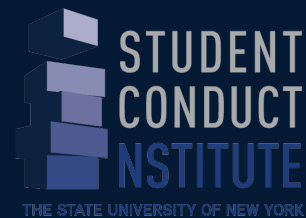


BREAK





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

Copy sent to complainant



THE NOTICE OF ALLEGATIONS (NOA)



NOTICE REQUIREMENTS

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 nor provide an advisor
- Reasonable restrictions
- Unless they conflict with cross-examination role





Reactions v. Responses



Reflective Responses:
Restate, Reflect, Validate



Choices



Consistent Communication
and Offerings for Parties



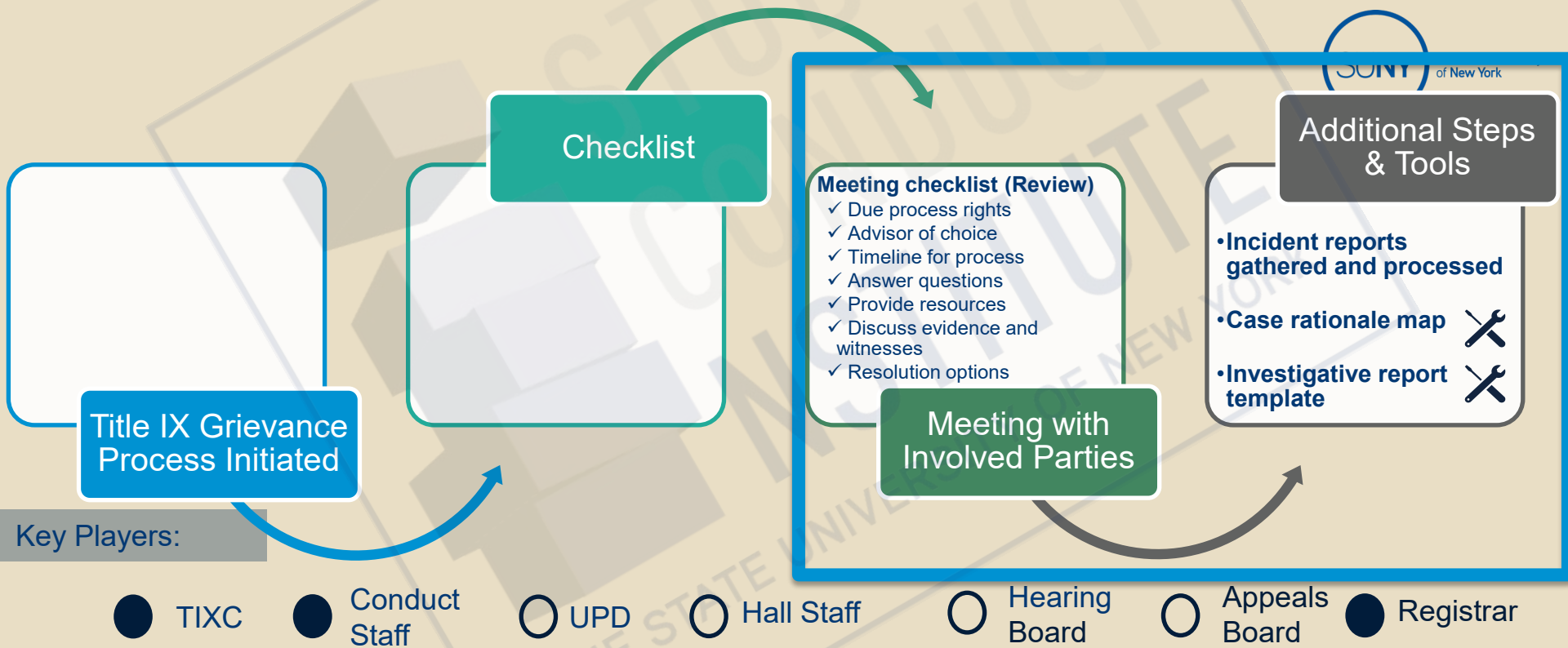
FERPA Considerations



REACTIONS AND CONSISTENT COMMUNICATION

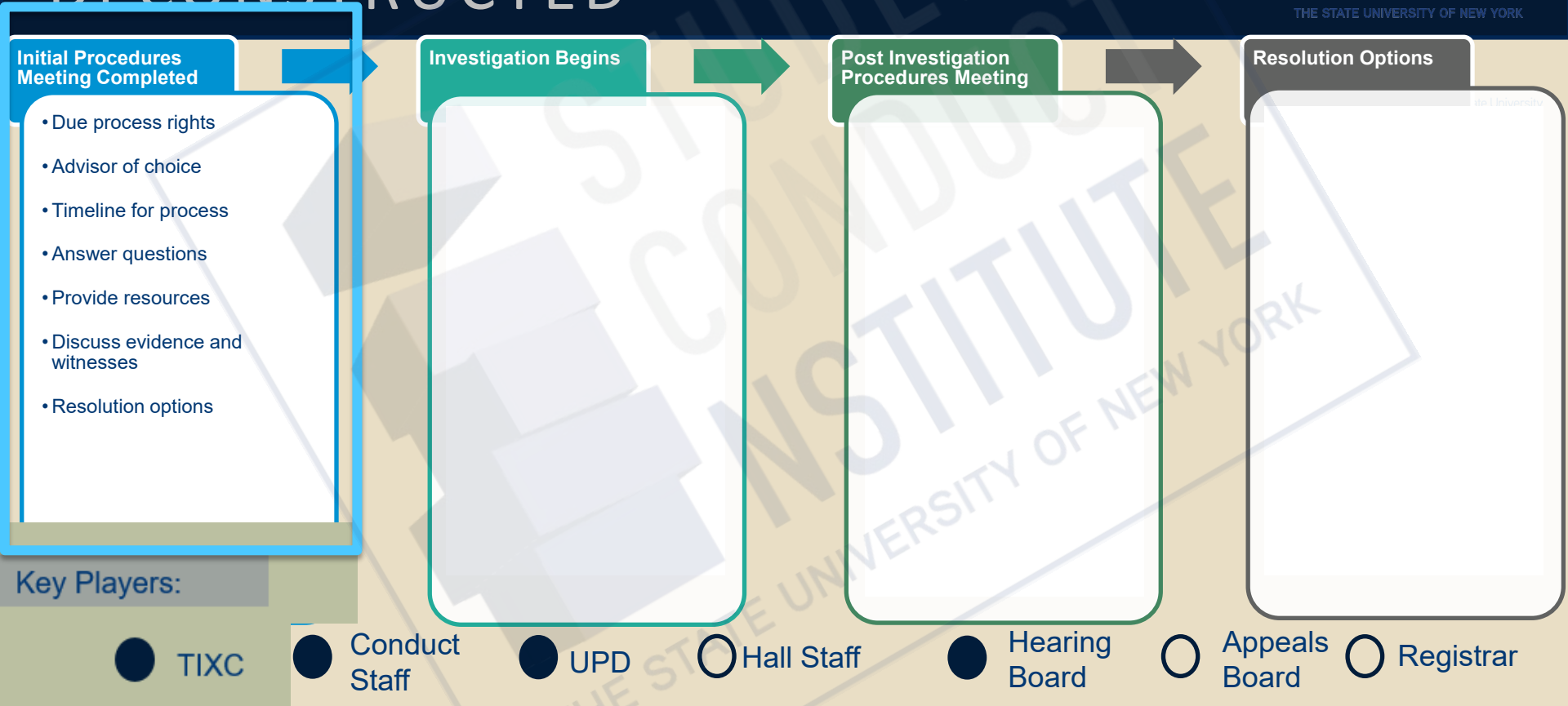
CASE PROCESS

2. TITLE IX GRIEVANCE PROCESS INITIATED



CASE PROCESS

2. TITLE IX GRIEVANCE PROCESS INITIATED





Detail Due Process Rights



Review Grievance Process
Timeline



Answer questions; provide
resources

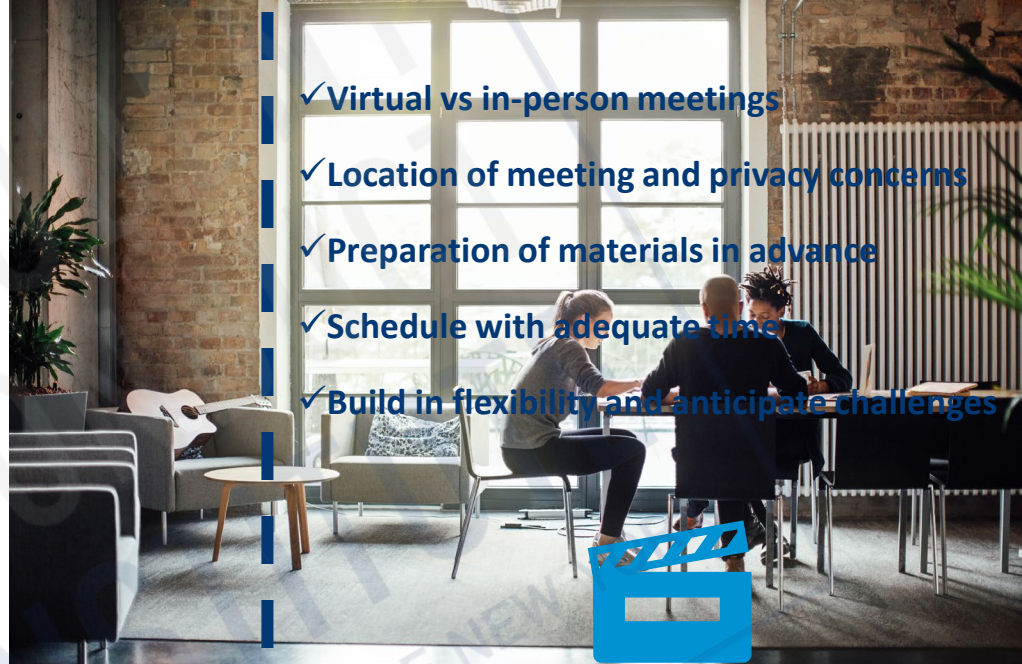


Review procedures
(evidence, witnesses)



Discuss potential outcomes,
offer resolution options

Action Items



- ✓ 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



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 RESOLUTIONS

CASE PROCESS

2. TITLE IX GRIEVANCE PROCESS INITIATED

Initial Procedures Meeting Completed



Investigation Begins



Post Investigation Procedures Meeting



Resolution Options

- 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.

Key Players:

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

- Avoid repeated disclosures
- Consider the impact of trauma:
 - Fragmented memory and non-linear order of events
 - Specific details about sensory events
- Trauma-informed approach is not a substitute for missing info, justification for not doing a full investigation, or cause a biased belief in a party's accuracy
- No right or wrong way to respond



2021-2022: Neurobiology of Sexual Assault Trauma (Part 1 3) - Introduction
 Online | Jul 1, 2021
 98685 seats available
 Hours: 0.25

Info Enroll



2021-2022: Neurobiology of Sexual Assault Trauma (Part 2 3) - When Attack Is Detected or Stress Kicks In
 Online | Jul 1, 2021
 98589 seats available
 Hours: 0.25

Info Sign-up



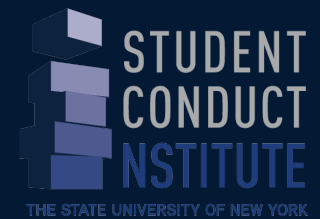
2021-2022: Neurobiology of Sexual Assault Trauma (Part 3 of 3) - Reflexes and Habits
 Online | Jul 1, 2021
 98527 seats available
 Hours: 0.25

Info Sign-up

-
- 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

TRAUMA INFORMED PRACTICES

INVESTIGATIONS



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

Investigation 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





Investigation Overview



Jurisdiction, Investigator Information



Investigation Report Objective



Alleged Prohibited Conduct, Witness List, Evidence List



Outline Procedural Next Steps after Investigation

Prompt and Impartial Investigations

- 
- ✓ Require publication of a timeframe based on a specific number of days with room for 'good cause' delay
 - ✓ Final Rules (and case I) anticipate balance between prompt resolution and adequate time to prepare and respond to charges
 - ✓ Must collect exculpatory and inculpatory evidence
 - ✓ Must follow code
 - ✓ Cannot have bias or conflict of interest

INVESTIGATION CONSIDERATIONS

Testimony

Text Messages

Social Media Posts

Medical Records

Public Safety/Police Records

Videos / Surveillance Footage

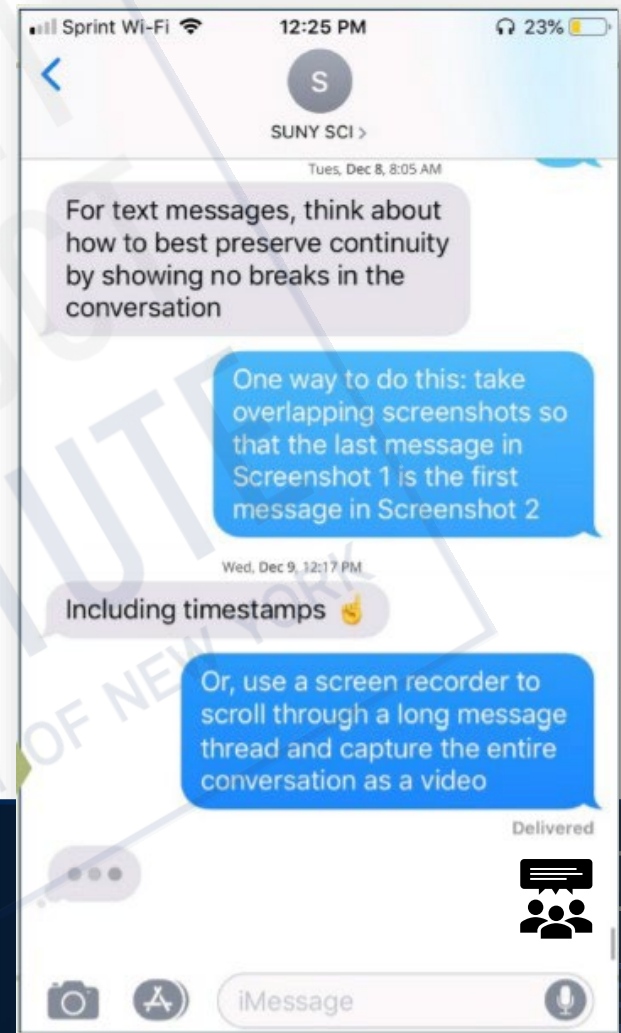
Pictures

ID Card Data / Network Usage Location Data

Email

Voice notes

EVIDENCE COLLECTION





CASE PROCESS

2. TITLE IX GRIEVANCE PROCESS INITIATED

Initial Procedures Meeting Completed



Investigation Begins



Post Investigation Procedures Meeting



Resolution Options

- 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

Key Players:

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



Detail **Due Process Rights**,
advisor of choice reminder



Review charges/allegations
and remaining timeline



Answer questions; provide
resources



Offer resolution options
again, discuss



Review appeal rights, policy
and procedure reminders

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-MEETING WITH STUDENTS

CASE PROCESS

2. TITLE IX GRIEVANCE PROCESS INITIATED

Initial Procedures Meeting Completed



Investigation Begins



Post Investigation Procedures Meeting



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

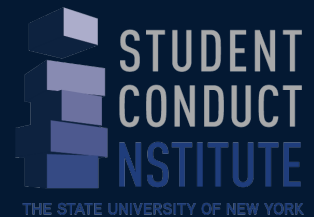
Hall Staff

Hearing Board

Appeals Board

Registrar

PRE-HEARING PREPARATIONS



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

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

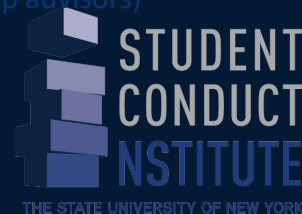
Technology

- 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

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 CONSIDERATIONS





Availability Expectations



Conflict of Interest and Bias Check



Access to evidence, hearing resources, information



Board Communication



Select chairperson, discuss relevant roles on board



HEARING BOARD PREPARATION



Date, Time, Location
(Meeting Links)



Include and cite relevant
policies / procedures



Describe the
outline/process for day of



Include failure to appear
clause



New evidence and witness
reminder



THE HEARING NOTICE DOCUMENT

- 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 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 FUNDAMENTALS

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



DECORUM



TITLE IX TOOLKIT



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).

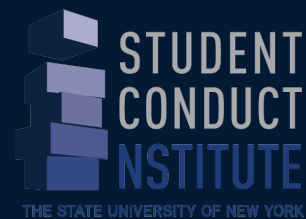
Question regarding Privileged Information

- 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).

GUIDE FOR DETERMINING RELEVANCE



THE STATE UNIVERSITY OF NEW YORK

**CODE WORD:
SONY**

BREAK

