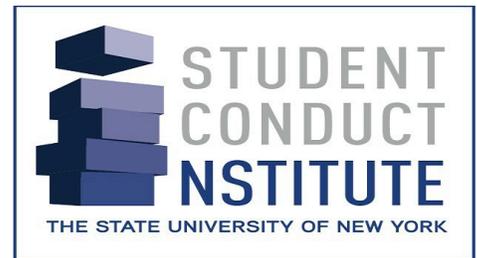




The State University  
of New York



## **Student Conduct Institute Agenda**

### **Live@Distance Basic Compliance Training**

#### **Cohort #1 Fall 2023**

#### **Tues, October 3rd: Introduction & Legal Fundamentals**

*Learning Outcomes from this session:*

1. Review of mandated training requirements under federal and state law and regulations.
2. Review of Due Process & Legal content
3. Understand the ways in which Due Process impacts obligations in investigations and adjudications of violations
4. Understand the ways in which federal law impacts campus processes
5. Recall/Reproduction of Information and application to your campus process
6. Consideration of any changes required to your process based on statutory, regulatory and guidance framework

*Mandated training topics:* Federal Legal Requirements; Understanding Sexual & Interpersonal Violence; TIX Sexual Harassment; TIX Jurisdiction; TIX Bias & Conflicts of Interest; Conflict of Interest & Bias (required by certain states only)

#### **Thurs, October 5th: Incident Reported & Initiating the Conduct Process**

*Learning Outcomes from this session:*

1. Understand what is required by law when an incident is reported and conduct action is initiated
2. Understand the laws and policy that impact this stage
3. Be able to recall/reproduce information about what is necessary at this stage
4. Be able to articulate the steps needed in both the sample case and identify any changes to one's own campus process

*Mandated training topics:* Understanding the Conduct Participant

Experience; Cultural Awareness; TIX Jurisdiction; TIX Bias & Conflicts of Interest; Working with Reporting Individuals (required by certain states only); Working with Accused Persons (required by certain states only); Remedial Actions (required by certain states only); Reporting & Confidentiality (required by certain states only)

## **Thurs, October 5th: Investigations, Pre-Hearing Prep & the Hearing**

*Learning Outcomes from this session:*

1. Understand what your obligations are in investigations and preparing for a hearing
2. Gain knowledge in the preservation of evidence, and a general understanding of considerations related to evidence in the digital age
3. Understand basic concepts related to being “trauma informed” and how that may impact various stages of the process
4. Understand the rights of each party during the hearing process
5. Know the fundamental procedures for hearing.
6. Be able to articulate the steps needed in both the sample case and identify any changes to one’s own campus process

*Mandated training topics:* Understanding the Conduct Participant Experience; Federal Legal Requirements; Consent; Investigation Process; Adjudication Process Title IX: Technology; Title IX: Relevant Evidence; Title IX: Investigative Reports; Title IX: Investigation & Grievance Procedures

## **Thurs, October 5th: Decision Making, Appeals, State Law & Wrap-Up**

*Learning Outcomes from this session:*

1. Understand the differences between different types of witnesses and how to weigh testimony
1. Understand what is required at the decision making and appeals stage
2. Understand the laws that impact this stage
3. Understand what your state law and guidance requires for responding to an incident of sexual or interpersonal violence.
4. Be able to articulate the steps needed in both the sample case and identify any changes to one’s own campus process

*Mandated training topics:* Adjudication Process; Trauma-Informed Practice (required by certain states only); Remedial Actions (required by certain states only); Title IX: Investigation & Grievance Procedures





# TITLE IX TOOLKIT



SAMPLE CASE DOCUMENT #7

## Student Conduct Institute Determination Regarding Responsibility Letter

### TRAINING SAMPLE: RESPONSIBLE

Case # 16809

Date: June 8, 2021

Sent via email to [Jaime.Carter@university.edu](mailto: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 **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 Complainant’s consent.*

A description of the rationale for this decision and associated sanctions, as well as the procedural steps followed, are indicated below.

### Formal Complaint

The Title IX Grievance Policy is developed and enforced according to the Institution’s obligations under the U.S. Department of Education’s 2020 Final Title IX Rule, available at <http://bit.ly/TitleIXReg>. The Title IX Grievance Policy may be viewed at [www.institution.college.edu/tixgrievance](http://www.institution.college.edu/tixgrievance).

On March 20, 2021, a formal complaint was filed by the Complainant against the Respondent alleging violations of SCIUniversity’s Title IX Grievance Policy: Sexual Assault – Section B - Fondling.

Page 1 of 6

SAMPLE CASE DOCUMENT #7

In accordance with the Title IX Grievance Policy, the Title IX Coordinator emailed the Respondent a written Notice of Allegations on March 23, 2021 and a copy was sent to the Complainant.

### **Investigatory Procedures**

A full account of the investigative process in this matter can be reviewed in the Investigative Report received by both the Respondent and the Complainant on May 10, 2021. To summarize, after emailing the Respondent the Notice of Allegations, the Title IX Coordinator referred the investigation to Title IX Investigator Freja Bijalk (hereinafter “Investigator Bijalk”). During the investigation, Investigator Bijalk interviewed the Respondent, the Complainant, Lykke Vidar (hereinafter “Witness 1”), Hedda Kraajk (hereinafter “Witness 2”), and Ture Vilgot (hereinafter “Witness 3”). Investigator Bijalk made numerous attempts to contact Svea Hjalma (hereinafter “Witness 4”), but was ultimately not able to interview them based on the witness’ refusal to answer questions or participate in the interview process.

After receiving the Notice of Allegations, an initial interview was scheduled between the Respondent and Investigator Bijalk on March 25, 2021.

Investigator Bijalk subsequently interviewed the Complainant on April 2, 2021, and Witness 1 on April 9, 2021, Witness 2 on April 10, 2021, and Witness 3 on April 21, 2021. Follow-up interviews were conducted with both the Respondent and the Complainant on April 22, 2021.

In addition to interviewing the above witnesses, Investigator Bijalk obtained police records and text messages, as indicated in the Investigative Report, detailed below.

### **Inspection and Review of Evidence and Investigative Report**

Investigator Bijalk submitted this evidence to the parties and their advisors on April 26, 2021 via Dropbox. Evidence determined to be irrelevant by Investigator Bijalk was separated and preserved in Appendix J to the Investigative Report. The parties notified Investigator Bijalk that their review and inspection of the evidence was completed on May 6, 2021, according to the Respondent’s email dated May 6, 2021 and the Complainant’s email dated May 6, 2021.

Investigator Bijalk submitted the Investigative Report to the parties on May 10, 2021 via Dropbox.

The parties submitted their response to the Investigative Report via email on May 20, 2021 according to the Respondent’s email dated May 20, 2021 and the Complainant’s email dated May 20, 2021.

The parties’ responses to the evidence and Investigative Report are preserved in Appendix G of the Investigative Report.

## **Delays and Adjournments**

The Respondent requested a delay of the hearing prior to the hearing of eight (8) days for good cause. The rationale was provided to the Director of Student Conduct and was deemed reasonable and the delay was granted. Both parties were notified via email on May 20, 2021 of this delay.

## **Live Hearing**

A live hearing on the formal complaint was held on June 1, 2021 at 1:00 PM before the Hearing Panel. The Director of Student Conduct had oversight of the proceedings of the hearing but did not participate in the decision-making. All members of the Hearing Panel previously had training on how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.

The parties, advisors, and witnesses were subject to rules of decorum defined within the university's Title IX Grievance Policy, and these individuals did follow these rules in the Hearing Administrator's judgment.

At the hearing's commencement, the parties were afforded the opportunity to raise objections to any member of the Hearing Panel's participation concerning material conflicts of interest or bias. The Respondent raised an accusation of bias based on one of the panel members having taught a sociology course in Gender Studies. The Hearing Panel, in consultation with the Director of Student Conduct, reviewed this accusation and determined there was no bias that would materially affect the outcome; as such, this decision maker was not replaced by another decision maker.

The following parties were present at the hearing:

- Mitchell Añepa, Chairperson;
- Mada Olfwok, Hearing Panel Member;
- Rehel Pletem, Hearing Panel Member;
- The Complainant;
- Dav Yilbrav, Advisor to the Complainant;
- The Respondent;
- Prin Lianas, Advisor to the Respondent: Prin Lianas;
- Investigator Bijalk
- Witness 2
- Witness 3

The parties were provided the opportunity to offer opening and closing statements. The Hearing Panel asked questions of the parties and witnesses. After the Hearing Panel questioned each party or witness, the parties' advisors were afforded the opportunity to cross-examine each party or witness.

The Chair of the Hearing Panel was solely responsible for determining the relevance of each question posed by the advisors. The Chair determined that all questions posed by the parties' advisors were relevant, with the exception of two questions. In the first instance, the Respondent's advisor posed a cross-examination question to the Complainant regarding her statement that she was startled in the middle of the night of March 15, 2021, which was duplicative of a question already asked and answered by the Complainant. In the second instance, the Respondent's advisor raised a question regarding the Complainant's prior sexual history.

All parties and witnesses submitted to cross-examination and addressed all relevant questions posed by the advisors.

### **Findings and Rationale**

As indicated above, the Respondent was alleged to have violated the Title IX Grievance Policy , specifically, Sexual Assault, Section B - Fondling.

Sexual Assault: Section B is defined as: "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: The 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 Complainant's consent.

In reaching its determination, the Hearing Panel reviewed the Investigative Report filed through the Title IX Investigator and all evidence referenced in the Investigative Report. As well as all verbal testimony from all parties present during the live hearing.

Using a preponderance of the evidence standard (meaning more likely than not), the Hearing Panel determined that while the Respondent had consent to engage in the sexual activity that occurred prior to the Complainant going to sleep during the early morning hours of March 15, 2021, the Respondent did not obtain consent for the alleged sexual activity that occurred after the Complainant woke up on March 15, 2021. Below is the rationale of the Hearing Panel that supports their decision.

Testimony from the Complainant indicated she was startled when she was awoken in the middle of the night. Further...

Testimony provided by the Respondent as well as the Complainant confirmed that a condom was not available in the morning. Additionally, the Respondent corroborated the Complainant's statements related to the Complainant pulling away from the Respondent prior to the alleged incidents occurring. In addition...

The Title IX Investigative report provided insight related to action and intent, specifically...

The text message exchange dated March 17, 2021 between the Respondent and the Complainant corroborated the Complainant's testimony that...

Witness 1 also corroborated the timeline of events described by the Complainant: specifically, the amount of alcohol consumed while at the party. Witness 1 also testified that when she spoke with the Complainant the following evening, the Complainant stated...

Witness 3, during cross examination, responded affirmatively to the question... which supported the testimony of Witness 1 that...

While Witness 2 provided testimony regarding the Respondents character, the witness failed to provide any information that spoke directly to the incident on March 15, 2021. Because Witness 2 had no first-hand knowledge of the incident, the character reference was only able to aid the hearing board during sanctioning.

Based on this evidence, the Hearing Panel has determined that the Respondent is responsible for violating both allegations of Sexual Assault, Section B - Fondling.

### Sanction and Remedies

In determining an appropriate sanction, the Hearing Panel considered the nature of the offense, as well as precedent for such offenses and any past disciplinary history. Based on this information, it has been determined that the following sanctions will be imposed:

Effective immediately the Respondent is subject to the following:

- **Suspended** from SCI University through **June 8, 2022**. This means the Respondent is permanently restricted from all SCI University classes, grounds, facilities, activities, or related functions during this time period. [Include Full Definition of Suspension, Start and end dates]
- Prior to re-admission the Respondent is required to complete a counseling assessment around sexual and interpersonal violence and healthy practices and behaviors. The Respondent must submit a completed assessment from a licensed health professional or treatment facility indicating:
  - The Respondents understanding of the behavior exhibited and how that behavior has impacted another person.
  - The number of assessment/treatment sessions along with beginning and ending dates; and
  - An explicit recommendation for a medically cleared readmission by the licensed health care professional.
- Upon re-admission the Respondent is subject to a one-year period of probationary status.

- The Restriction of contact with the Complainant will remain indefinitely.

The rationale for this decision is that at this time, based on the behaviors described, the Respondent acted outside the standards of behavior for students as set forth in the Code of Student Conduct and Title IX Grievance Policy. Membership in the University community is based upon the agreed standards within the Code. The violation of another student's physical person is not allowed and therefore continued membership within the Campus community cannot be permitted. The behavior the Respondent engaged in within the Campus community is unacceptable. It is the hope of the Hearing Panel that the Respondent take time to reflect on the serious nature of this incident as well as the consequences of the Respondent's actions.

As an institution that values growth, development, and the opportunity to learn from past incidents, we may allow for an opportunity to re-enter the Campus community after significant time has passed and all required sanctioning has been completed.

The Respondent may begin the process of readmission by contacting the Student Conduct Office for an appointment. If the Respondent wishes to return after the Spring 2022 semester, they should make an appointment after June 8, 2022. Prior to application for readmission, the Respondent is expected to have completed all the above sanctions.

### **Right to Appeal**

The Respondent and the Reporting Individual may appeal any portion of this decision based on the grounds for appeal defined in Section X of the Title IX Grievance Policy.

To do so, the appealing party must complete the attached "Appeals Form" **by no later than five (5) calendar days of today's date**. The form, in addition to a written appeal no longer than fifteen (15) double spaced pages (including appendices) may be submitted via email at [sciappeal@university.edu](mailto:sciappeal@university.edu) for review and consideration by the College Appeals Panel. Additional information and standards for the appeal may be found in Section X of the Title IX Grievance Policy.

If you have any questions about this case or this decision, contact SCI Administrator at 456 123 7890 or via email at [sci@contactus.edu](mailto:sci@contactus.edu).

Sincerely,

**Director of Student Conduct**

CC: Complainant; Title IX Coordinator



# 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](mailto: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 Complainant’s consent.*

A description of the rationale for this decision as well as the procedural steps followed, are indicated below.

#### Formal Complaint

The Title IX Grievance Policy is developed and enforced according to the Institution’s obligations under the U.S. Department of Education’s 2020 Final Title IX Rule, available at <http://bit.ly/TitleIXReg>. The Title IX Grievance Policy may be viewed at [www.institution.college.edu/tixgrievance](http://www.institution.college.edu/tixgrievance).

On March 20, 2021, a formal complaint was filed by the Complainant against the Respondent alleging violations of SCIUniversity’s Title IX Grievance Policy: Sexual Assault – Section B - Fondling.

In accordance with the Title IX Grievance Policy, the Title IX Coordinator emailed the Respondent a written Notice of Allegations on March 23, 2021 and a copy was sent to the Complainant.

### **Investigatory Procedures**

A full account of the investigative process in this matter can be reviewed in the Investigative Report received by both the Respondent and the Complainant on May 10, 2021. To summarize, after emailing the Respondent the Notice of Allegations, the Title IX Coordinator referred the investigation to Title IX Investigator Freja Bijalk (hereinafter “Investigator Bijalk”). During the investigation, the Investigator Bijalk interviewed the Respondent, the Complainant, Lykke Vidar (hereinafter “Witness 1”), Hedda Kraajk (hereinafter “Witness 2”), and Ture Vilgot (hereinafter “Witness 3”). Investigator Bijalk made numerous attempts to contact Svea Hjalma (hereinafter “Witness 4”), but was ultimately not able to interview them based on the witness’ refusal to answer questions or participate in the interview process.

After receiving the Notice of Allegations, an initial interview was scheduled between the Respondent and Investigator Bijalk on March 25, 2021.

Investigator Bijalk subsequently interviewed the Complainant on April 2, 2021, and Witness 1 on April 9, 2021, Witness 2 on April 10, 2021, and Witness 3 on April 21, 2021. Follow-up interviews were conducted with both the Respondent and the Complainant on April 22, 2021.

In addition to interviewing the above witnesses, Investigator Bijalk obtained police records and text messages, as indicated in the Investigative Report, detailed below.

### **Inspection and Review of Evidence and Investigative Report**

Investigator Bijalk submitted this evidence to the parties and their advisors on April 26, 2021 via Dropbox. Evidence determined to be irrelevant by Investigator Bijalk was separated and preserved in Appendix J to the Investigative Report. The parties notified Investigator Bijalk that their review and inspection of the evidence was completed on May 6, 2021, according to the Respondent’s email dated May 6, 2021 and the Complainant’s email dated May 6, 2021.

Investigator Bijalk submitted the Investigative Report to the parties on May 10, 2021 via Dropbox.

The parties submitted their response to the Investigative Report via email on May 20, 2021 according to the Respondent’s email dated May 20, 2021 and the Complainant’s email dated May 20, 2021.

The parties’ responses to the evidence and Investigative Report are preserved in Appendix G of the Investigative Report.

## **Delays and Adjournments**

The Respondent requested a delay of the hearing prior to the hearing of eight (8) days for good cause. The rationale was provided to the Director of Student Conduct and was deemed reasonable and the delay was granted. Both parties were notified via email on May 20, 2021 of this delay.

## **Live Hearing**

A live hearing on the formal complaint was held on June 1, 2021 at 1:00 PM before the Hearing Panel. The Director of Student Conduct had oversight of the proceedings of the hearing but did not participate in the decision-making. All members of the Hearing Panel previously had training on how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for Complainants, and any technology to be used at the hearing.

The parties, advisors, and witnesses were subject to rules of decorum defined within the university's Title IX Grievance Policy, and these individuals did follow these rules in the Hearing Administrator's judgment.

At the hearing's commencement, the parties were afforded the opportunity to raise objections to any member of the Hearing Panel's participation concerning material conflicts of interest or bias. The Respondent raised an accusation of bias based on one of the panel members having taught a sociology course in Gender Studies. The Hearing Panel, in consultation with the Director of Student Conduct, reviewed this accusation and determined there was no bias that would materially affect the outcome; as such, this decision maker was not replaced by another decision maker.

The following parties were present at the hearing:

- Mitchell Añepa, Chairperson;
- Mada Olfwok, Hearing Panel Member;
- Rehel Pletem, Hearing Panel Member;
- The Complainant;
- Dav Yilbrav, Advisor to the Complainant;
- The Respondent;
- Prin Lianas, Advisor to the Respondent: Prin Lianas;
- Investigator Bijalk
- Witness 2
- Witness 3

The parties were provided the opportunity to offer opening statements. The Hearing Panel asked questions of the parties and witnesses. After the Hearing Panel questioned each party or witness, the parties' advisors were afforded the opportunity to cross-examine each party or witness.

The Chair of the Hearing Panel was solely responsible for determining the relevance of each question posed by the advisors. The Chair determined that all questions posed by the parties' advisors were relevant, with the exception of two questions. In the first instance, the Respondent's advisor posed a cross-examination question to the Complainant regarding her statement that she was startled in the middle of the night of March 15, 2021, which was duplicative of a question already asked and answered by the Complainant. In the second instance, the Respondent's advisor raised a question regarding the Complainant's prior sexual history.

All parties and witnesses submitted to cross-examination and addressed all relevant questions posed by the advisors.

### **Findings and Rationale**

As indicated above, the Respondent was alleged to have violated the Title IX Grievance Policy, specifically, Sexual Assault, Section B - Fondling.

Sexual Assault: Section B is defined as: "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: The 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 Complainant's consent.

In reaching its determination, the Hearing Panel reviewed the Investigative Report filed through the Title IX Investigator and all evidence referenced in the Investigative Report. As well as all verbal testimony from all parties present during the live hearing. Ultimately, the Hearing Panel determined that there was not a preponderance of the evidence to substantiate the Complainant's claims that the Respondent engaged in sexual contact without the Complainant's consent on March 15, 2021. Below is the rationale of the Hearing Panel that supports their decision.

Testimony from the Complainant indicated she was startled when she was awoken in the middle of the night and that the Respondent engaged in the following behaviors... Testimony from the Respondent indicated that the Respondent denied the allegations and asserted that all sexual contact with the Complainant was consensual on March 15, 2021.

Testimony provided by Witness 1 and Witness 3 demonstrated that both witnesses did not directly witness any of the alleged behavior and were relying heavily on information that was provided by the friends of the Respondent (Witness 1) and the Complainant (Witness 3).

Given that none of the witnesses directly observed the sexual interaction between the Respondent and the Reporting Individual, taking into consideration the relationship of the witnesses to the respective parties and after factoring in the subtle inconsistencies between witness accounts, the Board concluded that the witness statements are not enough to tip the scale of credibility toward one party or the other.

Therefore, considering that the Board is unable to find either party more credible than the other, and given that the Respondent's narrative demonstrates consent and the Complainant's does not, the Board determined that there is not a preponderance of evidence to find the Respondent Responsible for both allegations of Sexual Assault - Section B Fondling. As a result, the Respondent was found Not Responsible for both allegations of Sexual Assault - Section B Fondling.

### **Sanction and Remedies**

SCIUniversity is not imposing any sanctions as the Respondent has not been found to have violated our policy. Any supportive measures related to this case will remain in effect until the conclusion of the Title IX Grievance process, which includes the appeals process detailed below (or the time within which appeals may be filed, if no appeal is filed). You will be notified in writing of modifications to supportive measures at that time.

### **Right to Appeal**

The Respondent and the Complainant may appeal any portion of this decision based on the grounds for appeal defined in Section X of the Title IX Grievance Policy.

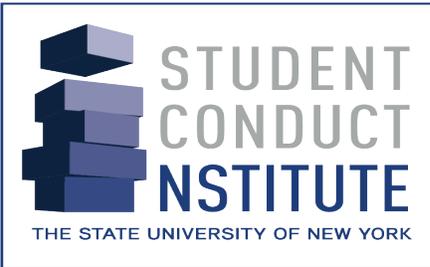
To do so, the appealing party must complete the attached "Appeals Form" **by no later than five (5) calendar days of today's date**. The form, in addition to a written appeal no longer than fifteen (15) double spaced pages (including appendices) may be submitted via email at [sciappeal@university.edu](mailto:sciappeal@university.edu) for review and consideration by the College Appeals Panel. Additional information and standards for the appeal may be found in Section X of the Title IX Grievance Policy.

If you have any questions about this case or this decision, contact SCI Administrator at 456 123 7890 or via email at [sci@contactus.edu](mailto:sci@contactus.edu).

Sincerely,

Director of Student Conduct

CC: Complainant; Title IX Coordinator



## The State University of New York Student Conduct Institute Residential Life Incident Report

SAMPLE CASE DOCUMENT #1

**Incident Report:** 16809RA  
**Completed By:** Maja Schuyler  
**Date of Submission:** March 15, 2021  
**Time of Submission:** 1:00 PM EST

### Background Information

**Incident Date:** March 15, 2021  
**Incident Time:** ~2:00 AM EST

### Involved Persons

- Maja Schuyler - Resident Assistant (RA) of 2<sup>nd</sup> Floor, Smith Hall
- Bo Sriniski - Residence Hall Director (RHD)
- Sidney Jones - Complainant
- Jaime Carter - Accused
- Ebba Kallax - Witness and Roommate for the Complainant
- Elan Kersvan - Witness

### Description of Incident

On Sunday, March 15th, 2021, I, Resident Assistant (RA) Maja Schuyler was in my room in Smith Hall when I heard a knock at my door around 10:00 AM. When I opened the door, I noticed Resident Ebba Kallax at my door. I greeted her and asked how she was, to which she responded that she was concerned about her roommate, Resident Sidney Jones, and wanted to know if I could come talk to Sidney. When I asked if her roommate was okay, Ebba replied that she was worried because her roommate seemed upset and came home at about 3:00 AM, which is unlike her. She was crying, but didn't want to talk about anything, and wouldn't go to breakfast. I agreed that I would go speak to Sidney and we went down the hall to their room.

Upon entering Ebba and Sidney's room, I could see that Sidney was sitting on her bed and that her eyes looked red and bloodshot. I noticed that Sidney was wearing sweatpants and an oversized sweatshirt with a USA soccer logo on it. Sidney had a box of Kleenex on the bed next to her, along with a can of White Claw. I asked if she was okay, and Sidney replied that she wasn't sure. I asked if she did anything for Founder's Day the night before, and Sidney nodded. She then asked me, "If something happened last night would I get into trouble?" I asked her what she was concerned about and informed her that her safety was my main priority, and she began to tell me about the party they attended the night previously. Sidney identified that she had been drinking the night of the party, and that there had been green jell-o shots and jungle juice given out at the party. She stated that she had consumed around two jell-o shots and 2 full red-solo cups of Jungle Juice. She did not know what type of alcohol was in the drinks but stated that it seemed like everyone was drinking it.

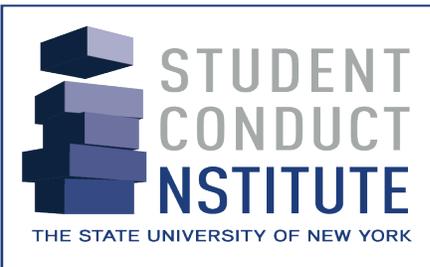
She said that she had met someone at the party named Jaime Carter, who was also a student. She said that Jaime invited her back to their room up on the fourth floor, and she agreed to go. Around 1:00 AM, they had "hooked up." Sidney said that she had wanted to have sex with Jaime at that time and consented to having sex at that time. After having sex, they both fell asleep. When Sidney woke up around 2:00 AM, she felt Jaime moving against her, and could feel they were rubbing against her hip.

SAMPLE CASE DOCUMENT #1

Sidney said Jaime had taken Sidney's hand and Jaime placed Sidney's hand inside Jaime's pants before Sidney pulled away from them. Sidney stated that she felt a little more sober and didn't want to have sex anymore. She said that Jaime told her they'd "make it good for her" and to "relax." Sidney asked Jaime if they had another condom, and Jaime said that it would be fine without one. Sidney was not comfortable with that and remembered saying that she needed to leave. She said she tried to get up, but she had trouble moving around Jaime. Sidney recalled that they put their hand up her shirt and then Jaime moved their hand down to Sidney's vagina.

Sidney recalled feeling disoriented when she left Jaime's room and had taken a wrong turn toward the back stairwell. She bumped into Elan Kersvan who was on his way to the vending machine and she was worried he might say something to her about seeing her doing a "walk of shame". She figured out how to get back to the second-floor left side where her room is. She returned to her room where her roommate Ebba was sleeping. She tried to go to bed but couldn't fall asleep. Sidney just said that she was upset about everything.

I explained that given what she had told me, I would need to call the Residence Hall Director (RHD) on call. I told her that we could be private about the situation, but that I had to report what she had told me. Sidney said that was okay, and that she would be okay with talking to the RHD about what had happened. I told her I would step out and call the RHD and let her know what her options are. I contacted the RHD on call and waited for her in the hallway at around 10:45 AM. End of Report.



## The State University of New York Student Conduct Institute Residential Life Incident Report

SAMPLE CASE DOCUMENT #2

**Incident Report:** 16809RHD  
**Completed By:** Bo Sriniski  
**Date of Submission:** March 15, 2021  
**Time of Submission:** 2:30 PM EST

### Background Information

**Incident Date:** March 15, 2021  
**Incident Time:** ~2:00 AM EST

### Involved Persons

- Bo Sriniski - Residence Hall Director (RHD)
- Maja Schuyler - Resident Assistant (RA) of 2<sup>nd</sup> Floor, Smith Hall
- Sidney Jones - Complainant
- Jaime Carter - Accused
- Ebba Kallax - Witness and Roommate for the Complainant
- Elan Kersvan - Witness

### Description of Incident

On Sunday, March 15th, 2021, at approximately 10:45 AM, I, Residence Hall Director (RHD) Bo Sriniski, received a call from Resident Assistant (RA) Maja Schuyler asking if I could come to Smith Hall to assist with a report of sexual assault. I arrived at Smith Hall where RA Schuyler was waiting for me in the hallway. We stepped into the Reslife office, where RA Schuyler disclosed that she received a knock on her door earlier that morning by Resident Ebba Kallax asking if she could come speak to her roommate. RA Schuyler said that she had spoken to the student, Resident Sidney Jones about a sexual interaction and that she was in her room ready to speak with me. I knocked on the door and introduced myself to Sidney, and asked permission to sit down. Sidney agreed. I asked if Sidney would be comfortable speaking with me about what happened, and she said yes. Sidney explained that she had been at a party, and ended up hooking up with Jaime Carter, but she felt uncomfortable with what had happened. At the time, Sidney's roommate, Ebba Kallax, was also present. I asked Sidney if she would prefer her roommate to stay in the room while we talked, or if she would prefer to talk alone. Sidney stated that she would prefer to speak to me alone. I observed that Sidney looked like her face was red and that her eyes were swollen. I also observed what looked like an empty can of White Claw next to her on the bed. She seemed to be speaking with me clearly and coherently. Sidney raised a concern that she might get into trouble, but said that RA Schuyler told her that she could talk to me. I explained that we have an amnesty policy and that she should not worry about charges related to alcohol or drug use. Sidney seemed satisfied with that confirmation and went on to say that she had been at a house party for Founder's Day, and that she had been drinking. I asked her if she remembered what she had drunk or how much. She stated that she had about two green jell-o shots and two full cups of jungle juice. She said she wasn't sure what alcohol had been in them.

I asked if she had known Jaime before this party, and Sidney said that she had seen them around Smith Hall but did not know them. Toward the end of the party, Jaime invited Sidney to their room on the fourth floor of Smith Hall, and Sidney agreed to go because they were really nice, and they were having a good time. Once in Jaime's room, they hooked up around 1:00 AM. Sidney said that this had been

SAMPLE CASE DOCUMENT #2

consensual, and that she had wanted to have sex with Jaime at this time. Afterwards, they both fell asleep. At around 2:00 AM, Sidney woke up to Jaime moving themselves against her. Sidney stated that Jaime had taken Sidney's hand and placed Sidney's hand inside Jaime's pants. Sidney stated that she felt more sober at this time and did not want to have sex at this time. She said that Jaime told her that they'd "make it good for her" and that she should "relax." Sidney asked if Jaime had another condom, and Jaime told her that it would be fine. She told Jaime that she needed to leave and attempted to get up, but could not move from around Jaime. Sidney stated that Jaime then put Jaime's hand under Sidney's shirt and then moved Jaime's hand to Sidney's vagina. Sidney then moved to get off the bed and went to find her dress that she had been wearing earlier but could not find it. Instead, she put on a pair of sweatpants and a sweatshirt that had been on the floor. I asked her if that was the sweatshirt and sweatpants that she was currently wearing and she said yes. When she went towards the door, Jaime gave her a hug, and Sidney left to go back to her room on the 2nd floor. She said she couldn't fall asleep when she got back, and in the morning her roommate was worried and went to get RA Schuyler.

I asked Sidney if she wanted or needed any medical attention and she declined. I also asked her if she wanted to stay in our emergency space, as she and Jaime live in the same building. She said she did want to stay in the emergency space and would be interested in changing rooms to a different hall. I stated that we could work with her on moving. I asked her if she would like to speak to the University Police to make a report, and she said that she did want to do that today. I also told Sidney that I would need to report what she told me to the Title IX Coordinator, but it would be her choice how she wanted to proceed. She stated that she wanted to speak with the Title IX Coordinator. At that time, I told her I would step out to contact University Police. After calling them, I asked RA Schuyler who was waiting in the hallway to document the situation from her perspective. After University Police arrived, I began to work with central staff on moving Sidney to our emergency space on campus per our protocol. I also forwarded both reports to the Title IX Coordinator. End of Report.



# TITLE IX TOOLKIT



## SAMPLE CASE DOCUMENT #3

### Notice of Allegations

Case # 16809

Date: March 23, 2021

Sent via email to [Jaime.Carter@university.edu](mailto:Jaime.Carter@university.edu)

Dear *Jaime Carter*,

On *March 20, 2021*, *Sidney Jones* filed a formal complaint according to the University's Title IX Grievance Process naming you as a Respondent. This is the term for a person accused of a violation of the Title IX Grievance Policy.

The Title IX Grievance Process is developed and enforced according to the Institution's obligations under the U.S. Department of Education's Final Title IX Rule of May 19, 2020. You may view the Final Rule at <http://bit.ly/TitleIXReg>. The Title IX Grievance Process defines the meaning of "sexual harassment" (including forms of sex-based violence), addresses how the University must respond to reports of misconduct falling within that definition of sexual harassment, and mandates a grievance process that this institution must follow to comply with the law in these specific covered cases before issuing a disciplinary sanction against a person accused of sexual harassment. It also defines informal resolution procedures that the parties may voluntarily select to remedy such covered cases.

A copy of the Title IX Grievance Process is available at the following link:  
[www.institution.college.edu/tixgrievance](http://www.institution.college.edu/tixgrievance).

According to the formal complaint, you engaged in the following conduct that potentially constitutes sexual harassment under the Title IX Grievance Policy:

*Complainant: Sidney Jones*

*Respondent: Jaime Carter*

*Date and Location: March 15<sup>th</sup>, 2021, Smith Hall, 4<sup>th</sup> Floor, Respondent's bedroom  
~2:00AM*

*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: The 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.*

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# TITLE IX TOOLKIT



*Additionally, on the same date and time the Complainant alleges the Respondent placed their hand on the Complainant's vagina without the Complainant's consent.*

A meeting has been scheduled for you with the Title IX Coordinator, Zelda Nintendo, on March 25<sup>th</sup>, 2021 at 3:00 PM in Academic Building Number Two to review our process, review available supportive measures, and discuss any questions you have. As with all meetings during the process, you are entitled to have an advisor present. Please contact us immediately at TitleIX@university.edu with any scheduling conflicts.

Under the Title IX Grievance Process, you are presumed not responsible for the alleged conduct. A determination regarding responsibility is not made until the conclusion of this Process.

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 University 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.

*Please be aware that section 14 of the Institution's code of conduct prohibits knowingly making false statements or knowingly submitting false information during the grievance process.*

Sincerely,

Zelda Nintendo  
Title IX Coordinator  
Zelda.Nintendo@university.edu

CC: COMPLAINANT

**Title IX Coordinator**

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**From:** Inza Carter; jcarter2003@aol.com>  
**Sent:** Tuesday, March 23, 2021 11:52 PM  
**To:** Title IX Coordinator; Director, University Housing  
**Cc:** Vice President of Student Affairs  
**Subject:** RE: Notice of Allegation

Dear Mrs. Nintendo,

I have just been informed that Jaime has been wrongfully accused of sexual assault, which I assure you did not occur. I am demanding an immediate explanation as to how this complaint could have possibly been given merit. We will be seeking counsel and addressing this situation. However, until this process has played out, I will not allow anyone to communicate directly with Jaime regarding this issue and all correspondence must go through me. They have been vilified and ostracized on their floor because she has apparently spoken to other students and I request that you address her and investigate charges for slander. Have you never heard of "Innocent until proven guilty?" My wife and I are traveling to campus tomorrow and would like to meet with both the Title IX Coordinator and the Director of Housing along with my child in order to address the allegations. Because we will be driving in the morning hours please call my cell phone at (098) 765-4321 first thing to schedule the meetings. I can't tell you how disappointed we are in how Jaime has been treated. We will look forward to a resolution tomorrow.

Sincerely  
Mr. & Mrs. Carter

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**SAMPLE CASE DOCUMENT #5**



**Call For:** *Title IX Coordinator*

**From:** *Ms. Jones (Case # 16809)*

<b>Date:</b> <i>3/23/2021</i>	<b>Time:</b> <i>12:25</i>	<b>Phone:</b>
	a.m. _____	<i>(111) 223 - 4455</i>
	p.m. <u>X</u>	

**Message:** *Called when you were at lunch - would like to speak to you about daughter's case. Concerned and would like to know what college is doing to ensure her safety. Also requested information on conduct process. (- fyi - she also called Residential Life Office)*

<b>Action</b>			
Phoned	Returned Your Call	<input checked="" type="checkbox"/> Please Call Back	Will Call Again

**Taken By:** *Your friendly neighborhood Admin Assistant*



# TITLE IX TOOLKIT



## SAMPLE CASE DOCUMENT #6

### Case Rationale Map

This documentation serves to support the reasonableness of the institution's response under the Department of Education's Title IX Regulations to:

<b>Case No.: 16809</b>	
Name of Complainant (s)	Sidney Jones
Name of Respondent(s)	Jamie Carter
Name and Title of Individual Completing this Map	Zelda Nintendo, Title IX Coordinator
Assigned Title IX Investigator	Freja Bijalk
<b>General Notification of Title IX Resources</b>	
Policies of the institution are published at: ( <i>website</i> )	www.institution.college.edu
All students, faculty, and staff receive notice of the policies via: ( <i>e.g. email, Handbook, etc.</i> )	Email and Student Handbook
<b>Reporting Process</b>	
Date of initial disclosure:	3/15/2021
Method of disclosure to Title IX Coordinator: ( <i>phone, email, walk-in, referral</i> )	Residence Hall Director on Call Incident Report via Residence Life
If not initially reported to the Title IX Coordinator by the Complainant, name and title of the referring party:	Bo Sriniski, Residence Hall Director
<i>Attach Intake Form used by Title IX Coordinator or designee in taking initial report.</i>	
<b>Supportive Measures</b>	
<input type="checkbox"/>	The Title IX Coordinator (or designee) <b>did not</b> offer supportive services. <b>Reason:</b>
	<input type="checkbox"/> The reported violation did not meet the definitions under Department of Education Regulations, even if proven (e.g. the complaint was for an insult based on liking a sports team, or something else clearly is not covered by Title IX).
	<input type="checkbox"/> Anonymous report where Complainant could not be identified
	<input type="checkbox"/> Complainant did not respond to electronic mail, phone, or postal mail messages ( <i>attach copy of messages</i> )
	<input type="checkbox"/> Complainant could be identified but no contact information was available for them
	<input type="checkbox"/> Other: Click or tap here to enter text.



# TITLE IX TOOLKIT

	<b>If one of the above is selected, please provide further details:</b> Click or tap here to enter text.
<input type="checkbox"/>	The Title IX Coordinator (or designee) <b>offered</b> supportive services to the Complainant but they were DECLINED.
	<input type="checkbox"/> Declined in <b>writing</b> (attach copy of message)
	<input type="checkbox"/> Declined <b>orally</b> Date: Click or tap to enter a date. Method: Click or tap here to enter text.
	Notes: Click or tap here to enter text.
<input checked="" type="checkbox"/>	The Title IX Coordinator (or designee) <b>was able to</b> arrange for supportive measures for Complainant. The measures arranged for include:
	<input checked="" type="checkbox"/> change of housing
	<input type="checkbox"/> change of classroom
	<input type="checkbox"/> change of schedule
	<input type="checkbox"/> change of work task, location, or hours
	<input checked="" type="checkbox"/> counseling (indicate whether on- or off-campus) On-Campus - Counseling Center
	<input type="checkbox"/> medical services (indicate whether on- or off-campus)
	<input type="checkbox"/> sexual assault forensic exam
	<input type="checkbox"/> mutual no contact order
	<input checked="" type="checkbox"/> one-way no contact order issued on March 25, 2021
	<input type="checkbox"/> security escort
	<input type="checkbox"/> other security changes or arrangements: Click or tap here to enter text.
	<input type="checkbox"/> other: Click or tap here to enter text.
	Additional information about supportive measures: Click or tap here to enter text.
<b>Emergency Removal (106.44(c))</b>	
<b>1.</b>	If the respondent was believed to pose an immediate threat to the physical health or safety of any student or other individual arising from the sexual harassment allegations, did the Title IX Coordinator (or designee) conduct an individualized safety analysis? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>2.</b>	Was the threat determined to be <i>immediate</i> , considering the respondent's propensity, opportunity, and ability? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>3.</b>	Was the threat determined to be to the <i>physical</i> health or safety of any student or other individual? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



# TITLE IX TOOLKIT

4.	Was the threat determined to have <i>arisen from</i> the sexual harassment allegations, including post-incident behaviors and threats of self-harm?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
5.	The Title IX Coordinator considered the application of disability law to the respondent's case.
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Accommodation Requested/Provided: None Requested
6.	Did the Title IX Coordinator consider whether supportive measures, such as a no contact order, would sufficiently address safety concerns?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
7.	Did the Title IX Coordinator determine that an emergency removal was warranted in this case?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	<p>a. If determination was to conduct an emergency removal, notice to respondent was sent (<i>attach copy of notice</i>):</p> <p>To whom: n/a Date: n/a Method: n/a</p>
8.	<p>b. Was the Complainant notified of the Emergency Removal?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>Justification for why notice or non-notice was not deliberately indifferent: n/a</p>
	<p>c. If the determination was to conduct an emergency removal, and notice to respondent was sent, did Respondent challenge the decision immediately following the removal?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A</p>
	<p>d. If Respondent did challenge the decision immediately following the removal, review was conducted (<i>attach copy of request for review of Emergency Removal determination</i>)</p> <p>By whom: n/a Date Received: n/a Method: n/a</p>



# TITLE IX TOOLKIT



	<p>Date Reviewed: n/a</p> <p>The determination after the review was to (<i>attach copy of written response to Respondent</i>):</p> <p><input type="checkbox"/> Uphold the Emergency Removal</p> <p><input type="checkbox"/> Overturn or cancel the Emergency Removal</p> <p><input type="checkbox"/> Modify the Emergency Removal</p>
	<p>e. Was Complainant given the opportunity to provide input prior to the determination of whether to modify a challenged Emergency Removal?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
	<p>f. Was Complainant notified of the Emergency Removal challenge result?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<b>Administrative Leave (of Non-Student Employees)</b>	
	<p>Was the respondent, a non-student employee, put on administrative leave?</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
9.	<p>a. If yes, prior to putting this individual on administrative leave, had a formal complaint been filed?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>b. Please indicate what procedures were followed prior to putting the individual on administrative leave under any relevant employment policies or collective bargaining agreements: n/a</p>
	<p>c. What was the rationale for putting the non-student employee on administrative leave? n/a</p>
	<p>d. Was the administrative leave paid or unpaid?</p> <p><input type="checkbox"/> Paid <input type="checkbox"/> Unpaid</p>
	<p><i>Attach any decision documentation regarding the employee's placement on administrative leave.</i></p>
<b>Formal Complaint</b>	
10.	<p>Did the Title IX Coordinator (or designee) inform the Complainant of their right to file a formal complaint to begin the grievance process under Department of Education Regulations? (<i>attach written correspondence</i>)</p> <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
	<p>Date Informed: March 20, 2021</p> <p>Method: In person meeting, also in letter correspondence attached</p>



# TITLE IX TOOLKIT



	<p>a. Notification of these rights is also maintained on the following web pages/catalog locations:</p> <ol style="list-style-type: none"> <li>1. Universitycorrespondence@sci.edu</li> <li>2. Student handbook page 38</li> <li>3. Universitycorrespondence2@sci.edu</li> </ol>
11.	Did the Complainant wish to file a formal complaint?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	a. This was conferred to the Title IX Coordinator (or designee):
	<input checked="" type="checkbox"/> <b>In writing</b> <i>(attach copy of message and copy of the Formal Complaint)</i>
	<input type="checkbox"/> <b>Orally</b> Date: Click or tap to enter a date. Method: Click or tap here to enter text.
<b>Advisor(s) of Choice</b>	
12.	Did Complainant select an advisor of choice?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	a. If selected: Name: Dav Yilbrav Firm/Org. Name: Advisors R Us Phone Number: 123 456 7890 E-mail: D.Yilbrac@advisors.com
13.	Did Respondent select an advisor of choice?
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	a. If selected: Name: Prin Lianas Firm/Org. Name: Advisors & Advisors oh My! Phone Number: 098 765 4321 E-mail: P.lianas@advisorsandadvisors.com
14.	Did either advisor of choice have to be removed or have participation limited for a violation in the process?
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	a. Provide detail below: Click or tap here to enter text.
	b. Notice of advisor removal or limitation sent to party who engaged that advisor was given on Date: n/a



# TITLE IX TOOLKIT

	Method: n/a <i>(attach correspondence)</i>
15.	If a party did not have an advisor of choice, did the institution provide an advisor selected by the institution to represent that party in the cross-examination part of the hearing? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	If provided: a. Name: Click or tap here to enter text. Firm/Org. Name: Click or tap here to enter text. Phone Number: Click or tap here to enter text.  E-mail: Click or tap here to enter text.
	b. Was this advisor employed by the institution? <input type="checkbox"/> Yes <input type="checkbox"/> No  Role at Institution: Click or tap here to enter text. Was conflict check conducted? <input type="checkbox"/> Yes <input type="checkbox"/> No Was any conflict discovered? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, was conflict mediated or otherwise shown not to interfere with the process or indicate a bias? <input type="checkbox"/> Yes <input type="checkbox"/> No
	c. Was this advisor an attorney (advisors of choice provided do not have to be attorneys under Department of Education Regulations)? <input type="checkbox"/> Yes <input type="checkbox"/> No
	d. <i>Optional: Was this advisor compensated by the institution?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, amount of compensation (note that compensation to an advisor may not be charged to the student party):</i> Click or tap here to enter text.
<b>Investigation</b>	
16.	Did the institution commence an investigation upon receipt of a formal complaint? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
17.	<b>Delays:</b> <input checked="" type="checkbox"/> There were <b>no delays</b> in the investigative process <input type="checkbox"/> There <b>was a delay</b> in the investigative process



# TITLE IX TOOLKIT



	<p>Date:</p> <p>Length:</p> <p>Reason: Click or tap here to enter text.</p> <p>Justification: Click or tap here to enter text.</p>
	<input type="checkbox"/> Notice was sent to Complainant ( <i>attach documentation</i> )
	<input type="checkbox"/> Notice was sent to Respondent ( <i>attach documentation</i> )
	Objection(s) (if any): Click or tap here to enter text.
	Response to Objection(s) (if any): Click or tap here to enter text.
<b>Hearings</b>	
18.	<p><b>Delays:</b></p> <p><input type="checkbox"/> There were <b>no delays</b> in the hearing process</p> <p><input checked="" type="checkbox"/> There <b>was a delay</b> in the hearing process</p>
	<p>Date: May 21, 2021</p> <p>Length: 8 day delay</p> <p>Reason: The Respondent had a pre-scheduled medical procedure.</p> <p>Justification: The Respondent provided medical documentation.</p>
	<input checked="" type="checkbox"/> Notice was sent to Complainant ( <i>attach documentation</i> )
	<input checked="" type="checkbox"/> Notice was sent to Respondent ( <i>attach documentation</i> )
	Objection(s) (if any): N/A
	Response to Objection(s) (if any): N/A
19.	<p><b>Charges:</b></p> <p>Sexual Assault – Section B – Fondling (2 Allegations)</p>
20.	<p>After a hearing, Respondent was found:</p> <p><input type="checkbox"/> Not Responsible    <input checked="" type="checkbox"/> Responsible</p>
21.	<p>Was a sanction applied for Charge: Sexual Assault – Section B: Fondling?</p> <p><input checked="" type="checkbox"/> Yes    <input type="checkbox"/> No</p>
	<p>a. If no, explanation (<i>attach documentation</i>)</p> <p>Click or tap here to enter text.</p>
	<p>b. If yes, sanction(s) applied is/are</p> <p>Disciplinary Suspension June 8, 2021 – June 8, 2022, Counseling Assessment, Probation for one year upon return to the University, Indefinite No Contact directive.</p>
22.	<p>Was the sanction from the list (or range) described by the institution and published in the policy and/or Clery Act Annual Security Report?</p>
	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No



# TITLE IX TOOLKIT

	a. If no, explanation ( <i>attach documentation</i> ) Click or tap here to enter text.
<b>Appeal</b>	
23.	Did the Complainant (s) appeal the determination? ( <i>attach any documentation correspondence</i> ). <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
24.	Did the Respondent(s) appeal the determination? ( <i>attach any documentation correspondence</i> ). <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
25.	The appeal was reviewed on: Date: Click or tap to enter a date. By: Click or tap here to enter text.
26.	The determination after the review was to ( <i>attach copy of written response to Respondent</i> ): <input type="checkbox"/> Uphold the Determination <input type="checkbox"/> Overturn the Determination <input type="checkbox"/> Modify the Determination <input type="checkbox"/> Send the Determination back for additional hearing or factfinding
27.	Notice of the determination was sent to the Complainant in writing ( <i>attach correspondence</i> ) Date: Click or tap to enter a date.
28.	Notice of the determination was sent to the Respondent in writing ( <i>attach correspondence</i> ) Date: Click or tap to enter a date.
29.	<b>Delays:</b> <input checked="" type="checkbox"/> There were <b>no delays</b> in the appeals process <input type="checkbox"/> There <b>was a delay</b> in the appeals process Date: Click or tap here to enter text. Length: Click or tap here to enter text. Reason: Click or tap here to enter text. Justification: Click or tap here to enter text. <input type="checkbox"/> Notice was sent to Complainant ( <i>attach documentation</i> ) <input type="checkbox"/> Notice was sent to Respondent ( <i>attach documentation</i> ) Objection(s) (if any): Click or tap here to enter text. Response to Objection(s) (if any): Click or tap here to enter text.
<b>Further Proceedings</b>	
30.	After the determination became final, were there any further proceedings? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
31.	a. If yes, detail below:



# TITLE IX TOOLKIT



	Click or tap here to enter text.
<b>Additional Notes or Information</b>	
32.	Click or tap here to enter text.
<b>Optional</b>	
	<b><i>I affirm that the information contained in this Documentation of Response to a Title IX Report and Reasonableness of That Response is accurate to the best of my recollection and understanding.</i></b>
	<i>Name of Title IX Coordinator (or designee):</i> Zelda Nintendo <i>Digital Signature:</i> Zelda Nintendo <i>Date:</i> 6/15/2021
33.	<i>Name of Other First Person inputting information:</i> Click or tap here to enter text. <i>Digital Signature:</i> Click or tap here to enter text. <i>Date:</i> Click or tap to enter a date.
	<i>Name of Other Second Person inputting information:</i> Click or tap here to enter text.  <i>Digital Signature:</i> Click or tap here to enter text. <i>Date:</i> Click or tap to enter a date.



## Student Conduct Institute

### Determination Regarding Responsibility Letter

#### TRAINING SAMPLE: NOT RESPONSIBLE

Case #: 1B8K62  
Date: 05/25/2020

SENT VIA EMAIL TO [LSVANO@SCIUNIV.EDU](mailto:LSVANO@SCIUNIV.EDU)

Dear Lis Svano,

This letter is to inform you of the decision of the Administrative Hearing Panel regarding your hearing held on May 22, 2020 at 2:00pm. At the hearing, you entered a claim of “Not Responsible.”

After carefully reviewing all the information presented at the hearing, you have been found **Not Responsible** for Sexual Assault.

- Sexual Assault: Section B9: Any penetration of the sex organs or anus of another person without affirmative consent. This includes penetration, however slight, of the sex organs or anus of another person by an object or any part of the body. This also includes knowingly touching or fondling a person’s genitals, breasts, or anus, or knowingly touching a person with one’s own genitals without affirmative consent. This action was alleged to have occurred on March 15, 2020 around 5:00am against Astrid Havsten (hereafter referred to as the Reporting Individual).

A description of our rationale for this decision and associated sanctions, as well as the procedural steps followed, are indicated below.

THE STATE UNIVERSITY OF NEW YORK

#### Formal Complaint

The Title IX Grievance Policy is developed and enforced according to the Institution’s obligations under the U.S. Department of Education’s 2020 Final Title IX Rule, available at <http://bit.ly/TitleIXReg>. The Title IX Grievance Policy may be viewed at [www.SCIUNIV.edu/TIX](http://www.SCIUNIV.edu/TIX).

On 03/20/2020, a formal complaint was filed by the Reporting Individual against you alleging the following violations of SCIUniversity’s Title IX Grievance Policy: B9: Sexual Assault.



In accordance with the Title IX Grievance Policy, the Title IX Coordinator emailed you a written Notice of Allegations on 03/23/2020.

## Investigatory Procedures

A full account of the investigative process in this matter can be reviewed in the Investigative Report you received on May 10, 2020. To summarize, after emailing you the Notice of Allegations, the Title IX Coordinator referred the investigation to Title IX Investigator Freja Bijalk. During the investigation, the Title IX Investigator interviewed you, the Reporting Individual, Lykke Vidar, Hedda Kraajk, and Ture Vilgot. Investigator Bijalk made numerous attempts to contact Svea Hjalma, but was ultimately not able to interview them **based on the witness' refusal to answer questions or participate in the interview process.**

After receiving the Notice of Allegations, an initial interview was scheduled between you and Title IX Investigator Freja Bijalk on 3/28/2020.

Title IX Investigator Bijalk subsequently interviewed the Reporting Individual on 04/02/2020, and witnesses Lykke Vidar on 04/09/2020, Hedda Kraajk on 04/10/2020, and Ture Vilgot on 04/21/2020. Follow-up interviews were conducted with both yourself and the Reporting Individual on 4/22/20.

In addition to interviewing these witnesses, the Title IX Investigator obtained police records and text messages, as indicated in the Investigative Report, detailed below.

## Inspection and Review of Evidence and Investigative Report

The Title IX Investigator submitted this evidence to the parties and their advisors on 04/26/2020 via Dropbox. Evidence determined to be irrelevant by the Title IX Investigator was separated and preserved in Appendix J to the Investigative Report. The parties notified the Title IX Investigator that their review and inspection of the evidence was completed on **May 6, 2020, according to your email dated 05/06/2020 and the Reporting Individual's email dated 05/06/2020.**

The Title IX Investigator submitted the Investigative Report to the parties on May 10, 2020 via Dropbox.

The parties submitted their response to the Investigative Report on **May 20, 2020** according to your email dated 05/20/2020 and the Reporting Individual's email dated 05/20/2020.

The parties' responses to the evidence and Investigative Report are preserved in Appendix G of the Investigative Report.



## Delays and Adjournments

Please note that you, as the Respondent, requested a delay of the hearing prior to the hearing of eight (8) days for good cause. Your rationale was provided to the Director of Student Conduct and was **deemed reasonable** and the delay was granted.

### Live Hearing

A live hearing on the formal complaint was held on May 22, 2020 at 2:00pm before the Administrative Hearing Panel. The Director of Student Conduct had oversight of the proceedings of the hearing but did not participate in the decision-making. All members of the hearing panel previously had training on how to serve impartially, issues of relevance, including how to apply the rape shield protections provided for complainants, and any technology to be used at the hearing.

The parties, advisors, and witnesses were subject to rules of decorum defined with the university's Title IX Grievance Policy, and these individuals did follow these rules in the **Hearing Administrator's** judgment.

At the hearing's commencement, the parties were afforded the opportunity to raise objections to any member of the hearing panel's participation concerning material conflicts of interest or bias. The Respondent raised an accusation of bias based on one of the panel members having taught a sociology course in Gender Studies. The Administrative Hearing Panel, in consultation with the Director of Student Conduct, reviewed this accusation and determined **there was no bias** that would materially affect the outcome; as such, this decision maker was not replaced by another decision maker.

The parties appeared in person. The parties were represented by the following advisors:

- Advisor to the Reporting Individual: Dav Yilbrav
- Advisor to the Respondent: Prin Lianas

The parties were provided the opportunity to offer opening statements. The Administrative Hearing Panel asked questions of the parties and witnesses. After the Panel questioned each party or witness, the parties' advisors were afforded the opportunity to cross-examine each party or witness.

**The Chair of the Administrative Hearing Panel** was solely responsible for determining the relevance of each question posed by the advisors. The Chair determined that all questions posed by the parties' advisors were relevant, with the exception of two questions. In the first instance,



the Respondent’s advisor posed a cross-examination question to the Reporting Individual regarding her statement that she was startled in the middle of the night of March 15, 2020, which was duplicative of a question already asked and answered by the Reporting Individual. In the second instance, the Respondent’s advisor raised a question regarding the Reporting Individual’s prior sexual history.

All parties and witnesses submitted to cross-examination and addressed all relevant questions posed by the advisors. No out-of-hearing statements or documents were excluded because of a party or witness’ failure to submit to cross-examination.

## Findings and Rationale

As indicated above, you were alleged to have violated Section B9 of the Code of Conduct, Sexual Assault.

Sexual Assault: Section B9 is defined as: “Any penetration of the sex organs or anus of another person without affirmative consent. This includes penetration, however slight, of the sex organs or anus of another person by an object or any part of the body. This also includes knowingly touching or fondling a person’s genitals, breasts, or anus, or knowingly touching a person with one’s own genitals without affirmative consent.”

This action was alleged to have occurred on March 15, 2020 around 5:00am against the Reporting Individual.

In reaching its determination, the Administrative Hearing Panel reviewed the written statement of the Reporting Individual, the Investigative Report filed through the Title IX Investigator, screen shots of various text message and social media conversations, as well as verbal testimony from witnesses during the live hearing.

The Code of Conduct articulates the definition of affirmative consent as “A knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in sexual activity. Silence, or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant’s sex, sexual orientation, gender identity or gender expression.” Using a preponderance of the evidence standard (meaning more likely than not), the Hearing Panel determined that the actions of the Reporting Individual created a clear willingness to engage when she placed her hand inside your pants and asked if a condom was available. It was not able to be determined by the panel that more likely than not the Reporting Individual articulated in any way she wanted to leave the room.



Testimony from the reporting individual indicated she was startled when she was awoken in the middle of the night. Further....

Testimony provided by you as well as the reporting individual confirmed that a condom was not available in the morning. In addition....

The Title IX Investigative report provided insight related to action and intent, specifically....

The text message exchange dated 03/17/2020 between yourself and the Reporting Individual corroborated your testimony that...

Witness Lykke Vidar also corroborated the timeline of events described by the Reporting Individual: specifically, the amount of alcohol consumed while at the party. This witness also testified that when she spoke with the Reporting Individual the following evening, the Reporting Individual stated....

Witness Ture Vilgot, during cross examination, responded affirmatively to the question... which supported the testimony of Lykke Vidar that...

While witness Hedda Kraajk provided testimony regarding your character, the witness failed to provide any information that spoke directly to the incident on March 15, 2020. Because this witness had no first-hand knowledge of the incident, the character reference was only able to aid the hearing board during sanctioning.

Based on this evidence, the Administrative Hearing Panel has determined that you are Not Responsible for violating Section B9: Sexual Assault.

## Sanction and Remedies

SCIUniversity is not imposing any sanctions as you have not been found to have violated our policy. Any supportive measures related to your case remain in effect until the conclusion of the of the Title IX Grievance process, which includes the appeals process detailed below (or the time within which appeals may be filed, if no appeal is filed). **You will be notified in writing of modifications to supportive measures at that time.**

## Right to Appeal

Any party may appeal any portion of this decision based on the grounds for appeal defined in the Title IX Grievance Policy.



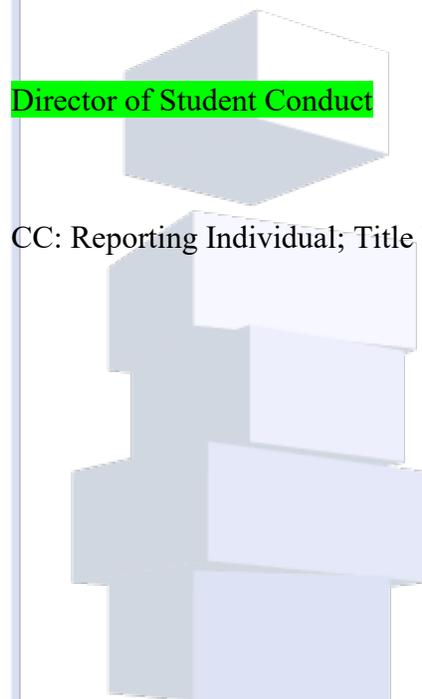
# TIX TOOLKIT



To do so, the appealing party must complete an "Appeals Form" which you can obtain in the Office of Student Conduct, Main Building. **This form must be filed with the office by no later than five (5) calendar days of today's date.** The form, in addition to a written appeal no longer than fifteen (15) double spaced pages (including appendices) may be submitted for review and consideration by the College Appeals Panel. Additional information and standards for the appeal may be found in the Title IX Grievance Policy.

If you have any questions about this case or this decision, contact \_\_\_\_\_.

Sincerely,



Director of Student Conduct

CC: Reporting Individual; Title IX Coordinator; Vice President of Student Affairs

STUDENT  
CONDUCT  
INSTITUTE

THE STATE UNIVERSITY OF NEW YORK



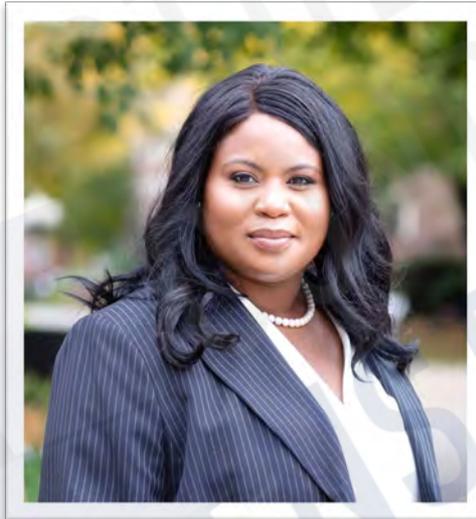
Mishka Woodley, J.D., LL.M.  
Associate Counsel,  
SUNY Office of General Counsel

Alexander Wheeler, M.S.Ed  
Assistant Director,  
SUNY Student Conduct Institute

October 2023

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

# WELCOME TO DAY ONE – MEET YOUR TRAINER



**Mishka Woodley, J.D., LL.M.**

Associate Counsel

SUNY Office of General Counsel

[Mishka.Woodley@suny.edu](mailto:Mishka.Woodley@suny.edu)

# DISCUSSION ROADMAP



## Title IX Sex-Based Harassment Grievance Process

Due Process Basics

Incident Reports

Investigative Process

Hearings

Evidentiary Review

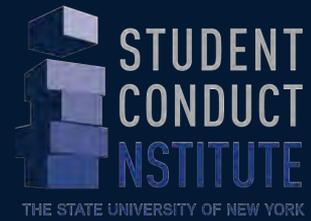
Decision-making Process

Appeals

Implementation



The State University  
of New York



## Disclaimer

*This presentation is for informational purposes only. Presentation content and materials shared shall not be construed to create an attorney-client relationship or as legal advice. Any and all representations made by the presenter(s) are solely opinions of their own and not SUNY System Administration.*



The State University  
of New York

# THE JOURNEY TO CONDUCT/TITLE IX COMPLIANCE-DUE PROCESS

Communication

Community

Clarity

Timeliness

Consistency

Transparency

EQUITY

Confidentiality/ Privacy

What Else????...

# COMPLIANCE ESSENTIALS: TOOLKIT



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

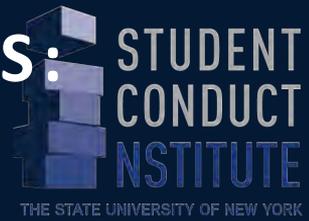
**COMPETENCE**: Know Your Policies and Codes- especially as related to student rights.

**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.

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



## U.S. Constitution: 14<sup>th</sup> Amendment, Section 1

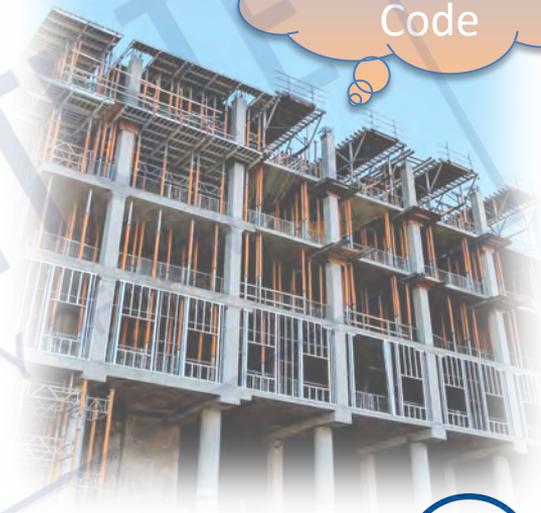
- *Prohibits the deprivation of life, liberty, or property*
- *Prohibits denial to any person the equal protection of laws.*

## Statutes

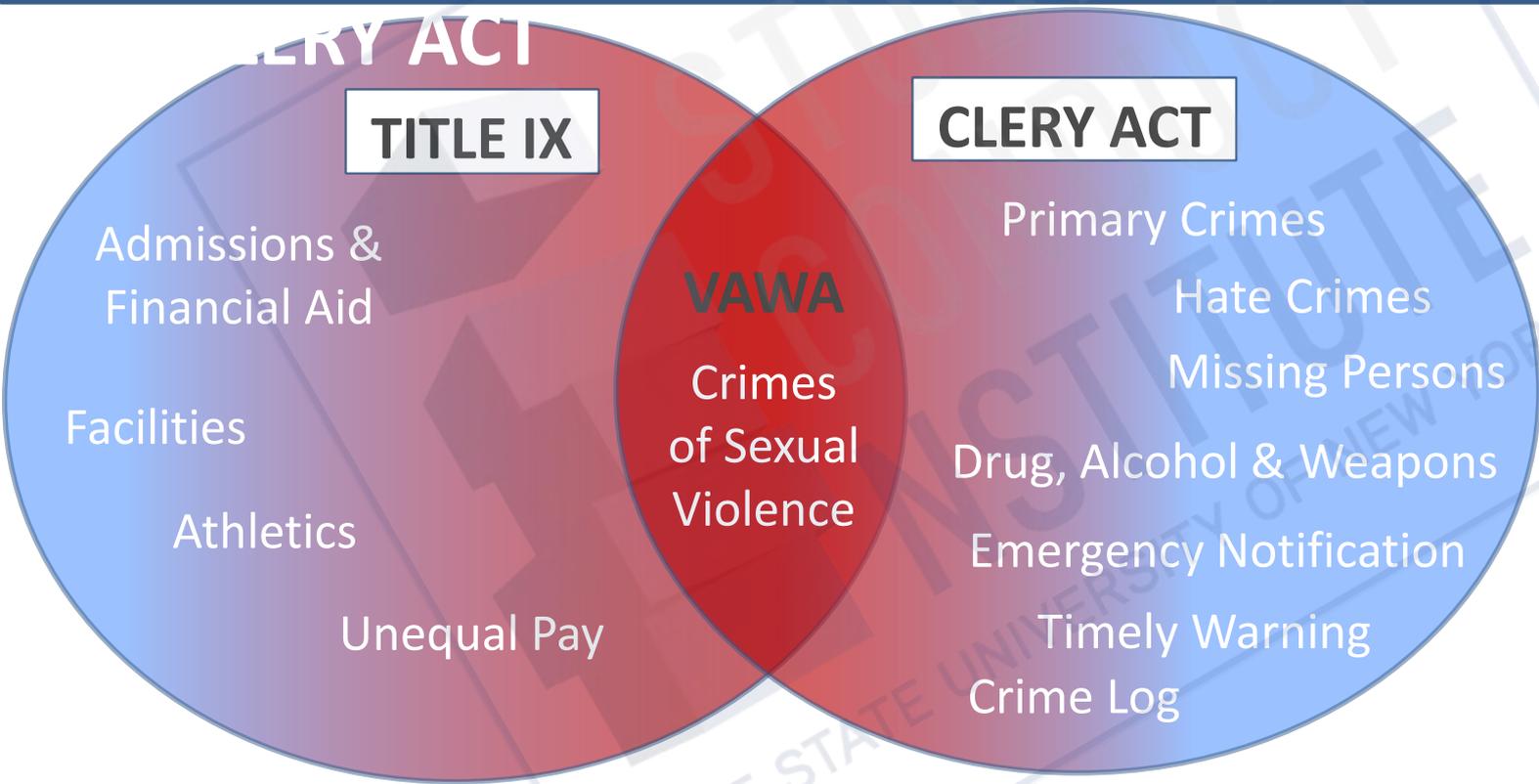
- Title IX of the Education Amendments of 1972
- The Clery Act (federal)
- Violence Against Women Act (VAWA) (federal)
- Family Educational Rights and Privacy Act (federal)
- NYS Education Law 129-B (state)
  - *(Sexual assault, dating violence, domestic violence and stalking prevention response policies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

## Rules & Regulations: (State /Federal)

- Title IX of the Education Amendments of 1972

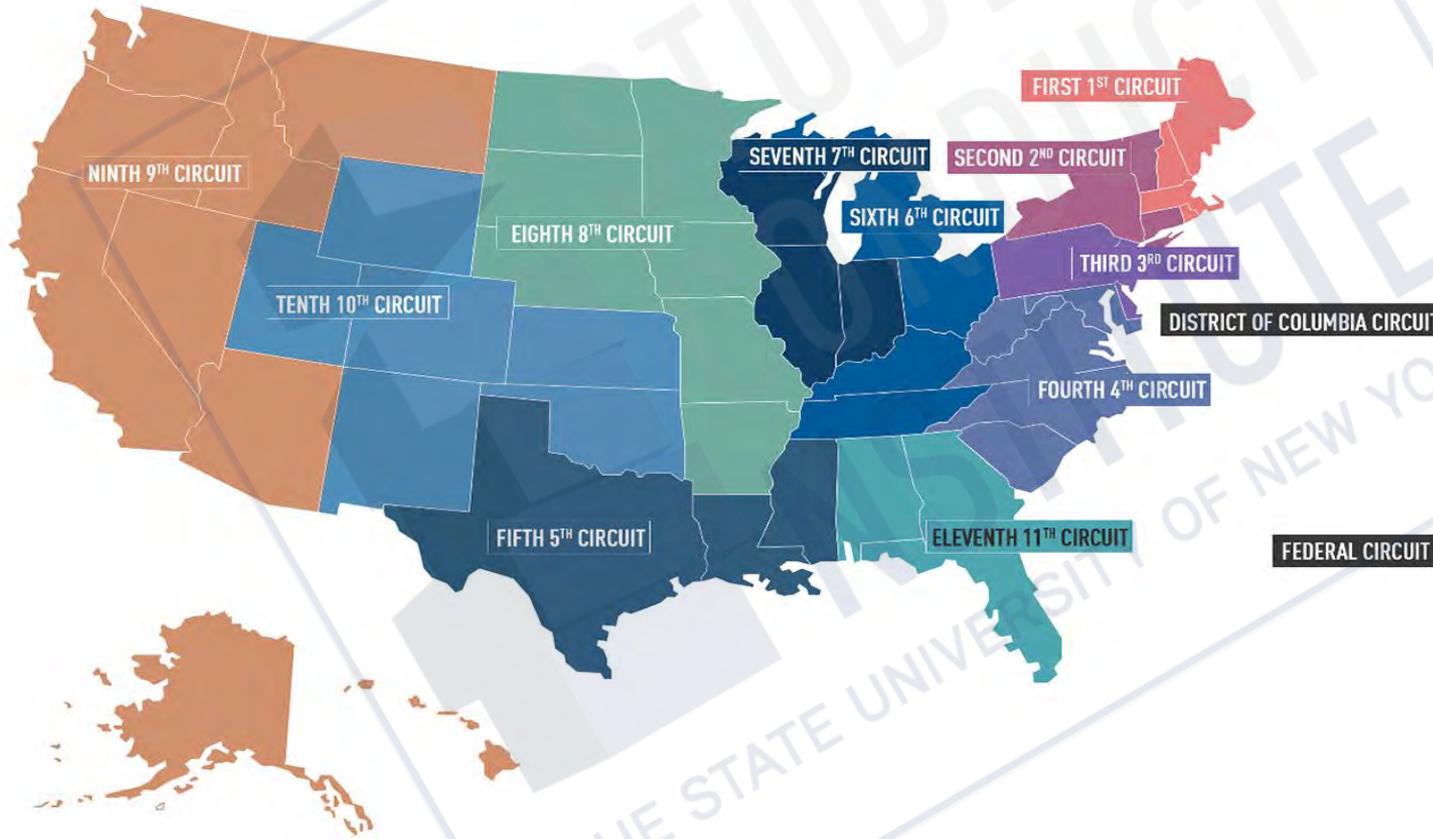


# THE VIOLENCE AGAINST WOMEN ACT (VAWA) &



# CIRCUIT COURTS

UNITED STATES COURTS OF APPEALS AND DISTRICT COURTS



# LEGAL FOUNDATIONS- CASE LAW

## Dixon v. Alabama . 293 F.2d 150 (5<sup>th</sup> Cir.



**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 (1975)



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*

# CONSTITUTIONAL STANDARD- DUE PROCESS

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

*14<sup>th</sup> Amendment,  
Section 1,  
U.S. Constitution*



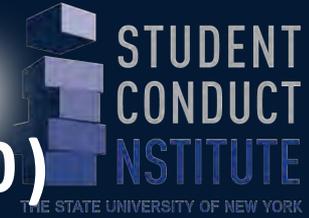
# LEGAL FOUNDATIONS- CASE



- 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.  
*[Dixon v. Alabama . 293 F.2d 150 (5<sup>th</sup> Cir. 1961)]*
- 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. *[Goss v. Lopez, 419 U. S. 565 (1975)]*
- 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.  
*[Wisconsin v. Constantineau, 400 U. S. 433 (1971)]*

# LEGAL FOUNDATIONS – CASE LAW

## 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

## MATHEWS V. ELDRIDGE, 424 U.S. 319



- **Addressed whether due process would require the opportunity for an evidentiary hearing prior to the termination of social security disability (SSD) benefits. No!**
- The Court determined that a person seeking SSD benefits was 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 error

# LEGAL FOUNDATIONS- CASE LAW

## WISCONSIN V. CONSTANTINEAU, 400 U.S.



- 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 )



# TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

No person in the United States shall. . .

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



- 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.

# 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 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
- Fair hearing process w/ opportunity to be heard
- Appeal (under specified circumstances)

- PROHIBITIONS:

- Conflicts of Interest and Bias
- Retaliation



# TITLE IX: SEXUAL HARASSMENT SCOPE

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

# TITLE IX: SEXUAL HARASSMENT SCOPE

- **Sexual Assault**
- **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*



# 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)*

# TITLE IX REQUIREMENTS: GRIEVANCE PROCESS FUNDAMENTALS

- **Actual Knowledge**
  - Notice to Title IX Coordinator or school official with authority to institute corrective measures on behalf of the school.
- **The conduct must fall within the scope of the Title IX sexual harassment definitions**
- **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.
- **Formal Complaint**

# 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.”

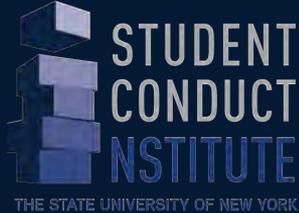
- 20 U.S.C. 1092(f)(6)(A)(v)

**“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)*

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# 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!

# 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)

# TITLE IX: 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



# TITLE IX 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

# 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

# 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
- Right to an advisor (may be an attorney)
- Presumption of non-responsibility



# DUE PROCESS: DISABILITY RIGHTS CONSIDERATIONS

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



# TITLE IX INVESTIGATION: PROMPT PROCESS- - UNJUSTIFIED DELAYS

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

Balance prompt resolution and adequate time to prepare and respond to charges.

Courts have identified the following delays as unjustified:

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



# INFORMAL RESOLUTIONS

## 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

## Examples:

- Administrative resolution
- Restorative justice
- Mediation

Not allowed in cases involving employee respondents  
TIXC *can* run the process, but it is not recommended



# 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: **PROHIBITED** CONFLICTS & BIAS

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



# TITLE IX: NOT *PER SE* CONFLICTS & 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



# TITLE IX INVESTIGATION: IMPARTIAL PROCESS

Must collect **BOTH** *exculpatory* and *inculpatory* evidence

Exculpatory =  
*increases probability of a finding  
of  
non-responsibility/ non-liability*

Inculpatory =  
*increases probability of a finding  
of  
responsibility/ liability*

**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!

# TITLE IX INVESTIGATION: IMPARTIAL PROCESS

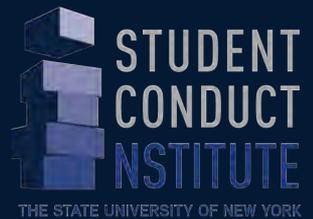
## REMINDER:

*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!*



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CONDUCT  
INSTITUTE  
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# 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 a student’s decision to not testify



# LIVE HEARING: DECORUM



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

See, 85 Fed. Reg. 30026, 30319.

***Advisors who violate the rules of decorum may be removed***

# LIVE HEARING: DECORUM CONSIDERATIONS



- 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

# DECISION-MAKING PROCESS: EVIDENTIARY REVIEW CONSIDERATIONS



- ✓ Exclusion Status
- ✓ Relevance
- ✓ Authenticity
- ✓ Credibility/ Reliability
- ✓ Weight

# DECISION-MAKING PROCESS: WEIGHING TESTIMONY AND EVIDENCE

- ✓ Exclusion Status
- ✓ Relevance
- ✓ Authenticity
- ✓ Credibility/ Reliability
- ✓ Weight



# 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



# 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.



# CREDIBILITY DETERMINATIONS: OBJECTIVITY



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

# WEIGHING TESTIMONY & EVIDENCE

Generally  
more objective

Caution: more  
subjective

Destruction of  
evidence. 85  
Fed. Reg. 30300.

Contradictory  
testimony or  
evidence by others

Corroborative  
testimony

Consistency and  
specificity of  
testimony

Recall

Evasiveness

Inherent plausibility  
("It just makes sense")

Demeanor and body  
language (permissible  
under Final Rules @  
p. 30321)

# WEIGHING TESTIMONY & EVIDENCE

## 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.

# PROHIBITION AGAINST RETALIATION

## ZERO TOLERANCE!

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

# PROHIBITION AGAINST RETALIATION

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

# RESPONSIBILITY DETERMINATION PROCESS

- ✓ Identify the **allegations** potentially constituting sexual harassment;
- ✓ Describe the **procedural steps** taken;
- ✓ Identify **findings of fact** supporting the determination;
- ✓ Identify which **section of the Code of Conduct** respondent has/has not violated.
- ✓ For **each allegation**, provide statement of and rationale 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**

# APPEALS PROCESS-

## (3) MANDATED GROUNDS FOR

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.



# 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?

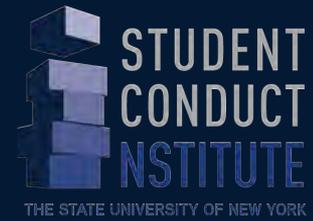
## Jurisdiction: People

- ✓ 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

# SEXUAL HARASSMENT: 2022 TITLE IX NPRM – HIGHLIGHT

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



# QUESTIONS



[suny.edu](https://suny.edu)

[system.suny.edu/sci/news](https://system.suny.edu/sci/news)

[system.suny.edu/sci/tix2020](https://system.suny.edu/sci/tix2020)

[system.suny.edu/sci/tixnprm2022](https://system.suny.edu/sci/tixnprm2022)