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THE STATE UNIVERSITY OF NEW YORK

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SCI LIVE@ DISTANCE BASIC COMPLIANCE TRAINING, DAY 4

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

Overview

Review and legal requirements.

Homework alert!
State Module Assignment

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DAY 4 OVERVIEW

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CASE PROCESS DECONSTRUCTED

1. Incident Reported
2. Student Conduct Process Initiated
3. Pre-Hearing Prep Investigation
4. Hearing
5. Appeal Process
6. Decision Implementation

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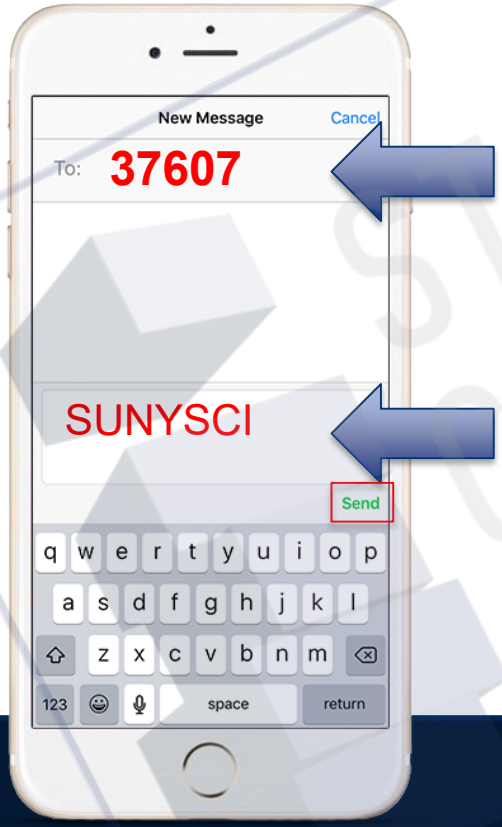
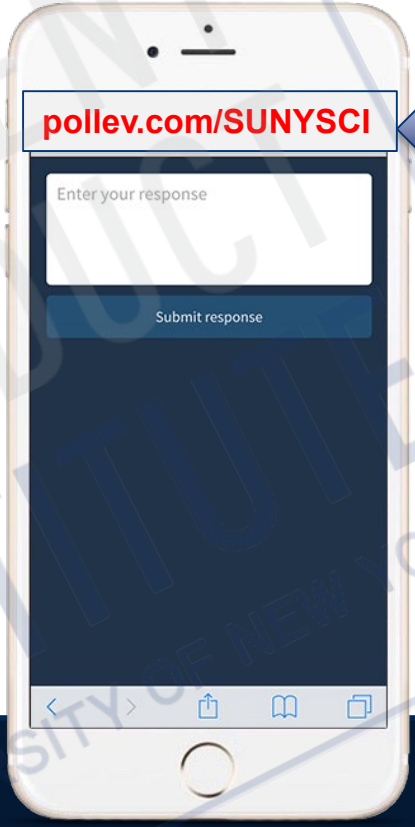
Option #1: Text Voting



Option #2: Web Voting



RESPONDING WITH POLL EVERYWHERE

It is important to have an understanding of the impact of trauma when conducting an investigation into sexual or related misconduct because:

The impact of trauma may explain aspects of the disclosure that are seemingly inconsistent.

Evidence of a traumatic response is proof that the reporting party was sexually assaulted.

What is NOT the goal of the Investigative Report?

summarize relevant evidence related to the allegations

indicate witnesses interviewed

describe inconsistencies identified within testimony

draw credibility judgments about witnesses

What are some considerations in preparing for a virtual hearing?

Which of these individuals CANNOT serve on a hearing board?

An athletic team coach	**A**
A librarian from your University library	**B**
A member of the appeal panel for that specific case	**C**
A residential life staff member	**D**

Student Conduct Administrator	• Assists the students through the resolution of the process
Hearing Board Member	• Decision Maker, may also as the hearing chair
Appeal Panel Member	• Reviews appeals and makes a determination utilizing the appropriate appeal grounds
Other Offices/Units	• Staff with supportive measures and decision implementation

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ROLES IN THE PROCESS

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CASE PROCESS DECONSTRUCTED

POST HEARING OVERVIEW (4,5,6)

CASE PROCESS DECONSTRUCTED

ROAD TO RATIONALE

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Deliberation

- **Roles**
  - The Conduct Administrator
  - Decision maker(s)
  - Note taker
  - Rationale writer
- **Consideration**
  - Checking bias
  - Clear expectations as to who is a voting member

+

Determination & Remedy

- **Not-Responsible**
  - Revisiting restrictions
- **Responsible**
  - Sanction Guidelines
  - Prior history
  - Re-admission components
- **Consideration**
  - Standard of Evidence
  - Complainant resources
  - Respondent resources
  - Consistency
  - Non-discriminatory

=

Rationale

- Exclusion Status
- Relevancy
- Authenticity
- Credibilty/ Reliability
- Weight

EVIDENCE BASED DECISION-MAKING- KEY CONSIDERATIONS

Evidence-Based Decision Making

- Must it be excluded?
- If no, is it relevant?
  - Plain and ordinary meaning. Does it tend to make a material fact more or less likely to be true?
- If yes, is it authentic?
- If yes, is it **credible** and reliable?
  - Why (or why not) is it worthy of belief?
- If yes, does the evidence have weight?
  - Consider: Specialized evidence types

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Credibility Determinations: "Objective" evaluation

- Cannot be based on the party's status
- Cannot apply "predictive behaviors"
- But you may consider:
  - The party/witness' stake in outcome. 85 Fed. Reg. 30247.
  - The potential conflict of interest where advisor is also witness. Id., 30299.
  - Possible motive to fabricate testimony
  - Possible coaching

Credibility Determinations: "Objective" evaluation

- *Generally* more objective
  - Consistency and specificity of testimony
  - Corroboration of testimony
  - Contradictory testimony or evidence by others
  - Destruction of evidence. 85 Fed. Reg. 30300.
  - Especially for experts: character, background, experience, and training
- *Caution:* more subjective
  - Demeanor and body language (permissible under Final Rules @ p. 30321)
  - Inherent plausibility ("It just makes sense")
  - Evasiveness
  - Recall

Direct Evidence:

First-hand observations and evidence of the incident or its surrounding circumstances are direct evidence. This evidence is often given considerable weight at a hearing. This includes:

- Direct statements from the parties. For example:
  - A witness who provides testimony that they walked into a room at the party and observed the respondent engaging in sexual activity with the complainant, who was unresponsive, not moving, and had their eyes closed.
  - A witness who provides testimony that they did three shots of vodka with the parties.

Corroborating Evidence:

Statements or tangible materials that tend to confirm direct evidence regarding the incident may serve as corroborating evidence. This may include:

- Video evidence
- Text message threads
- Security Footage
- Swipe Card Records
- Business Records
- Medical Records

Circumstantial Evidence:

Statements or tangible materials that rely on an inference to connect it to a conclusion of fact. The weight that the decision-maker gives to circumstantial evidence will vary greatly depending on the surrounding evidence.

- Example: Investigators may obtain photographs of the scene of the alleged sexual assault which show several empty vodka bottles and overturned Solo cups. The presence of these items may be suggestive, though not determinative, of the parties' level of intoxication.

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WEIGHING TESTIMONY & EVIDENCE

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- ✓ 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 for:
  - ➢ the result, including a determination regarding responsibility;
  - ➢ any disciplinary sanctions imposed on the respondent; and
  - ➢ whether remedies designed to restore or preserve equal access to recipient's education program or activity will be provided to complainant; and
- ✓ Describe the recipient's **appeal procedures**

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RESPONSIBILITY DETERMINATION PROCESS

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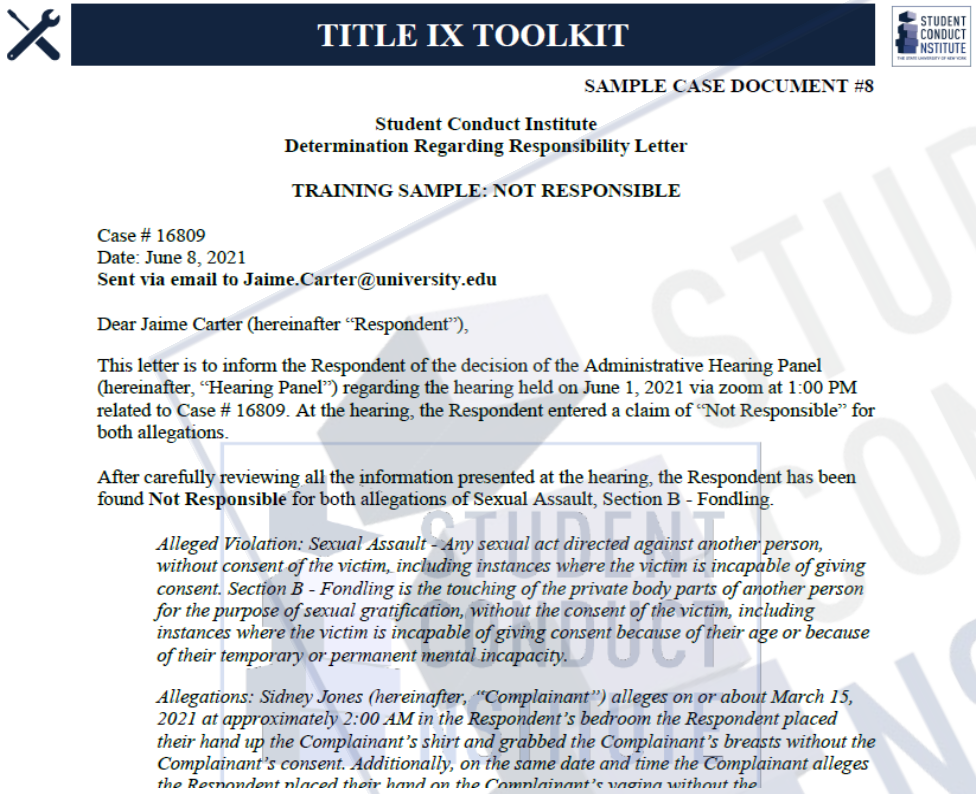

TITLE IX TOOLKIT

SAMPLE CASE DOCUMENT #8

Student Conduct Institute
Determination Regarding Responsibility Letter

TRAINING SAMPLE: NOT RESPONSIBLE

Case # 16809
Date: June 8, 2021
Sent via email to Jaime.Carter@university.edu

Dear Jaime Carter (hereinafter "Respondent"),

This letter is to inform the Respondent of the decision of the Administrative Hearing Panel (hereinafter, "Hearing Panel") regarding the hearing held on June 1, 2021 via zoom at 1:00 PM related to Case # 16809. At the hearing, the Respondent entered a claim of "Not Responsible" for both allegations.

After carefully reviewing all the information presented at the hearing, the Respondent has been found **Not Responsible** for both allegations of Sexual Assault, Section B - Fondling.

Alleged Violation: Sexual Assault - Any sexual act directed against another person, without consent of the victim, including instances where the victim is incapable of giving consent. Section B - Fondling is the touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of their age or because of their temporary or permanent mental incapacity.

Allegations: Sidney Jones (hereinafter, "Complainant") alleges on or about March 15, 2021 at approximately 2:00 AM in the Respondent's bedroom the Respondent placed their hand up the Complainant's shirt and grabbed the Complainant's breasts without the Complainant's consent. Additionally, on the same date and time the Complainant alleges the Respondent placed their hand on the Complainant's vagina without the

- Finding of Not Responsible or Responsible
- Policy Jurisdiction and Formal Complaint Summary
- Investigatory Procedures
- Inspection and Review of Evidence and Investigative Report
- Delays and Adjournments
- Live Hearing Procedures Summary
- Findings and Rationale
- Sanctions and Remedies
- Appeal Rights

DETERMINATION REGARDING RESPONSIBILITY

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Charge and Allegation

Review of evidence relied upon to make a determination for a specific charge and allegation

Describe Standard of Evidence

Finding for each specific charge and allegation

Sanction(s)
(if Responsible, consider readmission components)

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FINDINGS AND RATIONALE

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Area	Considerations
Student Centered	Create a **summary letter** that highlights the charge, allegations, finding (responsible or not responsible), sanction summary, appeal rights, records retention and directs the student to see attached rationale
Capacity	Consider board member or staff member schedules, set clear deadlines, and meet time frames set by policy
Skillsets	Attention to detail, analytical and strong writing skills (proofreading)
Style	Findings section may vary depending on the type of case; create an outline with your analysis mapped-out before drafting
Technology and Privacy	Plan in place on how to share the working document and who has access throughout the writing stages. Use student names, witness names once in the introduction of the document and then refer to them as (Complainant, Respondent, Witness 1)
Training	Senior board members may be better equipped to write rationales

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DETERMINATION REGARDING RESPONSIBILITY

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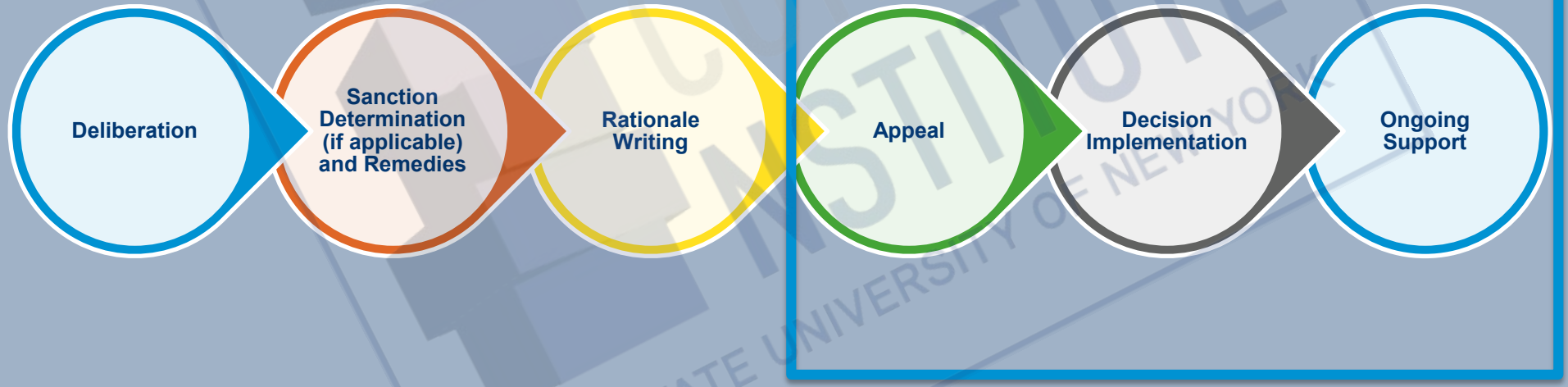
- Simultaneous notification to the parties, their advisors, Title IX Office or Investigator. Consideration for the time/day.
- Supportive measures or interim restrictions remain in place through appeal
- Either party can appeal (same timeline)
- Preparation for any reactions during this time period

NOTIFICATION OF DETERMINATION

CASE PROCESS DECONSTRUCTED

POST HEARING OVERVIEW (4,5,6)



BREAK

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Title IX Final Rules mandate both parties have access to an appeal:

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

APPEAL

CASE PROCESS DECONSTRUCTED

5. APPEAL PROCESS

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Confirm Criteria: Appeal Grounds → Both parties may submit an appeal → Coordination of appeal review panel → Appeal review panel access to documents
- Hearing Outcome Letter
- Investigation Report
- Appeal(s)

→ Appeal review and determination process → Final outcome letter to all parties

Key Players:

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

CASE PROCESS DECONSTRUCTED

6. DECISION IMPLEMENTATION

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Appeal Response

- Who is sending this?
- Who is cc'd?
- Managing reactions during this time

Final Outcome Notification to Students

- Student Conduct Administrator sends to the parties and their advisors
- CC: Title IX office or Investigator

Notification to other Offices/Units

- VPSA
- Registrar (Transcript)
- Financial Aid
- Res Life
- Public safety/UPD
- ITS
- Hold placed on account

Follow-Up Services

- Coordinating moves
- Offering resources
- Lifting restrictions

Record Keeping

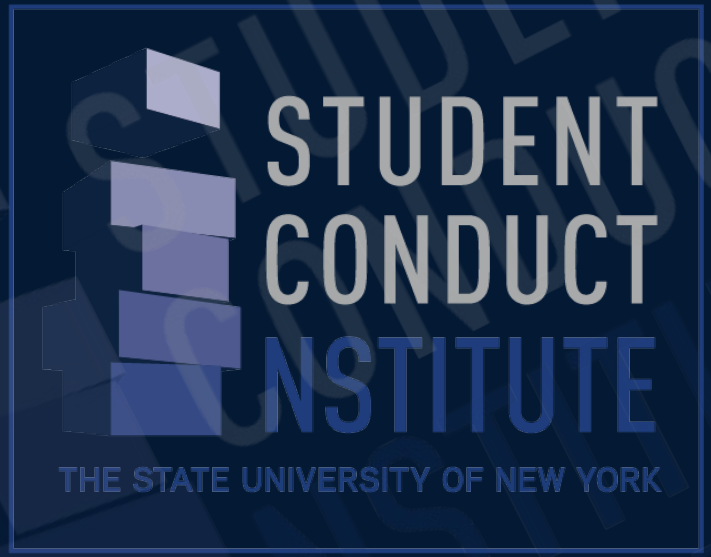
- Records retention and disposition policy (**7 Years** for Title IX)
- Updates to database
- Updates to file
- Correspondence included
- Hearing recording
- Full file maintenance

Record Request or Readmission

- **Record Request**
- What information will your share?
- **Readmission**
- Ensure this is detailed in outcome letter
- Process in place
- Notification to TIX office for measures assessment

Key Players:

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



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