

# CASE PROCESS

## B. PRE HEARING PREP INVESTIGATION MODEL DECONSTRUCTED

### Initial Procedures Meeting Completed

- Due process rights
- Advisor of choice
- Timeline for process
- Answer questions
- Provide resources
- Discuss evidence and witnesses
- Resolution options

### Investigation Begins

- Investigation Report Template
- Notice of Investigatory Interview Template
- Collection of evidence
- Witness interviews
- Review of evidence by Respondent and Complainant
- Written response from Respondent and Complainant
- Once completed the information is sent to the Student Conduct office.

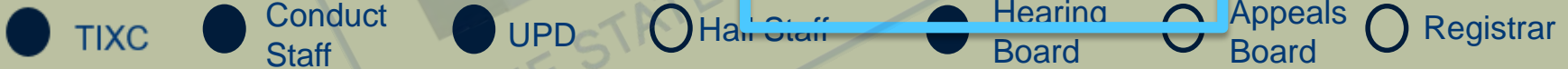
### Post Investigation Procedures Meeting

- Detail due process rights
- Indicate right to advisor of choice (advisor guide) ✕
- Describe timeline for process
- Answer questions & provide resources
- Discuss **new** evidence and witness procedures
- Discuss charges and allegations
- Offer resolution options (Informal Resolution & Hearing process)
- Disability accommodations
- Retaliation policy reminder
- Describe potential sanction outcomes
- Decorum policy ✕
- Determining relevance guide ✕
- Share their appeal rights
- Correspondence communication

### Resolution Options

- **Informal Resolution**
  - Complainant has agreed in writing.
  - Title IX Coordinator agrees.
  - Respondent has agreed to participate.
  - Facilitator reaches out to both parties.
  - Both parties agree to the resolution.
  - Informal Resolution Model ✕
- **Hearing**
  - Managing all schedules
  - Notice of Hearing
  - Parties confirm attendance with advisors
  - Pre-Hearing preparation & logistics
  - Selection of Board Members
  - Order of Hearing
  - Determination

### Key Players:



## Overview

- Detail due process rights
- Reminder - right to advisor of choice
- Describe timeline for process
- Review charges and allegations
- Answer questions & provide resources
- Discuss new evidence and witness procedures
- Offer resolution options (Informal Resolution & Hearing process detailed)
- Disability accommodations ✂
- Retaliation policy reminder ✂
- Decorum policy ✂
- Relevance determination policy ✂
- Describe potential sanction outcomes
- Share their appeal rights
- Correspondence clause

## Action Items

- ✓ **Virtual vs in-person meetings**
  - Clear expectations and reminders in your meeting notices (e.g. Advisor of choice notice)
- ✓ **Location of meeting and privacy concerns**
- ✓ **Preparation of materials in advance**
  - Referral Packet
  - Visual of hearing space if in person
- ✓ **Schedule with adequate time**
- ✓ **Build in flexibility and anticipate challenges**
  - Emotional state of all parties
  - Breaks may be necessary
  - Working with the student's advisor



# POST-INVESTIGATION PROCEDURAL MEETING

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### Key Players:



TIXC



Conduct Staff



UPD



Hall Staff



Hearing Board

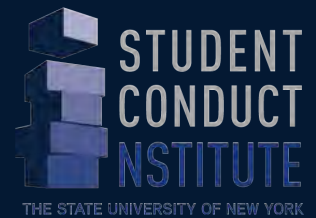


Appeals Board

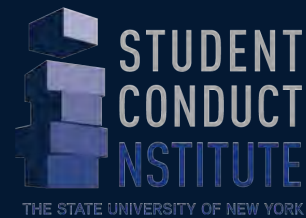


Registrar

**BREAK**



# HEARINGS



## Virtually

### Technology

- Accessibility needs
- Internet signal strength
- Party access to appropriate equipment – don't make assumptions
- Technology settings
- Recording ability (double check cloud space & storage)
- Double check provided links
- Back up plan & back up tech person role that does not wear other hats in the process

### Hearing Space and Parties

- Physical space for party and advisor
- Hearing board member location
- Your location
- Witness & Investigator invites
- All party and advisor confirmations (back up advisors)
- Confidentiality and privacy of communications (tip pan the room)

# PRE-HEARING PREPARATION

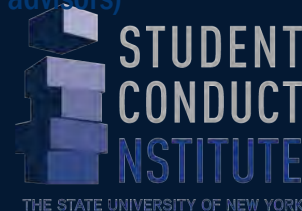
## In-Person

### Technology

- Accessibility needs
- Recording ability (double check cloud space & storage)
- Smart equipment (e.g. for the purposes of showing evidence)
- Back up tech person role that does not wear other hats in the

### Hearing Space and Parties

- Space considerations for where students will be placed – enter/exit building?
- Space availability (multiple spaces)
- Masks and visitor policies
- Access to documents and evidence
- Proximity to restrooms
- Proximity to a printer
- Fire alarm plan
- Water, tissues, snacks, pens, paper (for all)
- Witness & Investigator invites
- All party and advisor confirmations (back up advisors)



Training completion check

Confirm availability and availability expectations

Conflict of Interest and Bias Check

Access to evidence in advance of the hearing

Select a method of communication for the Board for the Hearing (Virtual Hearing)

Selection of chairperson

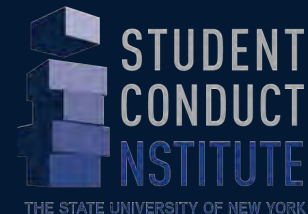
Hearing script

Reminder of relevant policies & tools

- Title IX Grievance Policy
- Code of Conduct (if applicable)
- Decorum Policy
- Guide for Determining Relevance
- Determination Regarding Responsibility Template
- Sanction Guidelines



# HEARING BOARD PREPARATION



**Date/Time/Location(or links)**

**Consider multiple days for scheduling (depending on the case)**

**Policy & Tool Reminders**

- **Title IX Grievance Policy**
- **Code of Conduct (if applicable)**
- **Advisor Guide**
- **Decorum Policy**
- **Guide for Determining Relevance**
- **Tech Guide (if applicable for how students and advisors can participate virtually)**

**Order of the hearing**

**Failure to appear clause**

**New evidence and witness reminder**

# HEARING NOTICE TO STUDENTS & ADVISORS



**Guide for  
Determinin  
g Relevance**

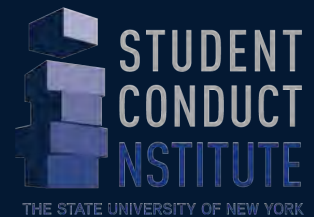
**Model  
Hearing  
Script**

**Model Decorum  
Policy**



**RESOURCE DOCUMENTS**

**CODE WORD  
TWO: Marcy**



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.”

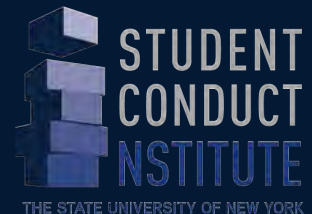
*Advisors who violate the rules of decorum may be removed*



See, 85 Fed. Reg. 30026-30210

**DECORUM**

**CODE WORD  
TWO: Marcy**

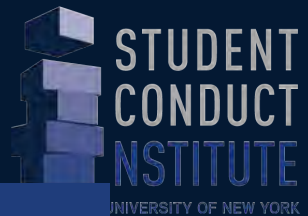


# Rules to consider

- Questions in neutral tone
- No accusatory questions
- Require parties and advisors to refer to other persons by the name and gender pronoun used by that person
- No "duty of zealous advocacy" inferred or enforced, even for attorney-advisors
- No abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission
- No use of profanity or personal attacks
- No use of repetitive questions



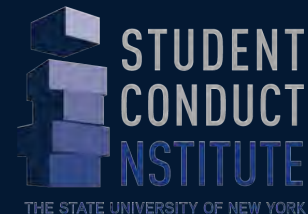
**DECORUM**



- All parties, advisors, witnesses, and decision-makers:
  - must be present at the same time either physically or remotely via secure technology.
- Decision-makers
  - Must be able to see and hear parties and witnesses (either physically or via secure technology).
  - Ask questions of the parties and witnesses.
  - Decide whether or not question is relevant.
- Advisors
  - ask relevant cross-examination questions. (*Does the question make a fact at issue more or less likely to be true?*)
- **“No Adverse Inference” Rule –**
  - No inference of responsibility from decision not to testify
- **The Title IX “Suppression Rule” has been VACATED**



# LIVE HEARING PROCESS FUNDAMENTALS





## Specific exclusions governing 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.



# LIVE HEARING PROCESS EXCLUSIONS



## Student Conduct Institute Guide for Determining Relevance

### *Generally probative questions*

- The question is relevant because it asks whether a fact material to the allegations is more or less likely to be true.
- The question is irrelevant because it asks about a detail that does not touch on whether a material fact concerning the allegations is more or less likely to be true. See, 85 Fed. Reg. 30026, 30343 (May 19, 2020).

### *Question regarding Privileged Information*

- The question is irrelevant because it calls for information shielded by a legally-recognized privilege [identify the privilege].
- The question is relevant because, although it calls for information shielded by a legally-recognized privilege [identify the privilege], that privilege has been waived in writing, and the question tends to prove that a material fact at issue is more or less likely to be true.

### *Question about Complainant's Prior Sexual Behavior or Sexual Predisposition*

- The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets *one of the two exceptions* to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i), and it tends to prove that a material fact at issue is more or less likely to be true [denote which exception].
  - Exception one: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.
  - Exception two: The question concerns specific incidents of the complainant's prior sexual behavior with respect to the respondent and is asked to prove consent
- The question is irrelevant because it calls for prior sexual behavior information about the complainant without meeting one of the two exceptions to the rape shield protections defined in 34 C.F.R. § 106.45(b)(6)(i).



# TITLE IX TOOLKIT



## Student Conduct Institute Sample Hearing Script<sup>1</sup>

### I. Introduction:

**Administrative Hearing Officer:** We are officially on the record at \_\_\_\_am/pm on Month, Day, Year for case number \_\_\_\_\_. I would ask everyone to turn off cell phones for the duration of the hearing and please could you all present your phones to ensure this practice? Thank you. My name is \_\_\_\_\_, and I am serving as today's hearing officer. Today's hearing is being recorded, therefore please be reminded to speak clearly throughout the hearing. The recording of this hearing will be made to be used in any deliberations by the decision-maker(s) or appeal board, and may be accessed by the parties prior to any appeal. This recording represents the sole official verbatim record of today's Title IX Hearing and is the property of this institution.

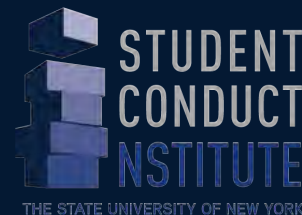
Would each member of the hearing panel please introduce themselves? We will begin to my left.  
[introduction]. |

### III. Privacy & Decorum Expectations

This is a closed hearing, and not open to the public. The individuals participating in this process can and should expect that the information discussed and the documents presented are to be kept to this hearing space in order to protect the privacy of all individuals involved. Providing materials to any other party not expressly participating in this process may be considered retaliatory and is not permitted.



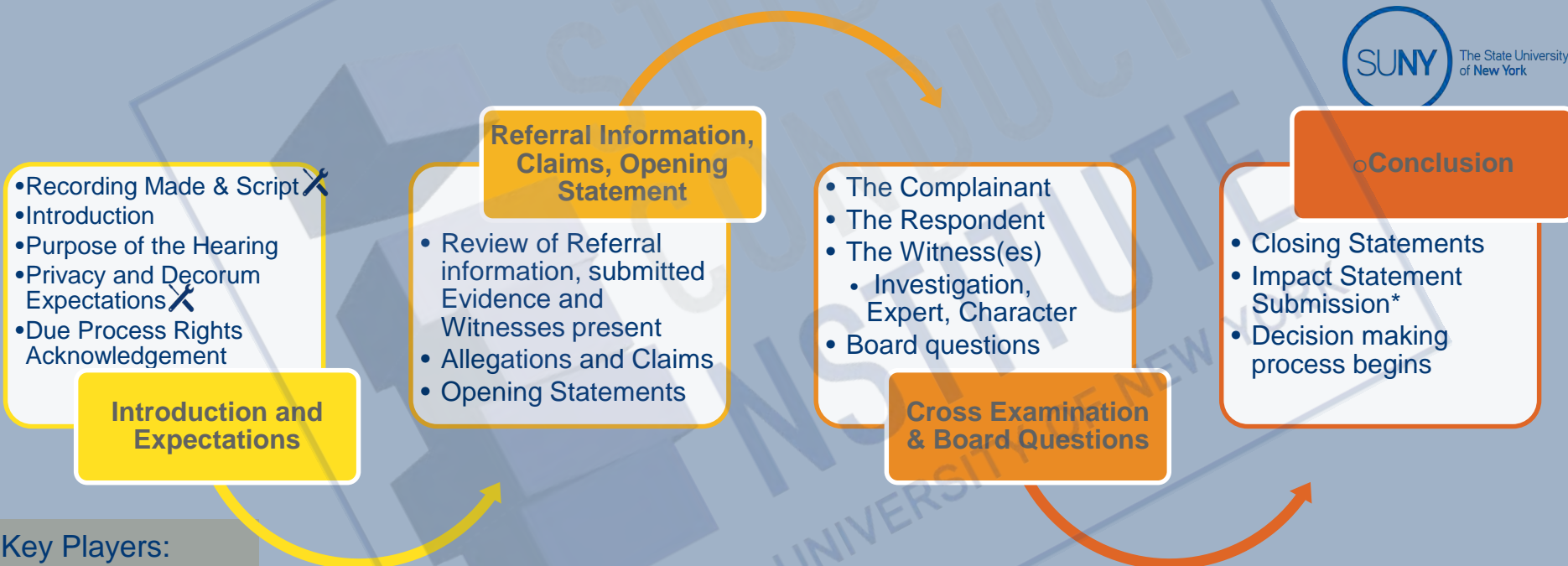
# SAMPLE HEARING SCRIPT



# CASE PROCESS

## # HEARING

# DECONSTRUCTED



**Key Players:**

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





## Homework alert! State Module Assignment



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



Review and legal requirements.

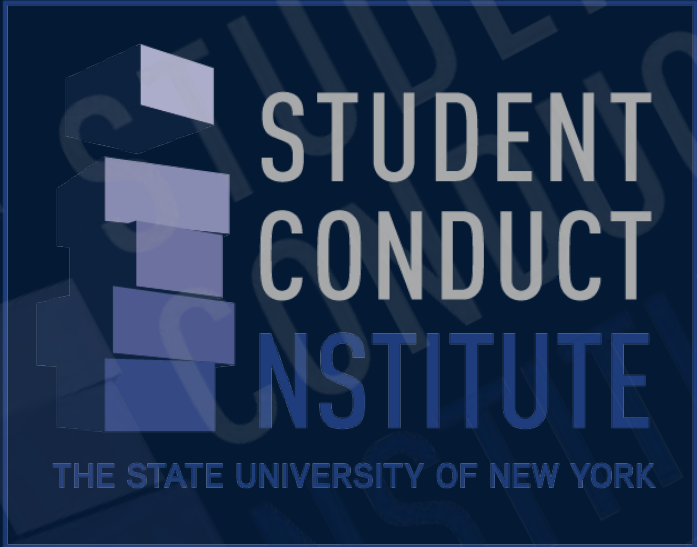


Overview



# DAY 4 OVERVIEW





The State University  
of New York