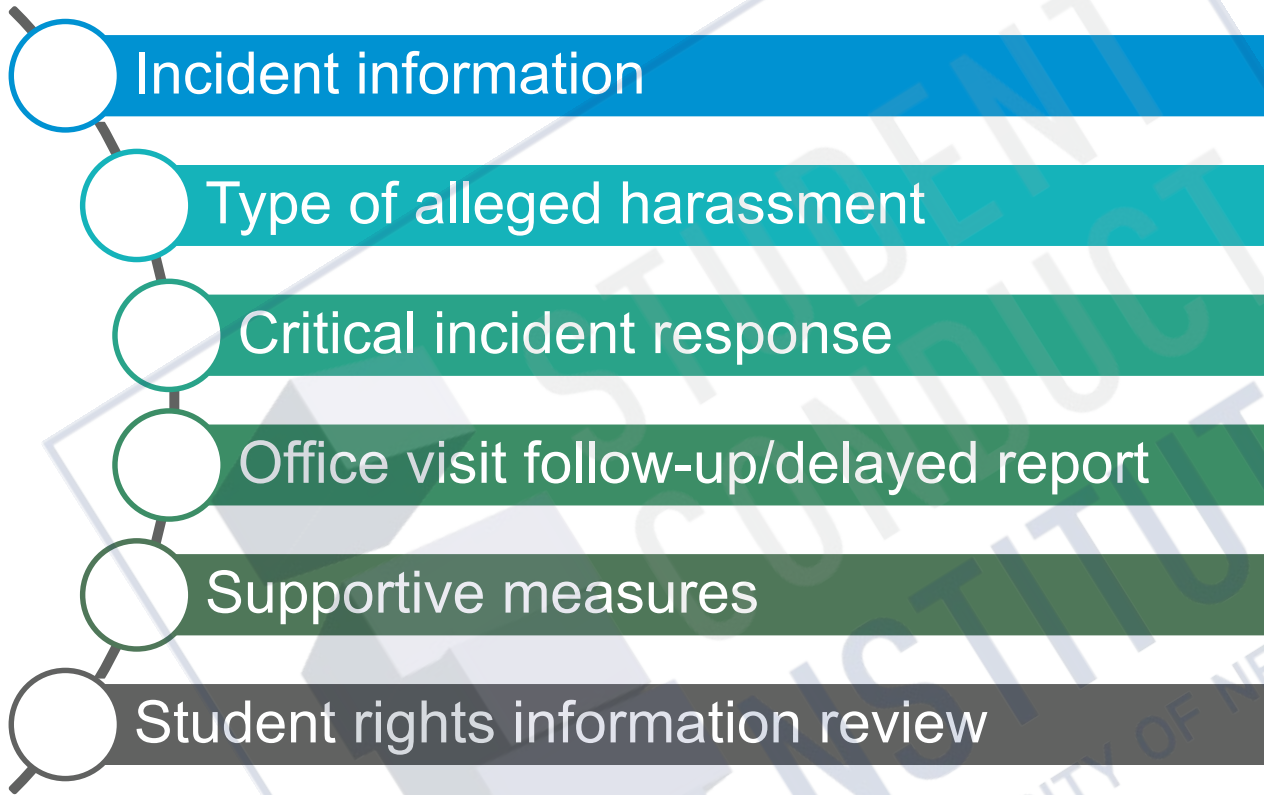
CASE PROCESS DECONSTRUCTED

1. INCIDENT REPORTED

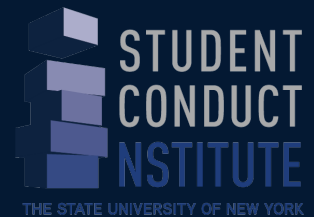


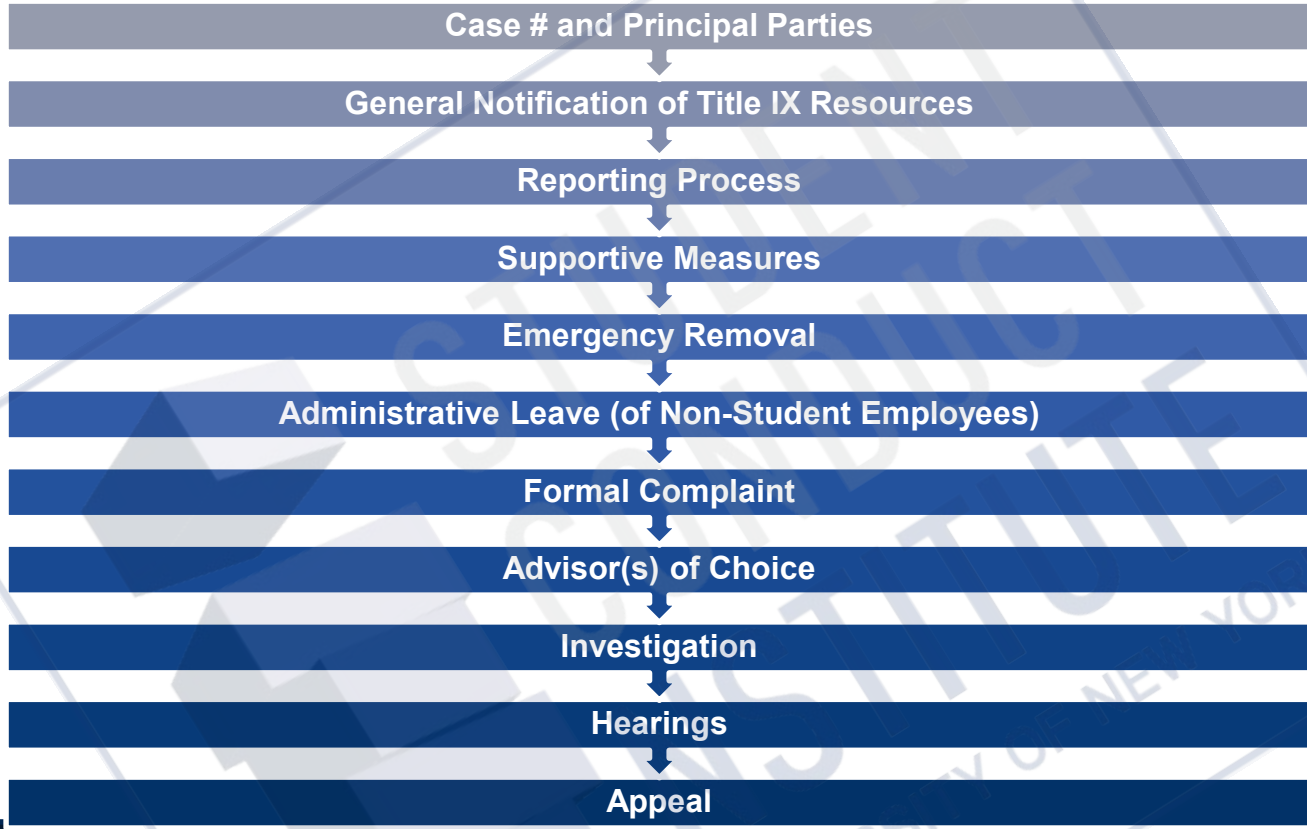
Key Players:



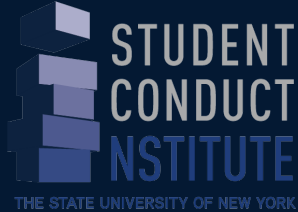


TITLE IX: INTAKE FORM





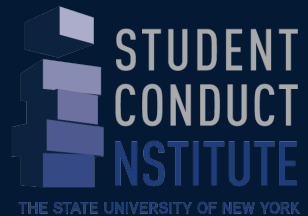
WHAT'S A CASE RATIONALE MAP?



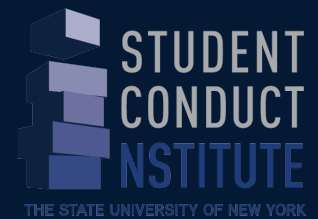
Type	Considerations
Safety	Security escort, reasonable safety accommodations
Health	Medical and mental health related resources
Housing	Location of incident, safety of the student(s) involved, room lock change, designated emergency space
Contact restrictions	One-way or Mutual No contact order 
Academic	Course accommodations, course changes, Professor notifications, leave of absence, withdrawal assistance
Work	On/Off Campus employment – restrictions may be necessary to avoid contact
Facility based	Gym, library, dining, University events, etc...
Recreational	Student group, athletic team, internship program



TITLE IX: SUPPORTIVE MEASURES

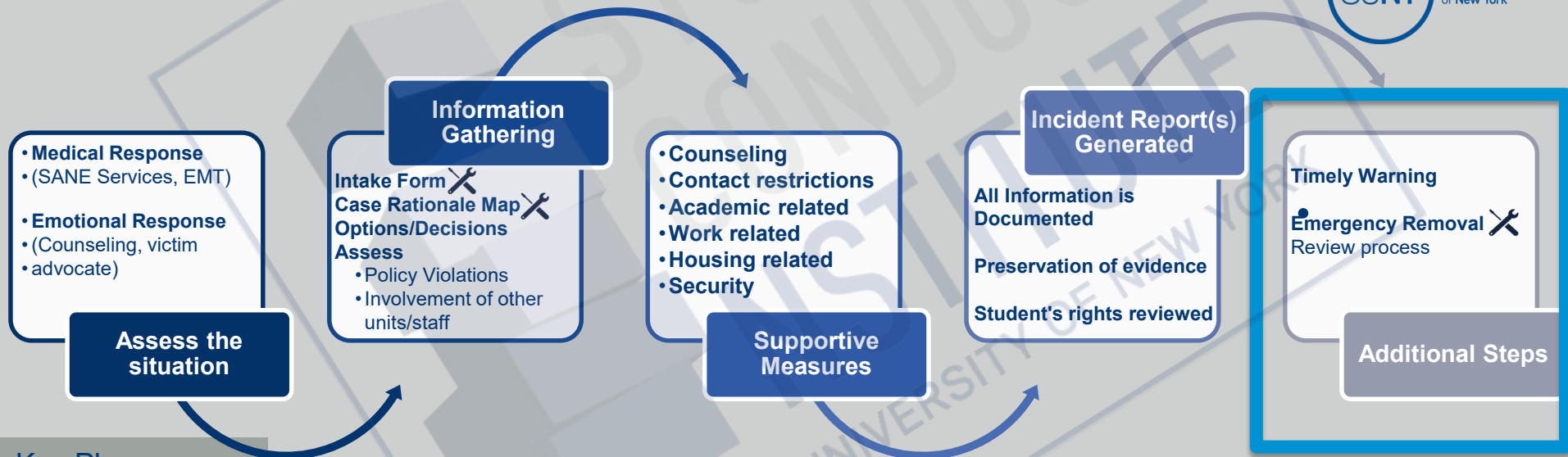


BREAK



CASE PROCESS DECONSTRUCTED

1. INCIDENT REPORTED



Key Players:



TIXC



Conduct
Staff



UPD



Hall Staff



Hearing
Board



Appeals
Board



Registrar

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

- Department of Education considers them disciplinary sanctions

Emergency Removal may be used where:

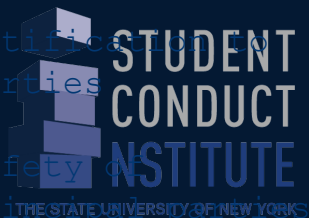
- Person poses threat of immediate **physical** harm
- Threat arises from allegations of sexual harassment
- Depends on individualized safety and risk assessment

Must provide opportunity for “immediate” opportunity to challenge the removal (need not be a formal hearing)

Action Items

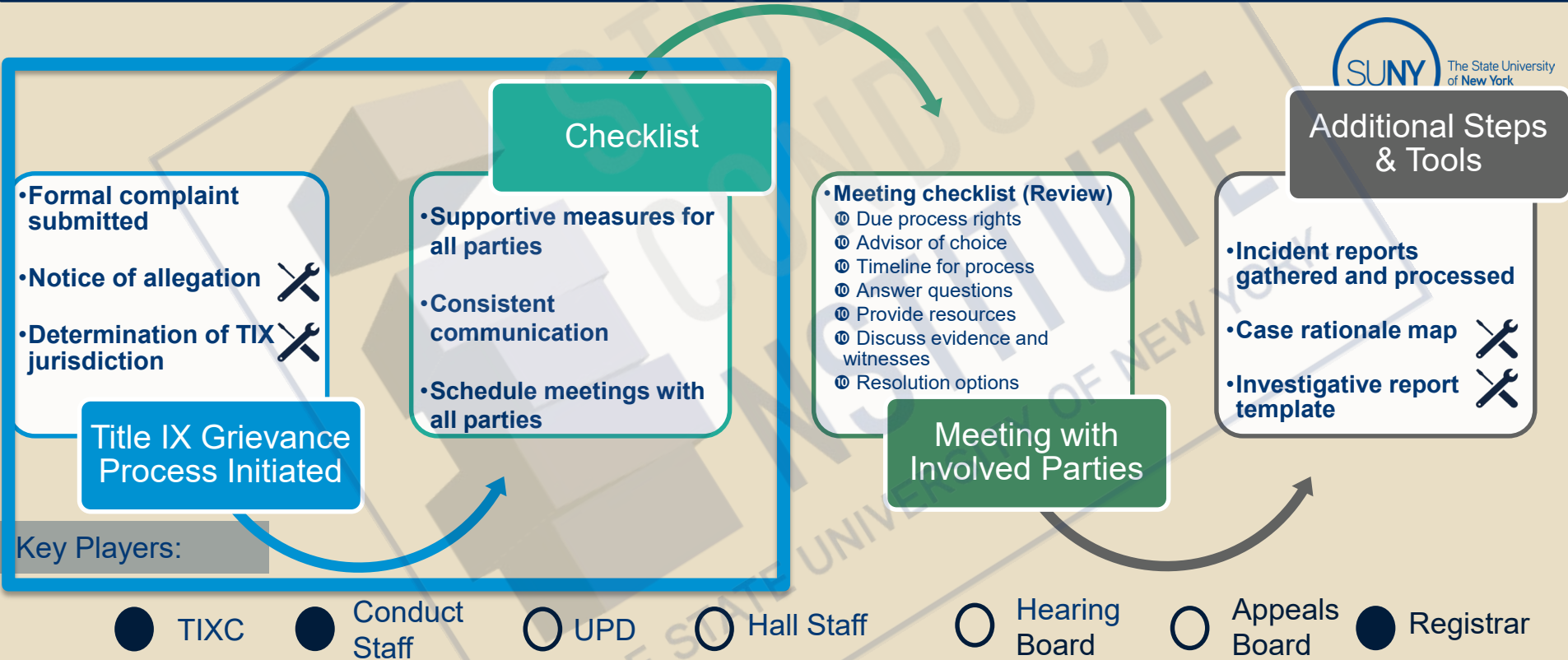
- ✓ Who makes the final call?
- ✓ How will you assemble staff?
- ✓ Documents and Form Templates
- ✓ Review meeting with student
- ✓ Review process/tech considerations
- ✓ Review process determination

TITLE IX: EMERGENCY REMOVALS

- ✓ Notification to parties
 - ✓ Safety of
- 
- STUDENT
CONDUCT
INSTITUTE
- THE STATE UNIVERSITY OF NEW YORK

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

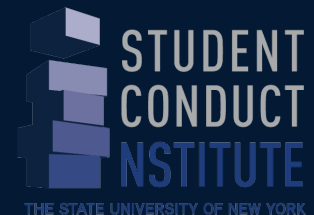
Multiple complaints arising from same incidents can be consolidated

Action Items

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



TIX: FORMAL COMPLAINT



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



• 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

**MANDATORY &
DISCRETIONARY DISMISSAL**

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



TITLE IX TOOLKIT



You are entitled to an advisor of your choice, who may be, but is not required to be, an attorney. Costs incurred by having such an advisor are your responsibility. In the event this matter proceeds to a hearing and you do not have the assistance of an advisor of choice, the institution will provide you with an advisor, at no cost or fee to you, for the purpose of conducting certain cross-examination within the hearing process.

You also have the right to inspect and review evidence directly related to the allegations of sexual harassment before the investigation concludes, including the evidence upon which {institution} does not intend to rely in reaching a determination regarding responsibility, and evidence that both tends to prove or disprove the allegations, whether obtained from a party or other source.

If applicable: Please be aware that section ___ of the Institution's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.

Sincerely,

Title IX Coordinator

CC: COMPLAINANT

NOA



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

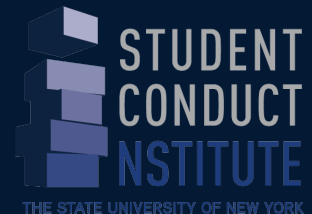
Cross Examination & Relevance

After the Hearing

Checklist

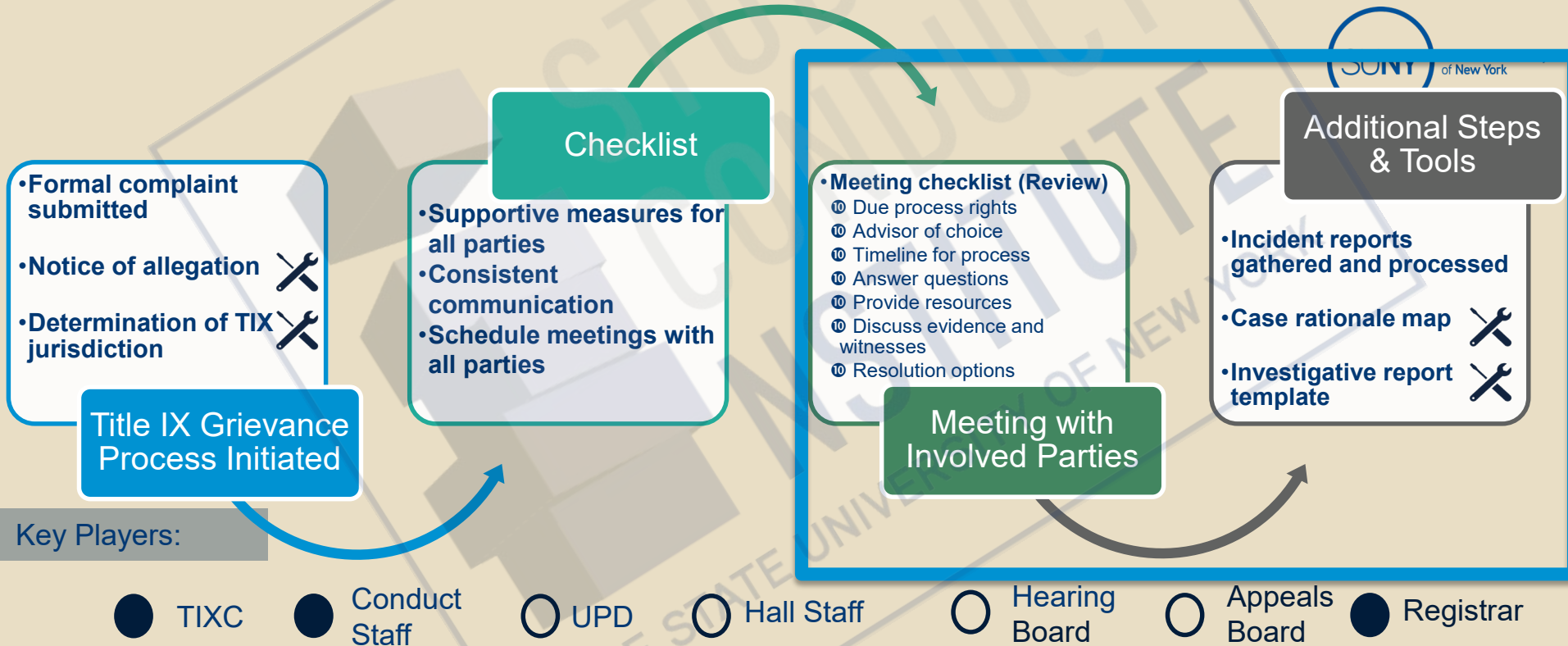


bit.ly/TIXadvisor



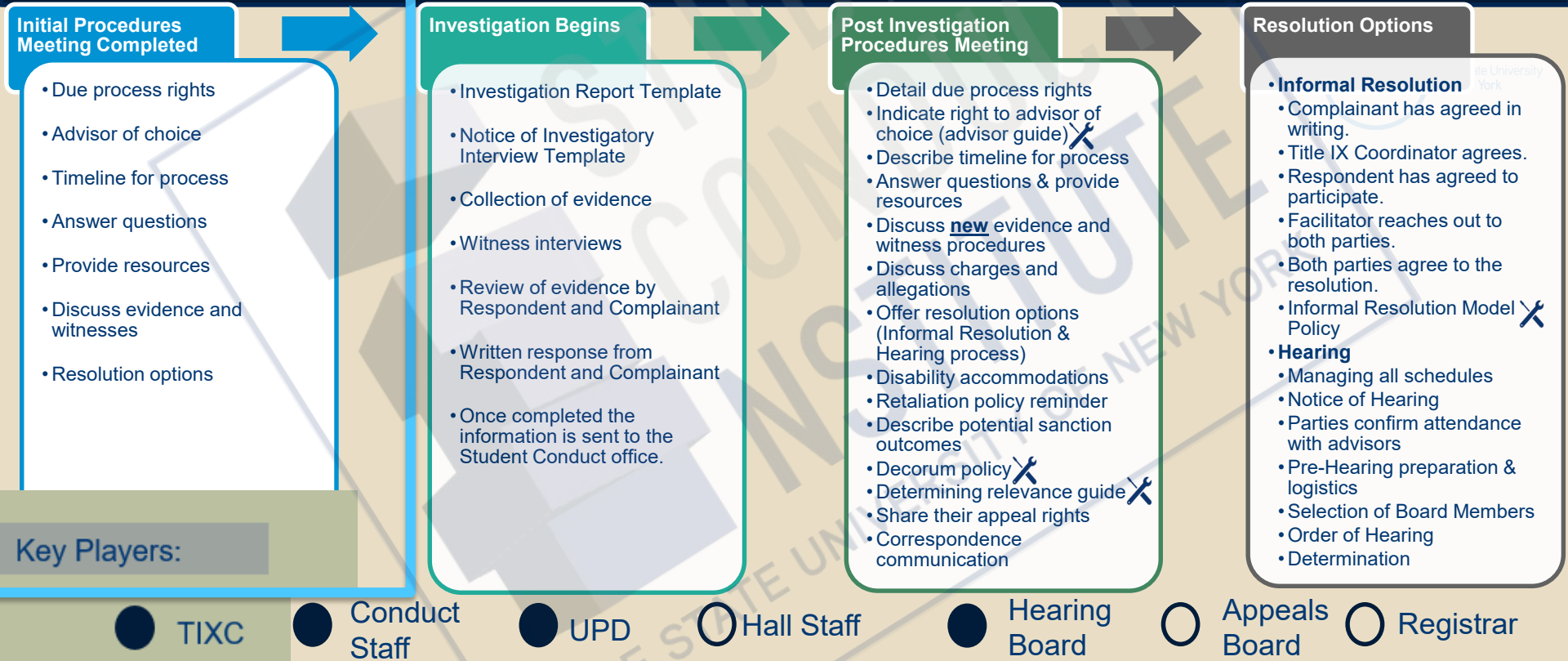
CASE PROCESS DECONSTRUCTED

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**

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**
- ✓ **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



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

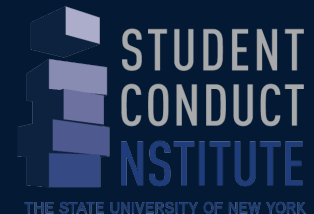
TIXC *can* run the process, but it is not recommended

Examples:

- Administrative resolution
- Restorative justice
- Mediation



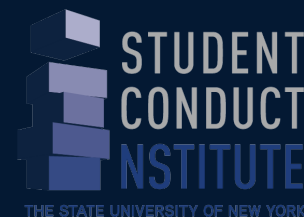
INFORMAL RESOLUTIONS



Area	Considerations
Capacity	Staff and technology needs
Policy Updates	Website, code, promotional materials
Process	Conceptualization, implementation, criteria, execution, form creation
Facility	Space needs, limitations, reserving space
Training	Individuals serving in a facilitator capacity and individuals explaining the Informal Resolution process
Awareness	Marketing & outreach



INFORMAL RESOLUTION





Review and legal requirements.

Investigations

Review, tools, and legal requirements.

Pre-hearing prep

Hearing

Overview, tools, and legal requirements.



DAY 3 OVERVIEW



