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# SCL LIVE@ DISTANCE BASIC COMPLIANCE TRAINING, WEEK 4

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## CASE PROCESS DECONSTRUCTED



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## 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



WEIGHING TESTIMONY & EVIDENCE



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## Credibility Determinations: "Objective" evaluation

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



WEIGHING TESTIMONY & EVIDENCE



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### Credibility Determinations: "Objective" evaluation

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



WEIGHING TESTIMONY & EVIDENCE



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### Review Sample Case Determination Regarding Responsibility Letters



DETERMINATION REGARDING RESPONSIBILITY



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- Identify the **allegations** potentially constituting sexual harassment;
- Describe the **procedural steps** taken;
- Identify **findings of fact** supporting the determination;
- Identify which **section of the Code of Conduct** respondent has/has not violated.
- **For each allegation**, provide statement of and rationale for:
  - the result, including a **determination regarding responsibility**;
  - any **disciplinary sanctions** imposed on the respondent; and
  - whether **remedies** designed to restore or preserve equal access to recipient's education program or activity will be provided to complainant; and
- Describe the recipient's **appeal** procedures



DETERMINATION REGARDING RESPONSIBILITY



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### Detail & Specificity

- Direct
  - Based on personal knowledge or observation
  - Proves a fact without inference or presumption
- Circumstantial
  - Evidence based on inference (not on personal knowledge or observation)
  - May or may not have equivalent weight to direct
- Corroborating
  - Evidence that differs from, but bolsters, what other evidence shows



DETERMINATION REGARDING RESPONSIBILITY



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- Boilerplate & Board content
- Simultaneous notification of the parties
- Supportive Measures remain in place through appeal
- Either party can appeal (same timeline)



## DETERMINATION REGARDING RESPONSIBILITY



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

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



## APPEAL



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# CASE PROCESS DECONSTRUCTED

## 5. APPEAL PROCESS



- Confirm criteria/grounds for appeal
- Appeal from both/either
- Both parties made aware of appeal
- Logistics for appeal review (*recording access, copies*)
- Hearing outcome reviewed
- Appeal reviewed
- Final decision-making process initiated (*NOT a re-hearing*)
- Final outcome letter to all parties

Key Players:

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

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# CASE PROCESS DECONSTRUCTED

## 6. DECISION IMPLEMENTATION



- Outcome to all parties
  - Notification to financial aid/VPSA/registrar/TIXC/ResLife/UPD
- Appropriate transcript notation if applicable (VA, NY)
- PNG if applicable
- Follow-up services for either party
- Any changes to supportive measures
- Notify TIX Coordinator of outcome for record-keeping

Key Players:

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

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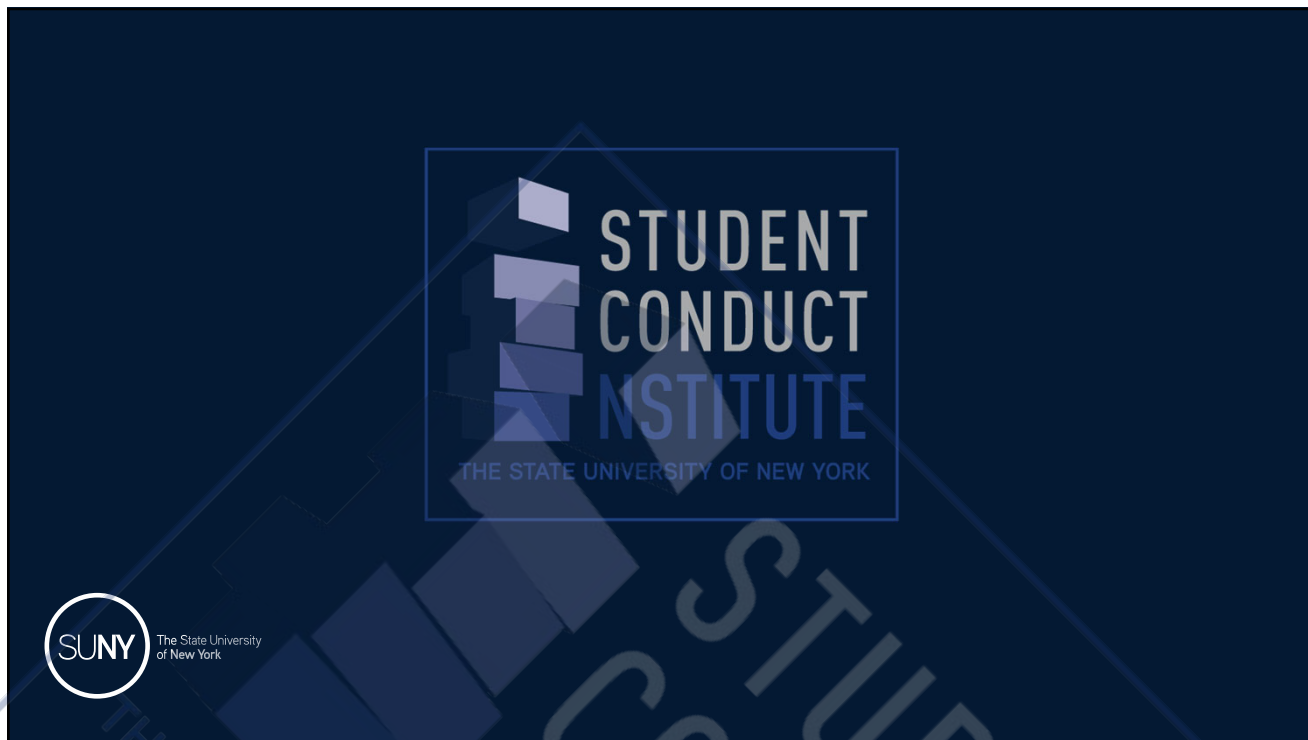
# WRAPPING UP



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