

END OF 1ST BREAK





Date/Time of Formal Complaint & who filed the Complaint

References to Policies & Procedures

Parties involved

Conduct alleged

Date/Location of the alleged conduct

Upcoming meeting Date/Time/Location

Notice of Advisor of choice

Presumed **not responsible** until a determination is made

Copy sent to Complainant



NOTICE OF ALLEGATIONS (NOA)



NOTICE REQUIREMENTS

TIMING

- Send to parties as soon as practicable after filing of formal complaint
- No investigative interviews until parties have sufficient time to review allegations



ADVISOR

- Notice must inform parties of right to advisor, who may be attorney
- School does not need to pay for attorney nor provide an advisor
- Reasonable restrictions
 - unless they conflict with cross-examination role





Reactions v. Responses



Reflective Responses:
Restate, Reflect, Validate



Choices



Consistent Communication &
Offerings for Parties



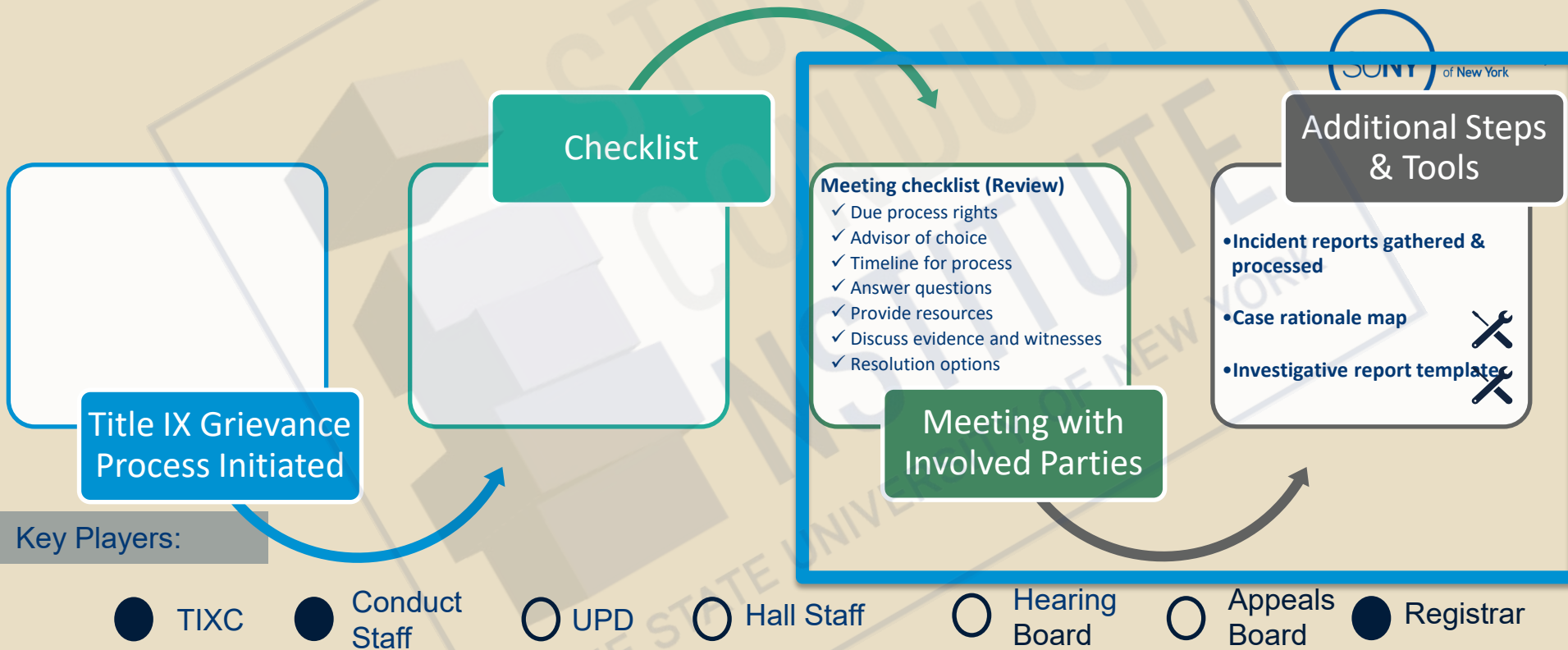
FERPA Considerations



REACTIONS & CONSISTENT COMMUNICATION

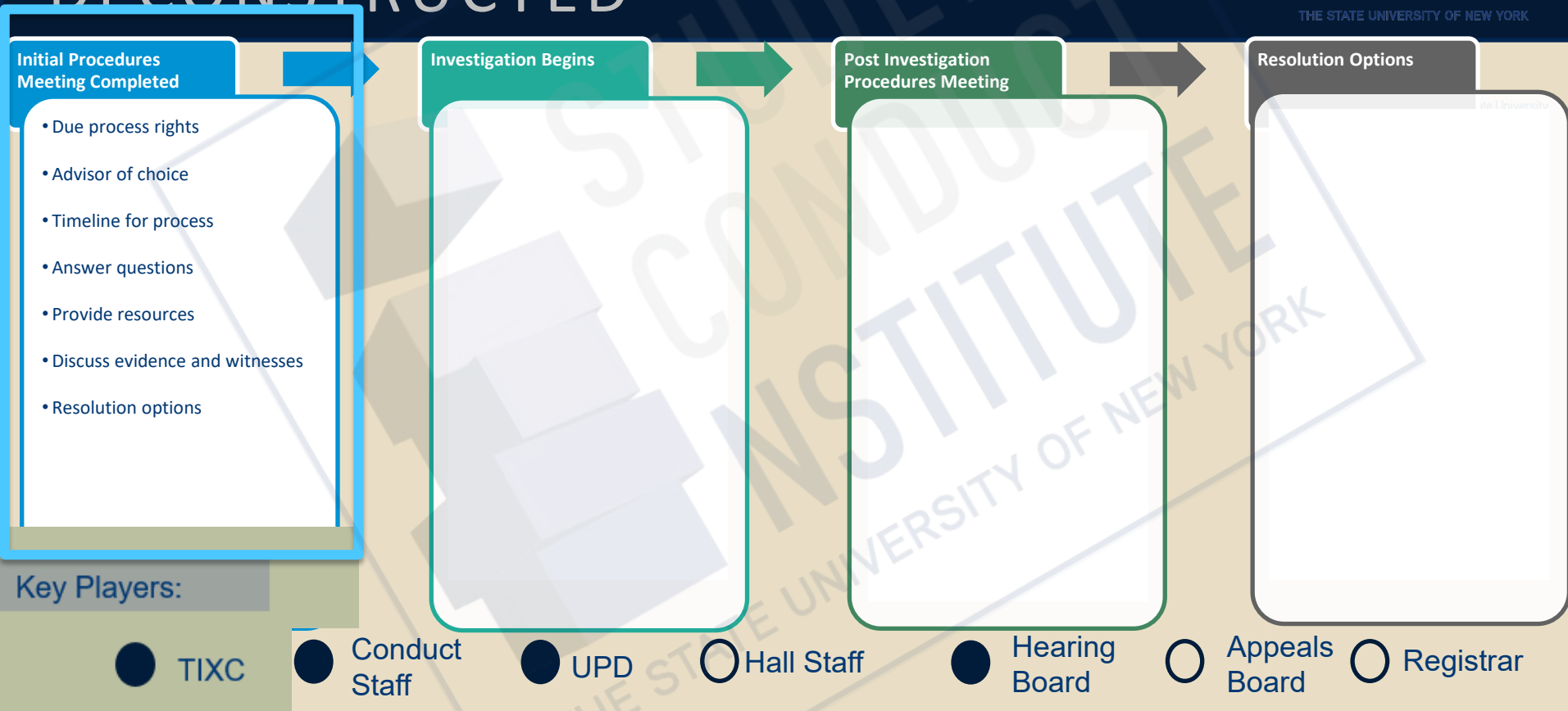
CASE PROCESS DECONSTRUCTED

2. TITLE IX GRIEVANCE PROCESS INITIATED



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Detail Due Process Rights



Review Grievance Process
Timeline



Answer questions; provide
resources



Review procedures (evidence,
witnesses)



Discuss potential outcomes,
offer resolution options

Action Items



- ✓ Virtual vs in-person meetings
- ✓ Location of meeting and privacy concerns
- ✓ Preparation of materials in advance
- ✓ Schedule with adequate time
- ✓ Build in flexibility and anticipate challenges

MEETING WITH STUDENTS

When Informal Resolutions are allowed under the Final Rule:

- After a formal complaint;
- When all parties and the TIXC coordinator consent;
- Any party can withdraw at any time

Not allowed in cases involving employee Respondents

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

Examples:

- Administrative resolution
- Restorative justice
- Mediation



INFORMAL RESOLUTIONS

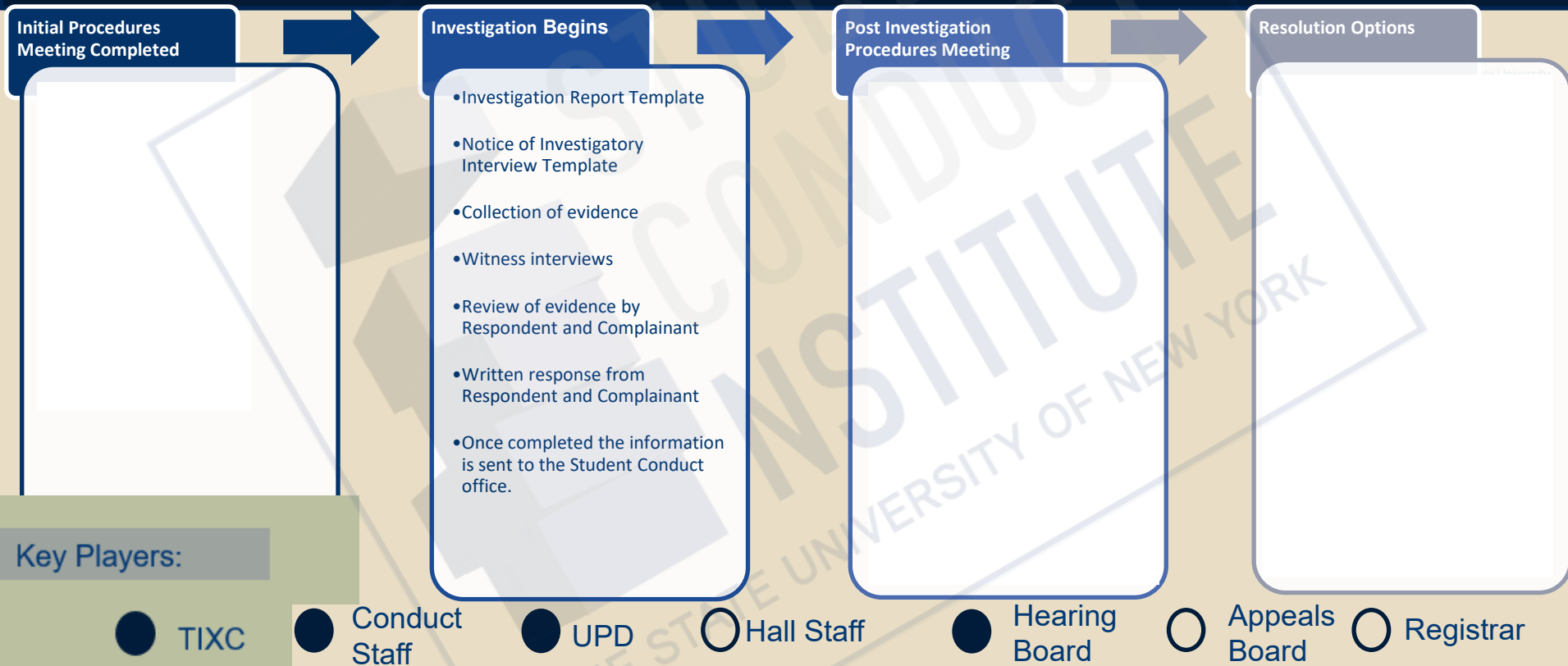
Area	Considerations
Capacity	Staff and technology needs
Policy Updates	Website, code, promotional materials
Process	Conceptualization, implementation, criteria, execution, form creation
Facility	Physical & Virtual
Training	Facilitators and Stakeholders
Awareness	Marketing & outreach



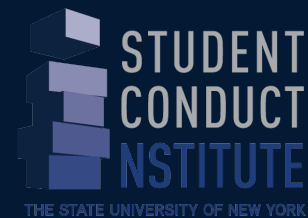
INFORMAL RESOLUTIONS

CASE PROCESS DECONSTRUCTED

2. TITLE IX GRIEVANCE PROCESS INITIATED



INVESTIGATIONS



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

-
- Training and procedure review
 - Check your body language and demeanor
 - Questioning and word usage (Help me understand... and what are you able to tell me about what you experienced?)
 - Describing another individual's experience
 - Framing your questions, avoiding why questions



TRAUMA INFORMED PRACTICES

INVESTIGATIVE PROCESS

Evidence Collection

- Interviews of parties & witnesses must take place after Notice of Allegations
- Both inculpatory & exculpatory evidence must be collected
- Evidence will be directly related to the allegations
- The collection process may include evidence that institution does not intend to rely on

Evidence Sharing

- Parties may review evidence with advisors present
- May set reasonable rules around evidentiary review and sharing
- Redaction of “irrelevant” evidence
- Mandatory inspection process with 10-day min. review period

Investigation Report

- Summarizes relevant evidence directly related to allegations
- Cannot make determination regarding responsibility- sole role of the hearing panel
- Parties must have opportunity to review at least 10 days before hearing





Investigation Overview



Jurisdiction, Investigator Information



Investigation Report Objective

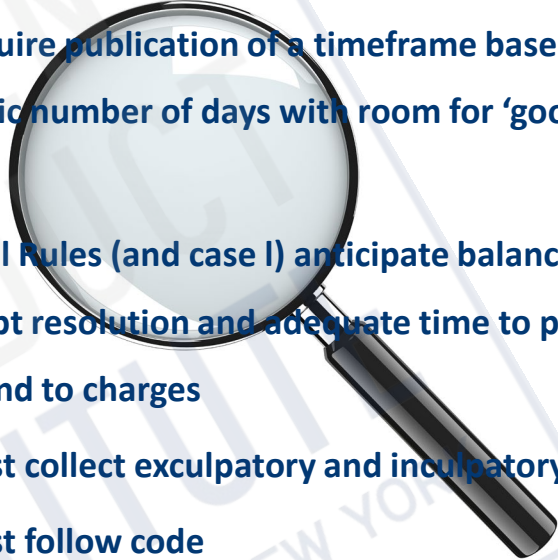


Alleged Prohibited Conduct, Witness List, Evidence List



Outline Procedural Next Steps after Investigation

Prompt and Impartial Investigations

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

INVESTIGATION CONSIDERATIONS

Testimony

Text Messages

Social Media Posts

Medical Records

Public Safety / Police Records

Videos / Surveillance Footage

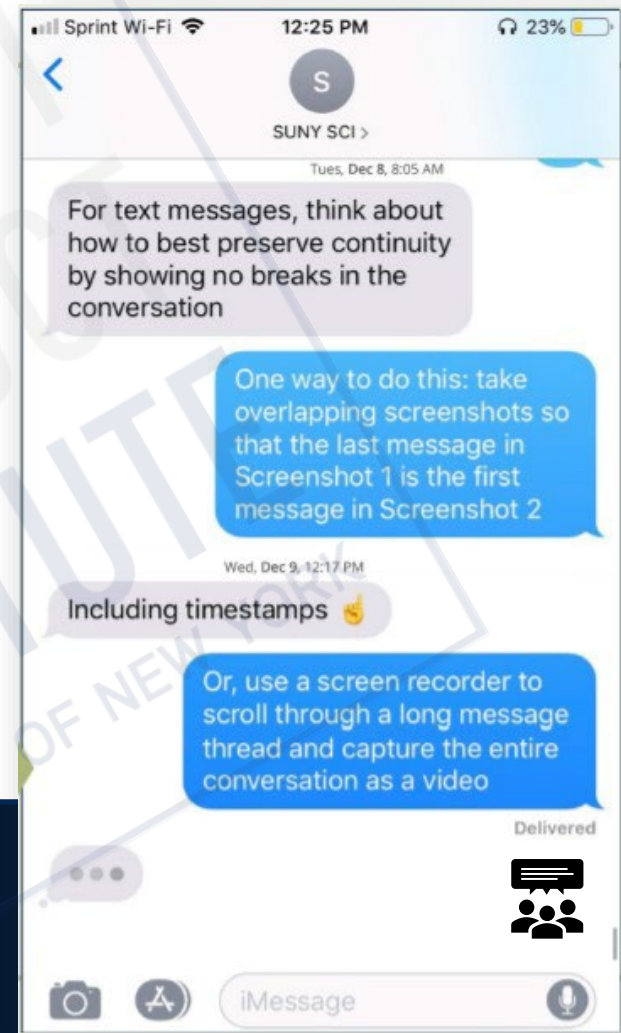
Pictures

ID Card Data / Network Usage Location Data

Email

Voice notes

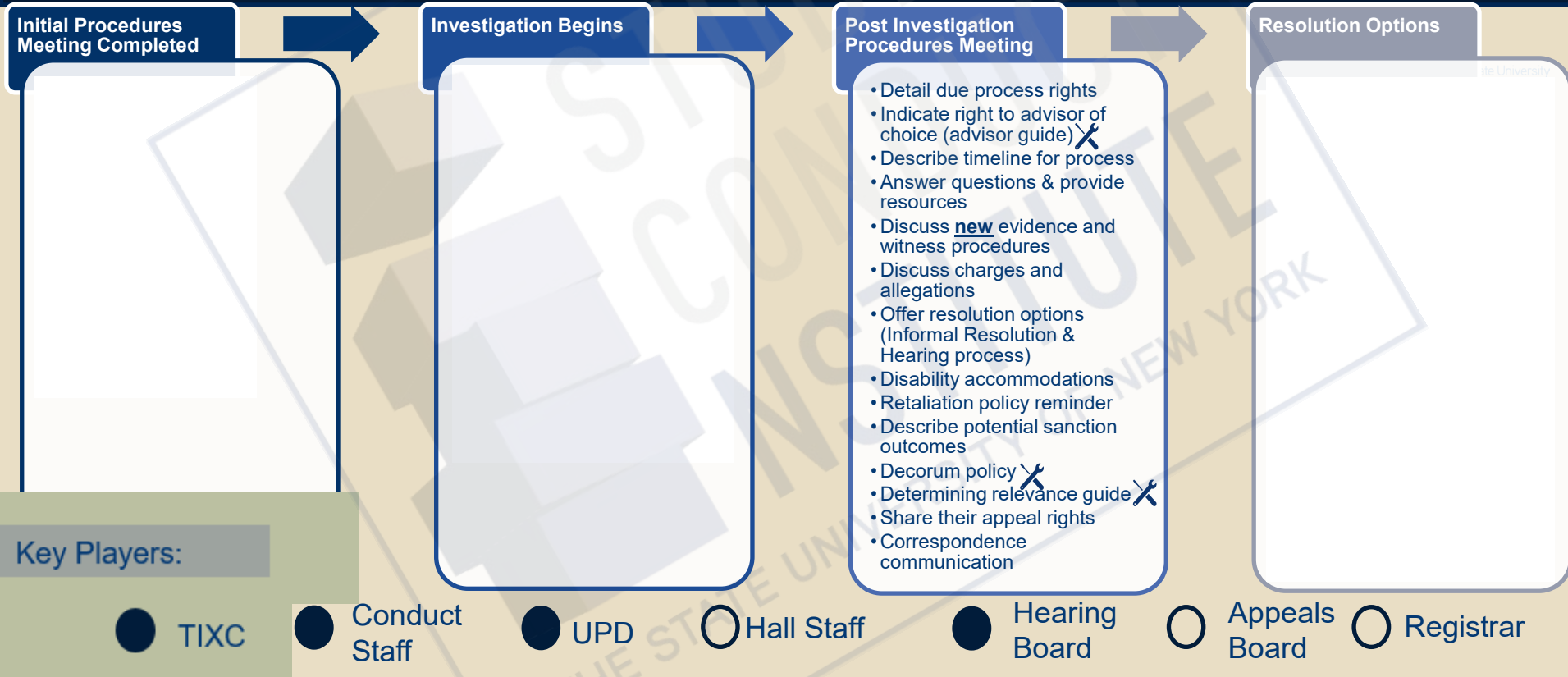
EVIDENCE COLLECTION





CASE PROCESS DECONSTRUCTED

2. TITLE IX GRIEVANCE PROCESS INITIATED





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



Review charges/allegations
and remaining timeline



Answer questions; provide
resources



Offer resolution options
again, discuss



Review appeal rights, policy
and procedure reminders

Action Items



✓ Virtual vs in-person meetings

- Clear expectations and reminders in your meeting notices (e.g. Advisor of choice notice)

✓ Location of meeting and privacy concerns

✓ Preparation of materials in advance

- Referral Packet
- Visual of hearing space if in person

✓ Schedule with adequate time

✓ Build in flexibility and anticipate challenges

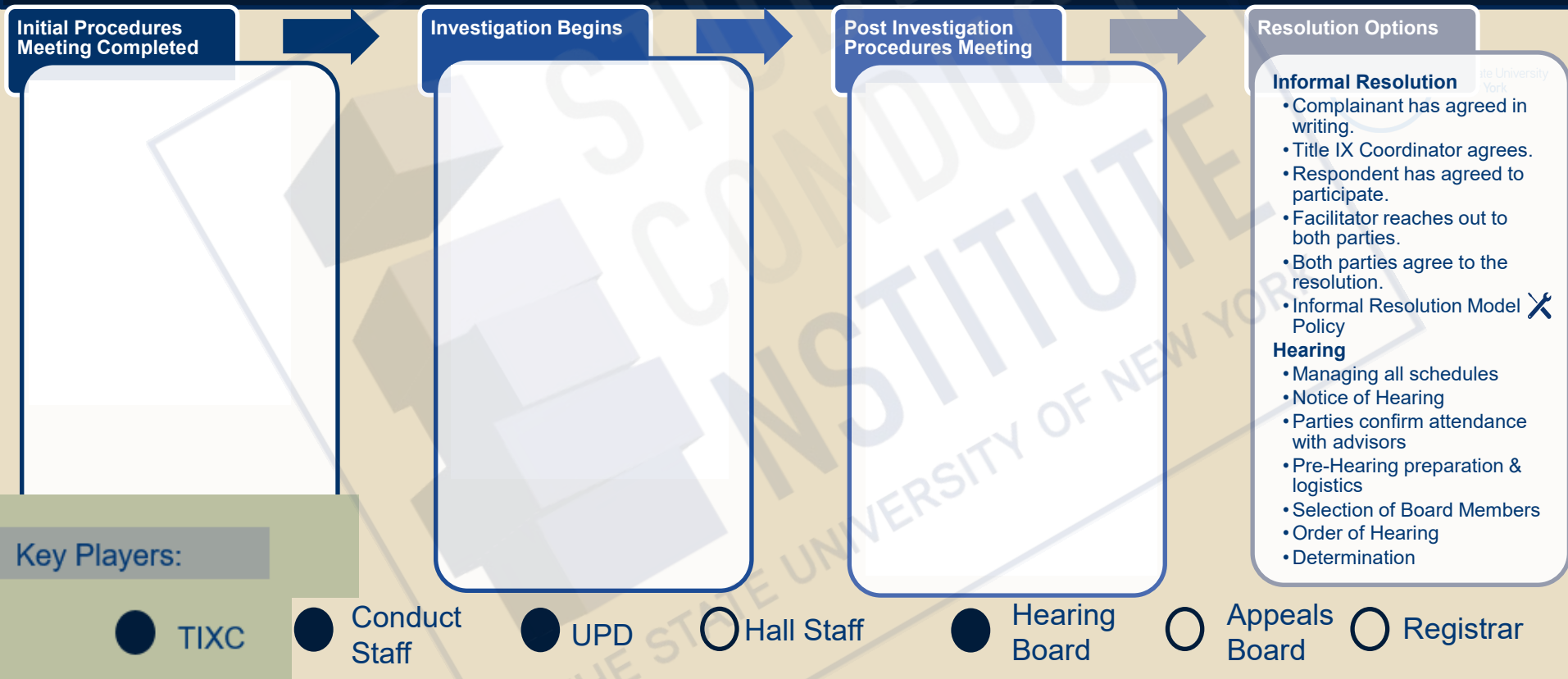
- Emotional state of all parties
- Breaks may be necessary

- Working with the student's advisor

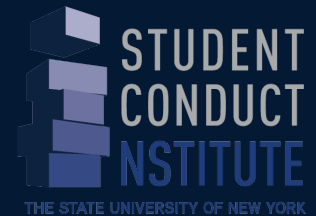
POST-MEETING WITH STUDENTS

CASE PROCESS DECONSTRUCTED

2. TITLE IX GRIEVANCE PROCESS INITIATED



PRE-HEARING PREPARATIONS



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
- Access to documents

Hearing Space & 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 CONSIDERATIONS (VIRTUAL)



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 process

Hearing Space and Parties

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



PRE-HEARING CONSIDERATIONS (IN- PERSON)





Availability Expectations



Conflict of Interest and Bias Check



Access to evidence, hearing resources, information



Board Communication



Select chairperson, discuss relevant roles on board



HEARING BOARD PREPARATION



Date, Time, Location
(Meeting Links)



Include and cite relevant
policies / procedures



Describe the
outline/process for day of



Include failure to appear
clause



New evidence and witness
reminder



HEARING NOTICE DOCUMENT

- All parties, advisors, witnesses, and decision-makers:
 - must be present at the same time either physically or remotely via secure technology.
- Decision-makers
 - Must be able to see and hear parties and witnesses (either physically or via secure technology).
 - Ask questions of the parties and witnesses.
 - Decide whether question is relevant.
- Advisors
 - ask relevant cross-examination questions. (*Does the question make a fact at issue more or less likely to be true?*)



LIVE HEARING FUNDAMENTALS

Rules to consider

- Questions in neutral tone
- Require parties & advisors to refer to other persons by the name & gender pronoun preferred

Avoid:

- Accusatory questions
- "duty of zealous advocacy" inferred or enforced, even for attorney-advisors
- abusive behavior: yelling, screaming, badgering, leaning in, or approaching witnesses/parties without permission
- use of profanity or personal attacks
- use of repetitive questions



DECORUM



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



GUIDE FOR DETERMINING RELEVANCE



TITLE IX TOOLKIT

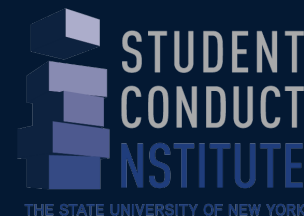


Question about Complainant's Prior Sexual Behavior, or Sexual Predisposition

- The question is relevant because although it calls for prior sexual behavior information about the complainant, it meets one of the two expectations 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 1: The question is asked to prove that someone other than the respondent committed the conduct alleged by the complainant.
- Exception 2: 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**



GUIDE FOR DETERMINING RELEVANCE





TITLE IX TOOLKIT



General probative questions

- Determining whether a question is relevant because it asks whether a fact material to the allegations is more or less likely to be true
- Determining whether a 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)



GUIDE FOR DETERMINING RELEVANCE



START OF 2ND BREAK

