

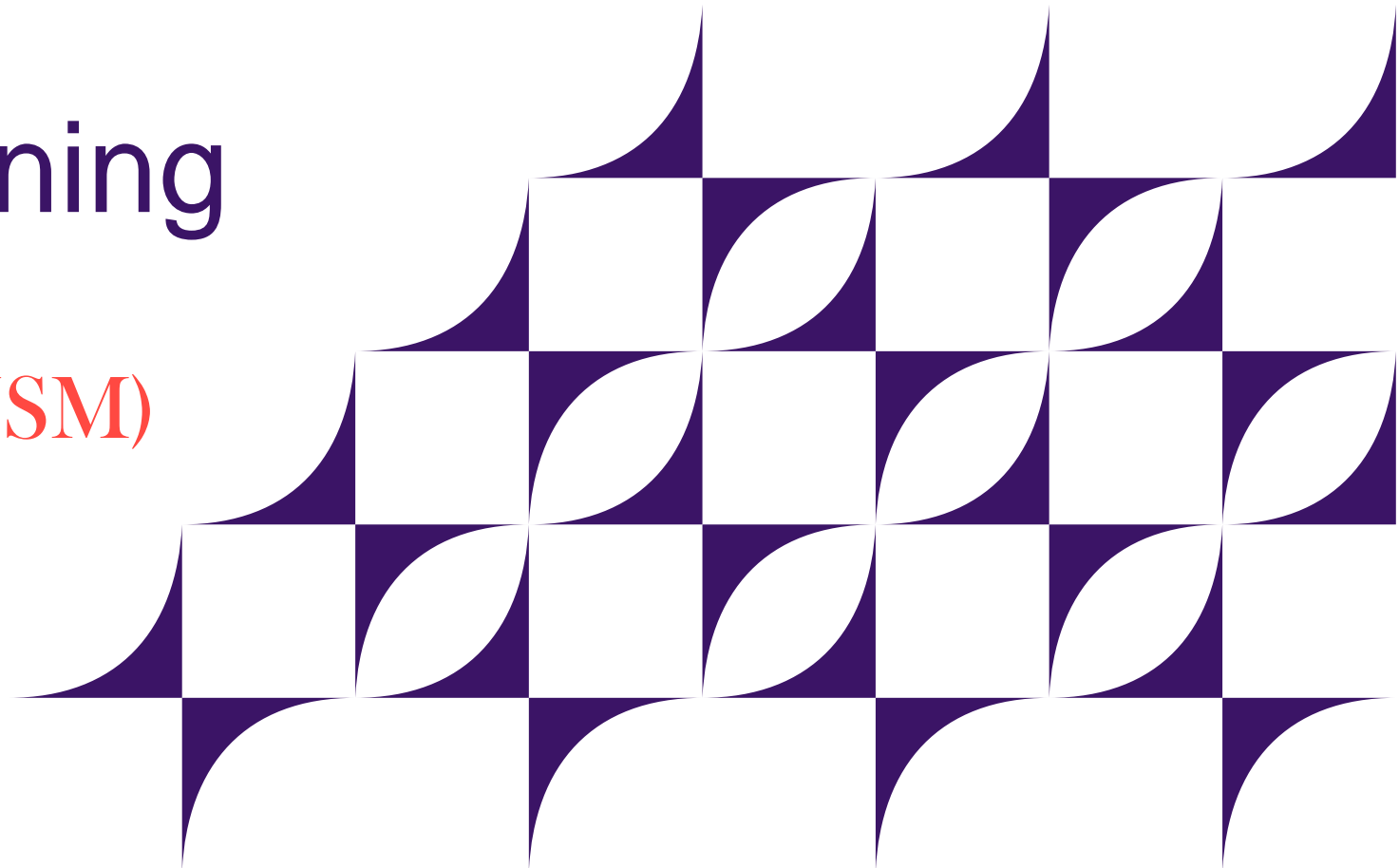
Title IX Sexual Harassment Training

St. George's University
School of Medicine (SGUSM)

Academic Year 2026-2027/June 29, 2026

JacksonLewis

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Agenda

- Understanding the Context
- Ensuring Effective Compliance
 - *Complaints*
 - *Supportive Measures*
 - *Investigations*
 - *Adjudications/Determinations*
 - *Hearings*
 - *Informal Resolution*
 - *Other Considerations*

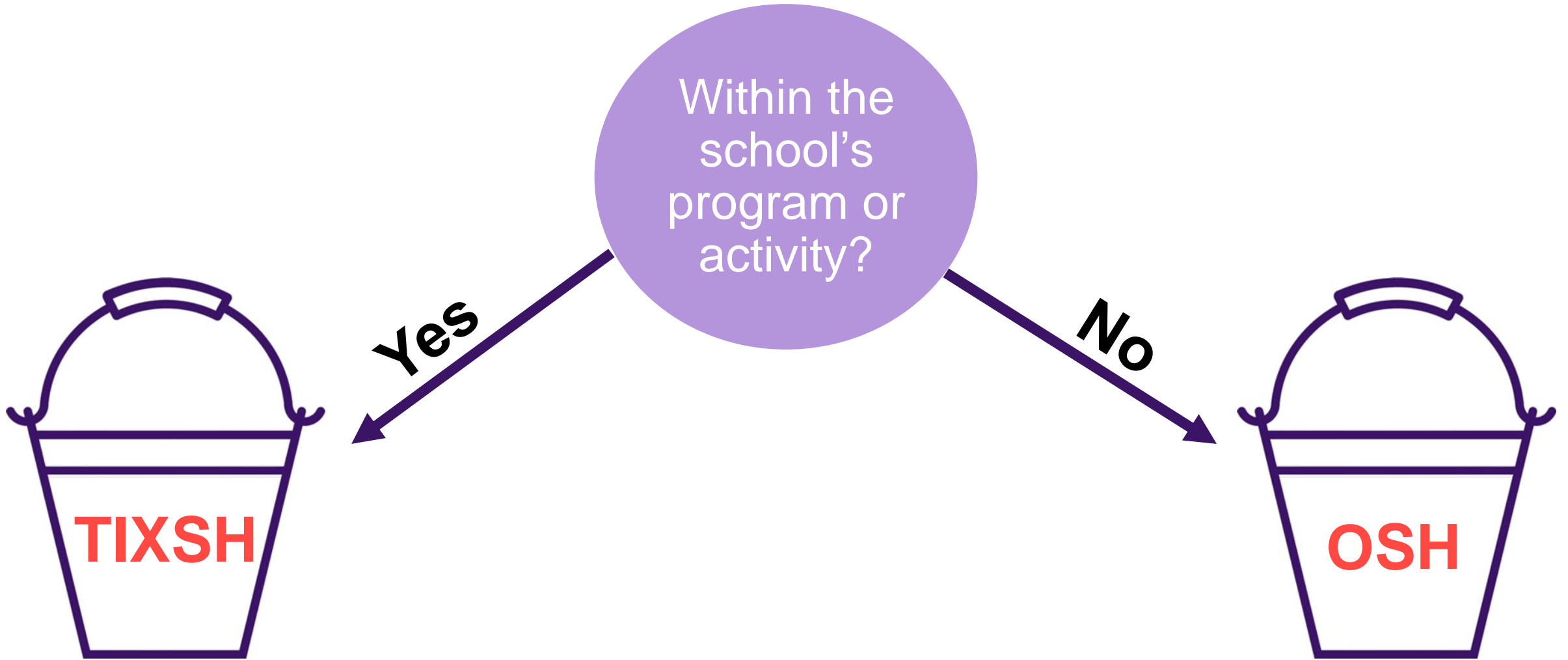
Understanding the Context

Title IX

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.

Title IX's Purpose Is to Remove Barriers

- Prohibitions on participation based on sex
- Unequal funding of men's and women's athletics
- Pregnancy Discrimination
- Sexual Harassment
 - Sexual Assault
 - Stalking
 - Domestic/Dating Violence
 - Verbal/expressive



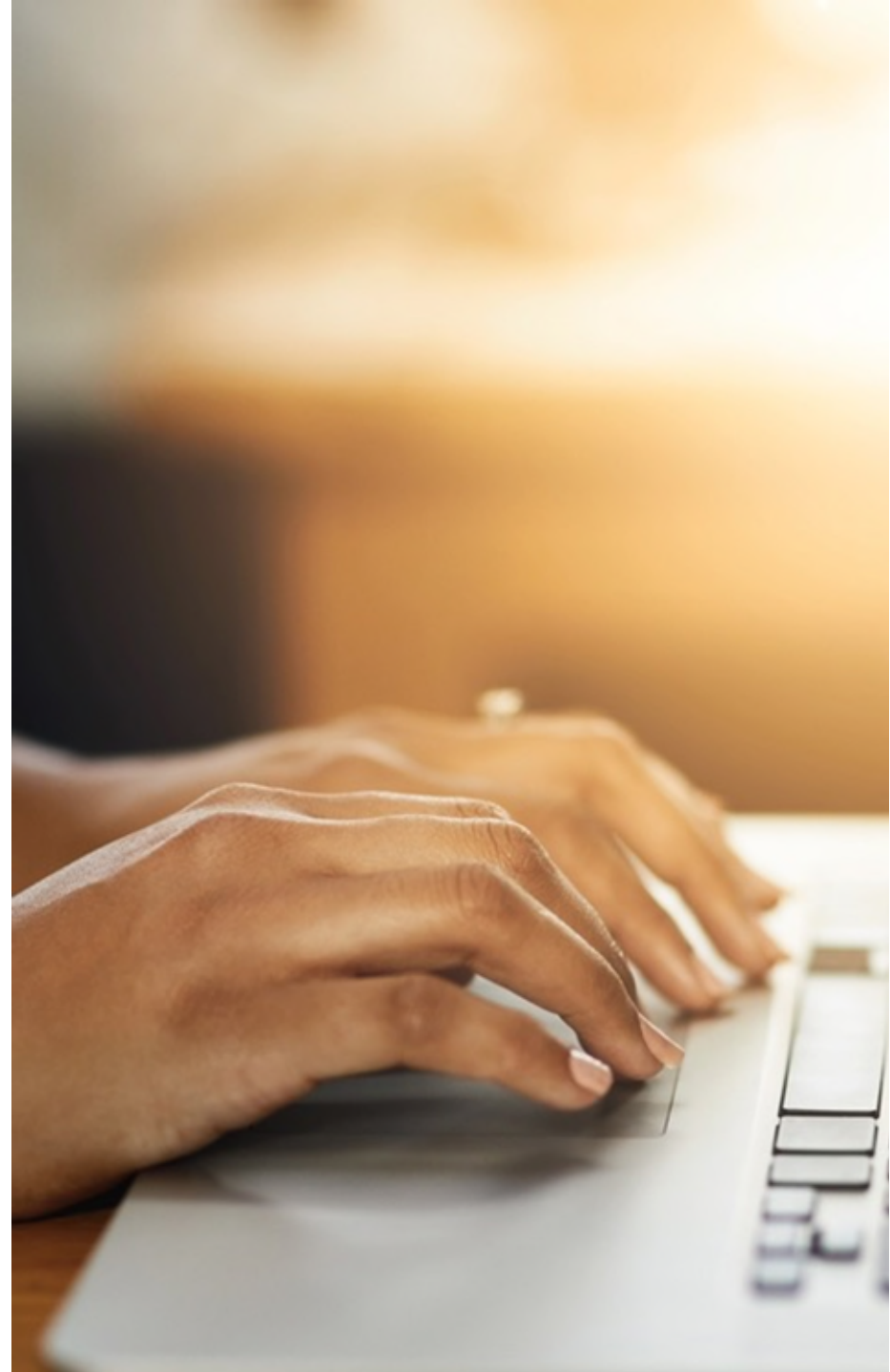
On Campus?

“[All] of the operations’ of a recipient (per existing statutory and regulatory provisions), and the additional ‘substantial control’ language in these final regulations, clearly include all incidents of sexual harassment occurring on a recipient’s campus.”

Translation: If it happened on campus, it falls within your education program or activity

When Is an Online Interaction Within the Education Program or Activity?

- Physical location of parties
- Hardware
- Platform/Network
- Event/Activity



**Quid Pro Quo
Sexual Assault, Relationship
Violence, Stalking
Level 4 Expressive
Harassment**

Yes

No

TIXSH

OSH

Three Broad Types of Sexual Misconduct Fall Within the Jurisdiction of Title IX Under the 2020 Regulations

1. Sexual Assault
Dating and Domestic Violence
Stalking } Clery Act Conduct
 2. A school employee conditioning the provision of an aid, benefit, or service on participation in unwelcome sexual conduct } Quid Pro Quo
 3. Unwelcome conduct*
(Expressive: verbal, written, electronic, body language) } Level 4 Expressive Conduct
- * determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies a person equal access** to the school's education program or activity

“Level 4” Expressive Conduct

Unwelcome conduct determined by a reasonable person to be so **severe, pervasive, and objectively offensive** that it **effectively denies a person equal access** to the school’s education program or activity.

- Title IX is not a “civility code” prohibiting all unwelcome conduct.
- High bar due to interest in free speech, especially in the academic context
- Serious enough to warrant the label “abuse”
- Equal access is measured against access of person who has not been harassed
 - No concrete injury required!

Ensuring Effective Compliance

Providing Notice

Location

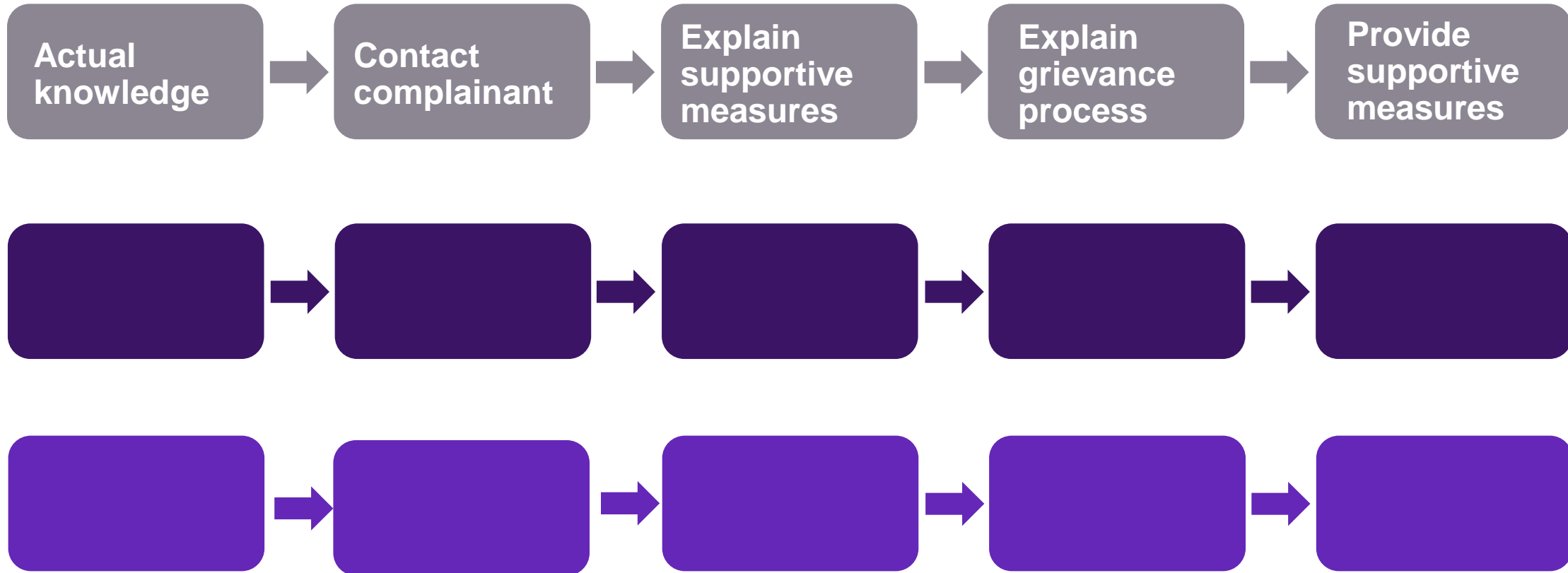
- In all catalogues & handbooks
- On the website
- Provided to
 - Applicants for admission
 - Applicants for employment
 - Employees
 - Unions/Prof. Organizations

Providing Notice (cont'd)

Content

- The institution does not discriminate on the basis of sex in the education program or activity that it operates,
- It is required by Title IX not to do so,
- Inquiries regarding Title IX, sexual harassment, and other discrimination on the basis of sex may be referred to the Title IX Coordinator or the Department of Education, and
- Where to file sexual harassment and broader sex discrimination allegations and how the institution will respond.

Flow Chart



Final Rule § 106.44

A recipient with actual knowledge of sexual harassment in an education program or activity of the recipient against a person in the United States, must **respond promptly** in a manner that is **not deliberately indifferent**. A recipient is deliberately indifferent only if its response to sexual harassment is **clearly unreasonable** in light of the known circumstances.



There are Zero Special Requirements for Reporting Sexual Harassment

Who can report?

- Student, Employee, Other
- Victim, Friend, Witness, Parent, Other
- Anonymous

How can a report be made?

In person. Via email. Over the phone. Through your website.

Actual Knowledge

“Actual knowledge” occurs when...

- The Title IX Coordinator
or
An institutional official with authority to take corrective action
- Observes/Becomes aware
or
Receives a report
- Of sexual harassment occurring in the institution's education program or activity against a person in the United States (TIXSH)

What Does Deliberate Indifference Look Like?

- Ignoring the situation all together
- Not investigating a situation when presented with incomplete information
- Disregarding new acts by the respondent
- Discouraging the complainant from reporting or pursuing the process
- Repeating the same ineffective directives while the behavior continues unabated
- Not taking into account the respondent's position of authority or history of misconduct
- Failing to follow your own policies and procedures
- Allowing a respondent to violate a no-contact order with impunity
- Failing to file a Formal Complaint (when the complainant doesn't) when necessary to protect the community
- **Failing to contact the complainant to offer supportive measures and explain how to file a Formal Complaint.**

What Does Deliberate Indifference Look Like?

Non-Exhaustive List of Possible Supportive Measures

- Academic Accommodations (e.g. extended deadlines)
- Modification of class schedule
- Campus escort services
- Leaves of absence
- Counseling/Other health services
- Change in work schedule or location
- Change in housing
- Increased security/monitoring
- Mutual no-contact orders
- Transportation assistance
- Trespass/Be on the Lookout orders
- Education to the community/sub-group
- Referral to EAP, immigration services, etc.
- Law enforcement notification

Nuts & Bolts of Supportive Measures

- Individualized
- Reasonably available
- No fees or charges
- Can be provided before formal complaint is filed, after formal complaint is filed, and in cases where no formal complaint will ever be filed
- Information about options must be provided in writing (Clery)
- May be offered to respondents, as well
- Must maintain confidentiality to the greatest extent possible
- Coordinator manages effective implementation



Caution

The purpose of supportive measures is always to:

- **Preserve** access to education, or
- **Protect** the educational environment, or
- **Deter** sexual harassment

The purpose of supportive measures may **NOT** be to discipline the respondent

- Respondent cannot be sanctioned unless and until found responsible
- Respondent cannot be unreasonably burdened by supportive measures

Documentation of Supportive Measures

- The initial report of sexual harassment
- Any actions taken in response to the report
- Efforts to reach complainant
- Date/time/location of meeting(s) with complainant
- Any supportive measures offered/taken
- If no supportive measures taken: “The reason this response was reasonable...”
- **Conclusion:** “Our response was not deliberately indifferent because we...”



Emergency Removal? Administrative Leave?

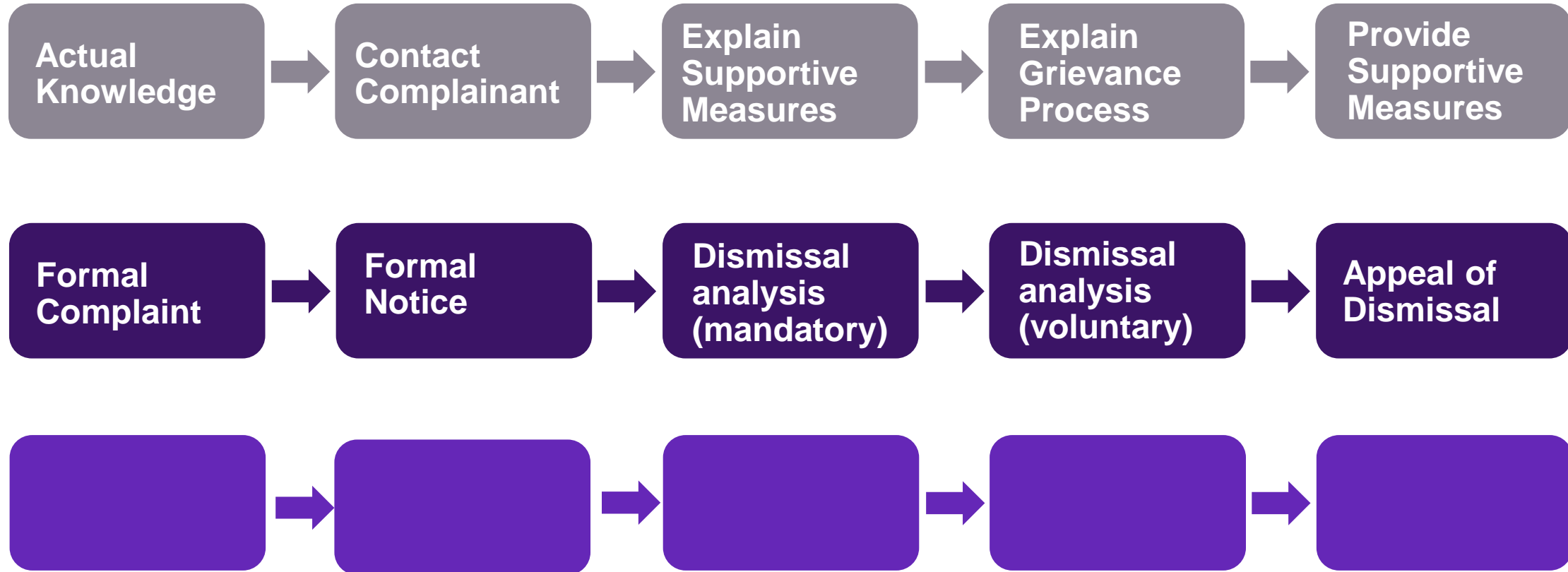
Emergency Removal = Yes, if...

- Individualized safety and risk analysis
- Immediate threat to physical health or safety
- Notice and opportunity to challenge decision immediately following removal

Administrative Leave = Yes

- For non-student employee respondents
- During the pendency of the grievance process
- Much more lenient standard

Flow Chart



A Formal Complaint

Is the one and only way to start the grievance process.

**Can be filed only by the complainant
(alleged victim) or the Title IX Coordinator**

- The complainant wants to file, but is ineligible.
- The complainant is eligible to file, but declines to do so.

Must:

- Be in writing (document or electronic)
- Allege sexual harassment and request investigation
- Be signed (physically or digitally)

Formal Notice to All Parties

- Explanation of grievance process and informal resolution
- Sufficient details of allegations (who, what, when, where)*
- Presumption of non-responsibility; determination made at conclusion of process
- May have an advisor of choice who may be an attorney
- May inspect and review evidence
- Note any “false statement” rule in code of conduct
 - Materially false statement made in bad faith
 - By itself, an adverse determination does not support a charge of making false statements.

*If additional allegations will be investigated, supplemental notice must be given

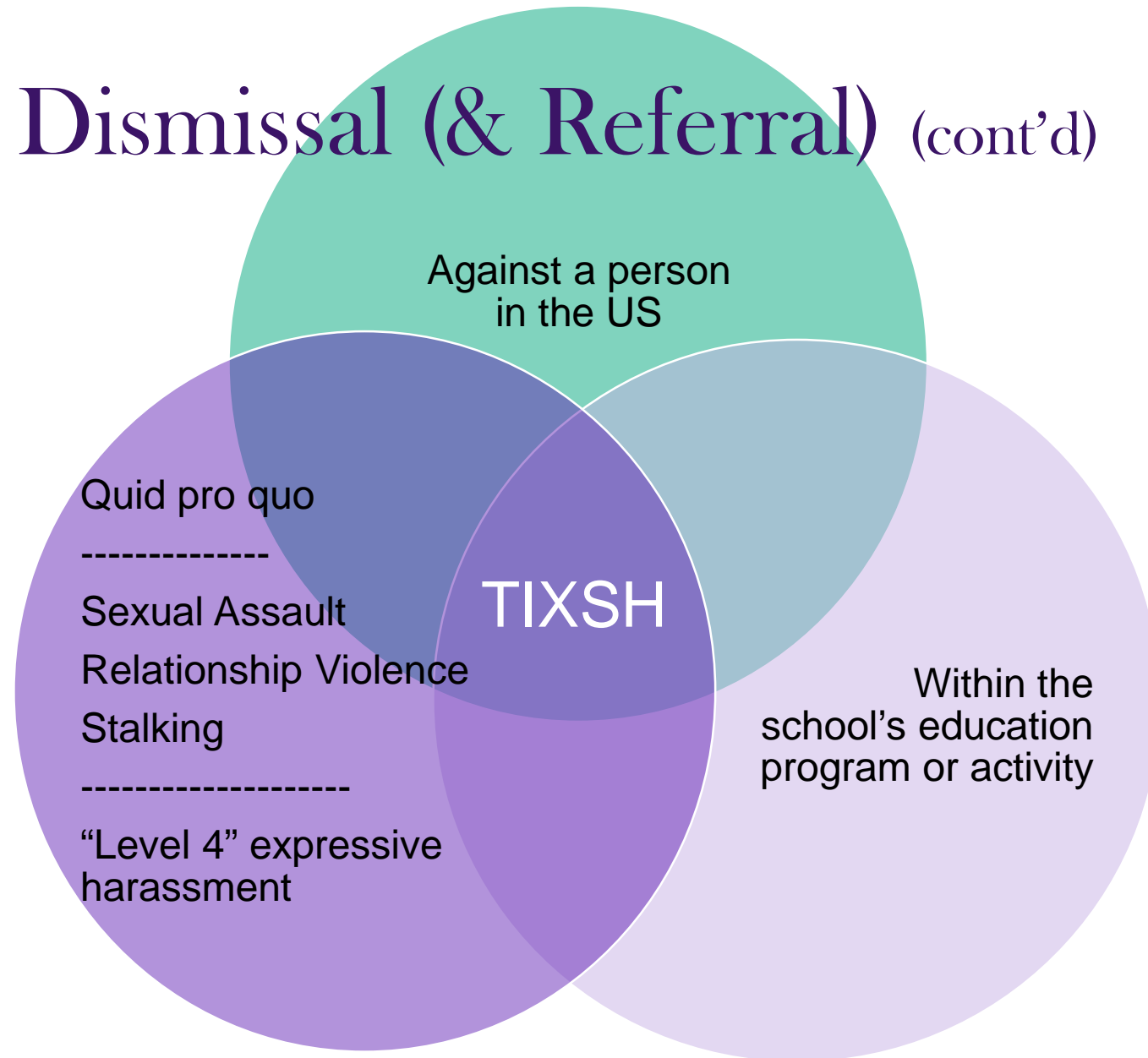
No Surprises

Reach out regarding supportive measures

Mandatory Dismissal (& Referral)

- If the formal complaint lacks any one of these three elements, it must be dismissed as a Title IX matter
- Dismissal notice must explain right of appeal
- The conduct may be investigated and disciplined as the violation of some other rule as the school sees fit. The Dismissal Notice should state if the complaint is being referred to another office.
- The tone and content of the Dismissal Notice should make clear to both parties that dismissal as a Title IX matter is not the same as exoneration

Mandatory Dismissal (& Referral) (cont'd)



Voluntary Dismissal*

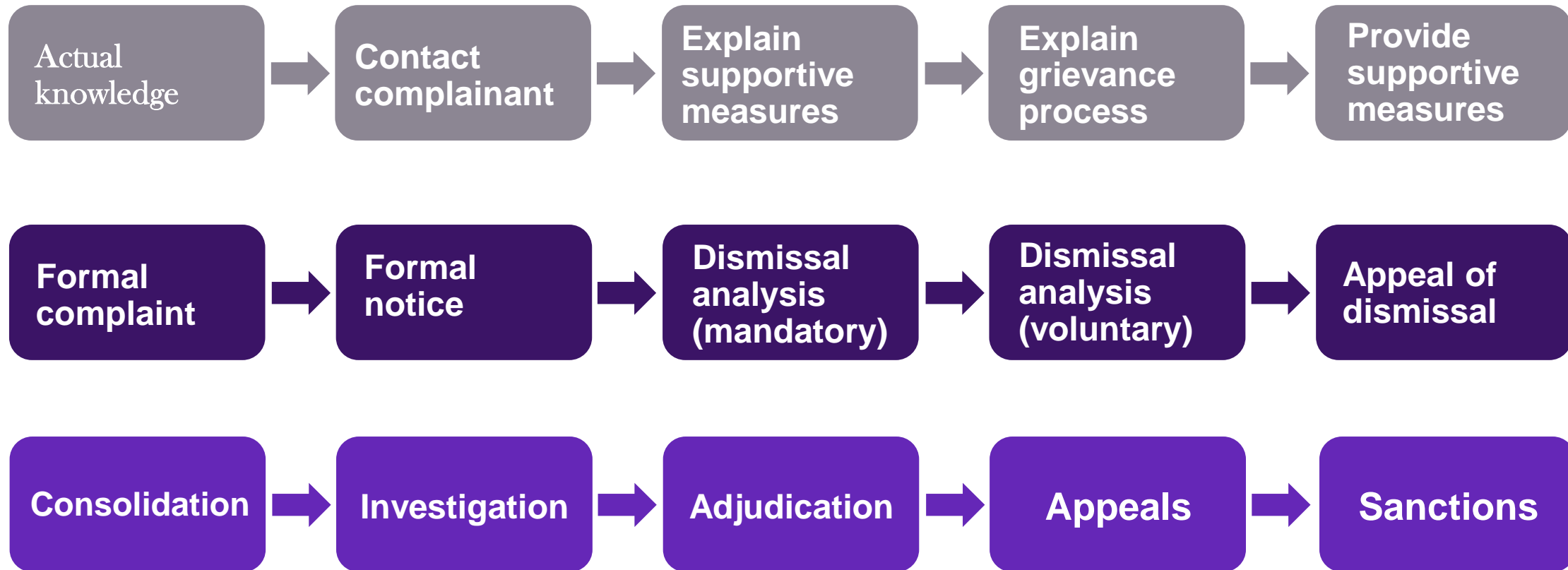
1. Complainant no longer wishes to proceed
2. Respondent no longer works at/attends the school
3. Not enough information available to pursue case

In the event of a voluntary dismissal...

- Promptly send written notice of the dismissal (and reasons therefore) to the parties simultaneously.
- Explain procedures for filing an appeal

* In your discretion

Flow Chart



Reasonably Prompt Timeline

SGUSM strives to complete its investigation and resolution of a Formal Complaint (not including an appeal, if applicable) within 90 calendar days of receipt of a Formal Complaint, excluding appeals.

Formal Complaint filed by complainant or signed by Title IX Coordinator

Notice of Allegations sent to parties

With sufficient time to prepare a response for initial interviews

Dismissal Analysis

If dismissed:

5 calendar days from notice of dismissal to appeal

Investigation

Parties have 10 calendar days to submit written response to evidence collected

Hearing

Final Determination Letter sent to parties

Appeal

Party must submit within 5 calendar days from date of Final Determination Letter

10 Key Requirements

1. Investigators are not the decision-makers.
2. Parties are entitled to notice of all interviews.
3. An advisor may be present at all meetings.
4. New notice is required for new allegations.
5. The school has the burden of collecting evidence.
6. Parties may freely gather and present evidence.
7. Parties may freely discuss the allegations.
8. The parties may inspect and review relevant and directly-related evidence.
9. The investigative report fairly summarizes relevant evidence.

The Four Stages of Investigation

Stage 1 — Plan

- ✓ Refresh on procedures, policies, and values
- ✓ Create investigation plan, calendar, and log

Stage 2 — Collect Evidence

- ✓ Interview complainant, respondent, and other witnesses
- ✓ Collect other forms of evidence

Stage 3 — Sort Evidence

- ✓ Classify evidence as relevant, directly related, or not directly related
- ✓ Provide evidence to parties and consider their responses

Stage 4 — Summarize Evidence

- ✓ Create report
- ✓ Provide report to parties and decision-makers

Critical Importance of Prohibited Conduct Definitions

Policy violation determination central to investigation and adjudication

Relevant definitions should be referred to often and must guide investigator and adjudicator actions

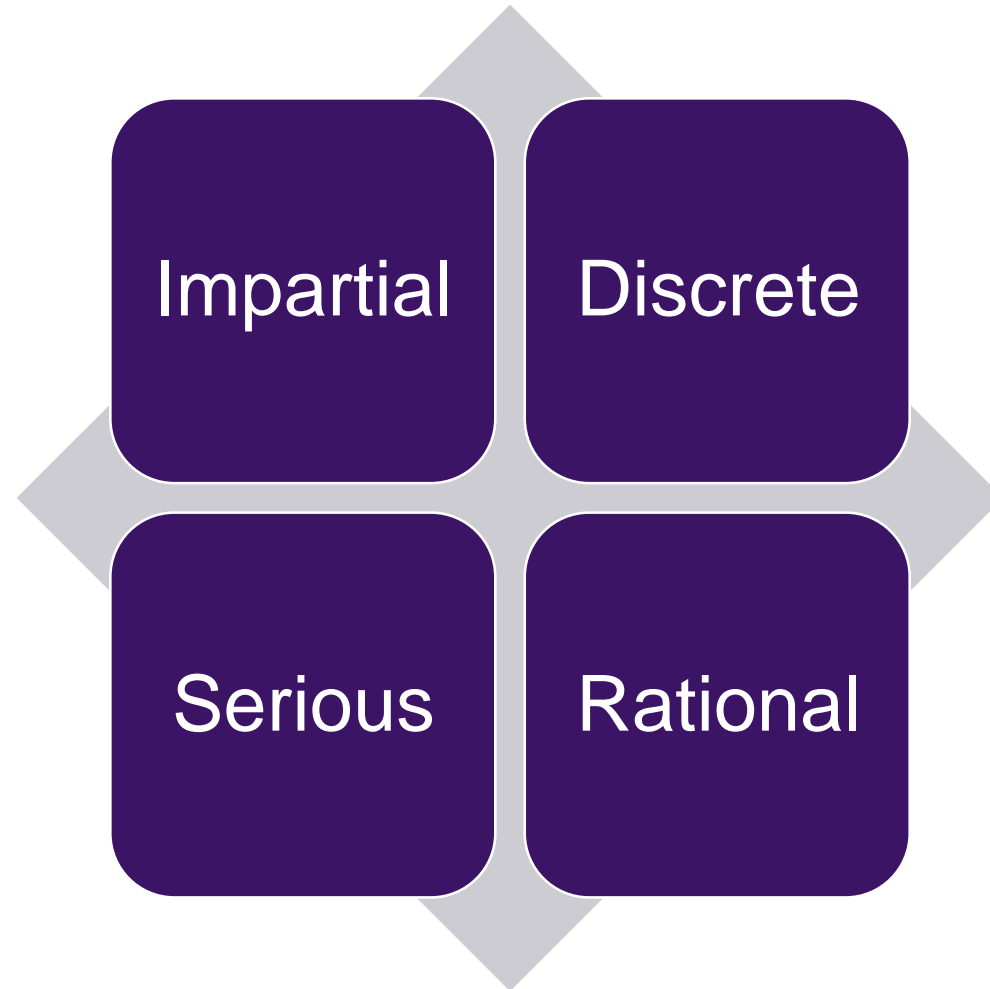
Two Kinds of Evidence Are Off Limits

- Don't access, consider, disclose, or otherwise use a party's **records that are made by a physician, psychiatrist, psychologist, etc.** without voluntary written consent to do so for the grievance process.
- Don't require, allow, rely upon, or otherwise use or seek disclosure of **information protected under a legally recognized privilege unless the privilege** has been waived.

Fundamentals of Adjudication

- Hearings may be virtual, but they must be live such that everyone can see and hear each other
- Hearings must either be recorded or transcribed.
- There must be opportunity for live cross examination conducted by advisors, but parties may not question one another directly.
- Cross examination questions are subject to a relevancy requirement, rape shield principles, and other limitations.
- Adjudicators must apply the same standard of evidence to all formal complaints of TIXSH: Either preponderance of the evidence or clear and convincing. St. George's uses the preponderance of evidence standard.

What Does It Mean To Be Judicious?



Pre-Hearing Preparation

1. Re-engage core traits
2. Review your school's hearing procedures AND misconduct definitions
3. Review Investigative Report
 - Identify critical issues
 - Determine what questions need to be asked

Don't conduct your own investigation!

Scheduling a Hearing

1) Determine who needs to be there

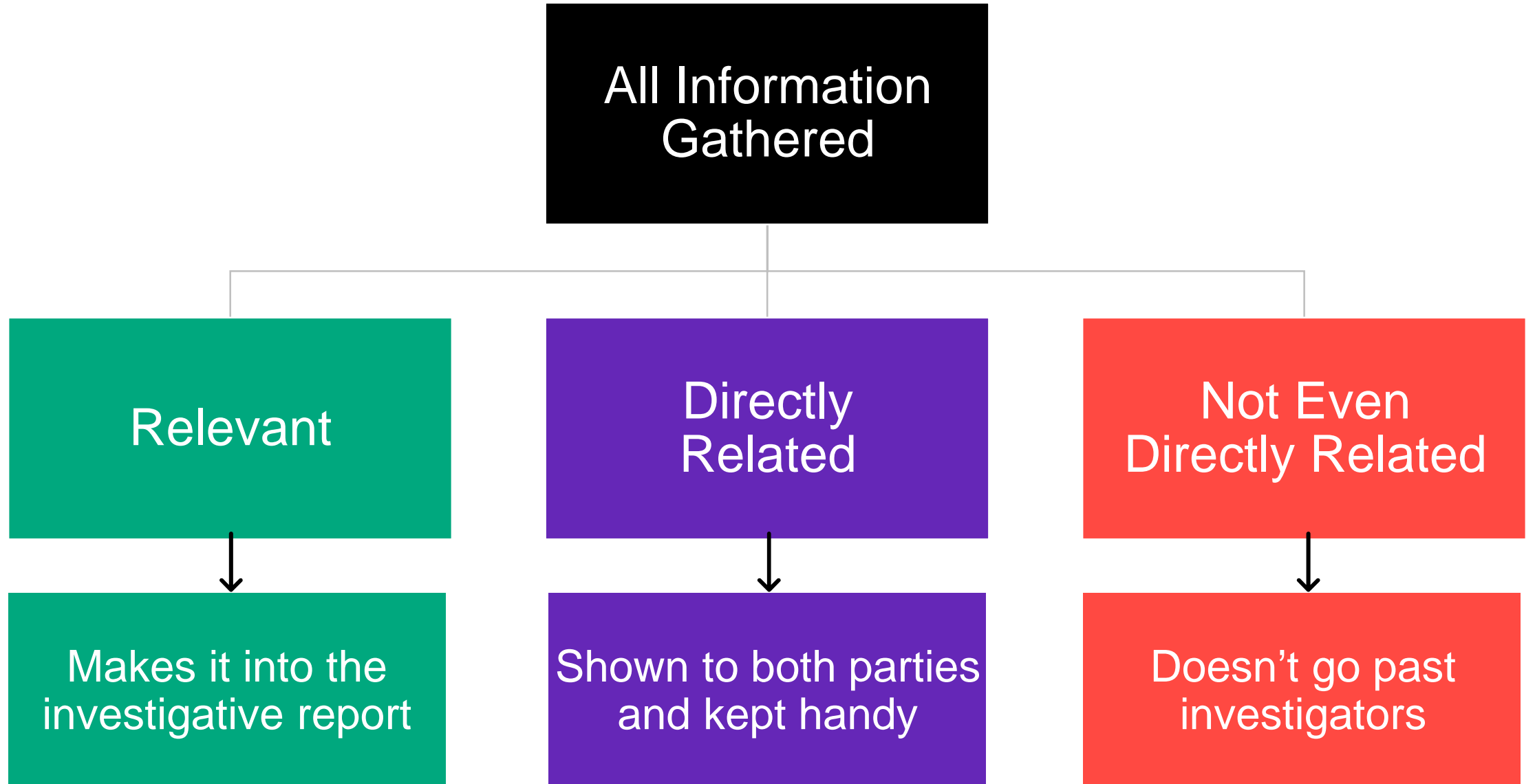
- Option A: All witnesses in the report
- Option B: All witnesses wanted by the parties or by you

2) Pre-hearing communication?

- Option A: Everyone together
- Option B: With each party separately

3) Timing of hearing

- At least 10 days after delivery of Inv. Report
- Within case deadline (+ time for determination)



The 3 Types of Irrelevant Evidence

**Does not make a material
fact more or less likely**

Duplicative

Blocked by the Rules

- Privileged
- Partially Shielded
- Barred

Components of the Written Determination

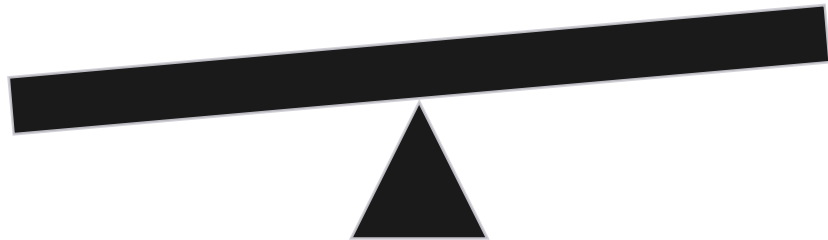
- I. Identification of the allegations
- II. Description of the procedural steps for the entire case
- III. Findings of fact
- IV. Application of school rules to the facts (rationale)
- V. Statement of result as to each allegation
- VI. Procedures for either party to appeal

Standard

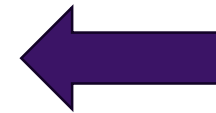
Preponderance of the Evidence

Neutral.

The party with the majority of the evidence prevails even if the margin is very narrow.



St. George's Standard of Proof



Fundamentals of Written Determinations

The parties should simultaneously receive a written notice of the determination of responsibility, which includes:

- Identification of the allegations
- Description of all procedural steps
- Findings of fact supporting each determination
- Conclusions regarding the application of the recipient's code of conduct to the facts
- Statement/rationale for result as to each allegation including determination regarding responsibility
- Any disciplinary sanctions imposed on respondent and whether remedies will be provided to the complainant
- Instructions about the procedures and permissible bases for appeal

Fundamentals of Sanctions

- Ensure that any sanctions are fulfilled (deadlines!)
 - Completion of mandatory training
 - Completion of service hours
 - Completion of reflection paper
- Documentation
 - Personnel or Student Conduct file
 - Notation on transcript?
- Procedure for handling failure to comply with sanctions
 - Student conduct charges
 - Additional penalties

Appeal of Determination

- Required for both parties on these grounds:
 1. Procedural irregularity
 2. New evidence
 3. Bias that affected the outcome
 4. Any other ground school allows
- Different decision maker than decided dismissal (and not Coordinator or Investigator)

Informal Resolution



- Puts parties in control
- Reduces likelihood of litigation
- Opens up more creative resolutions
- Can be better experience for participants



- Initial investment in creation and training
- Possibility of attempt, then formal hearing
- Risk of serious misconduct going unsanctioned*

Informal Resolution (cont'd)

Threshold Requirements

- Formal complaint must be filed first
- Both parties must consent in writing
- Can't be used where the allegation is that an employee sexually harassed a student

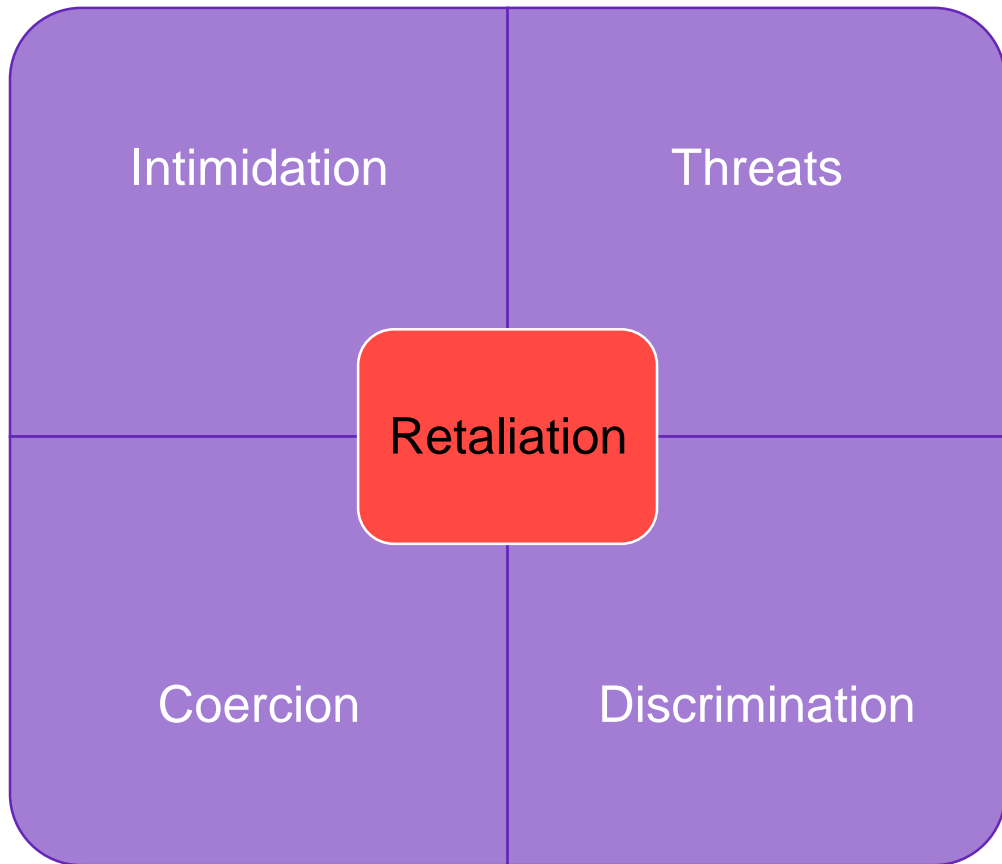
Written Disclosures

- Allegations
- Requirements of the process
- When parties are precluded from resuming formal complaint (only after agreeing to a resolution)
- Consequences of participation
 - records that will be maintained
 - handling of information that is shared

Other Important Considerations



Retaliation



- For making a report or complaint
- For testifying or assisting in an investigation or hearing
- For refusing to participate

Includes an institution charging an individual with non-sexual code of conduct violations for the purpose of interfering with rights conferred by the 2020 Regs.

Retaliation (cont'd)

- Complaints of retaliation may be filed under the grievance procedures for sex discrimination. Unless the retaliation is itself a form of sexual harassment, it should not be handled under the TIXSH grievance process.
- The exercise of First Amendment rights does not constitute prohibited retaliation.

Records Must Be Created, Retained, and Available to the Parties for Seven Years:

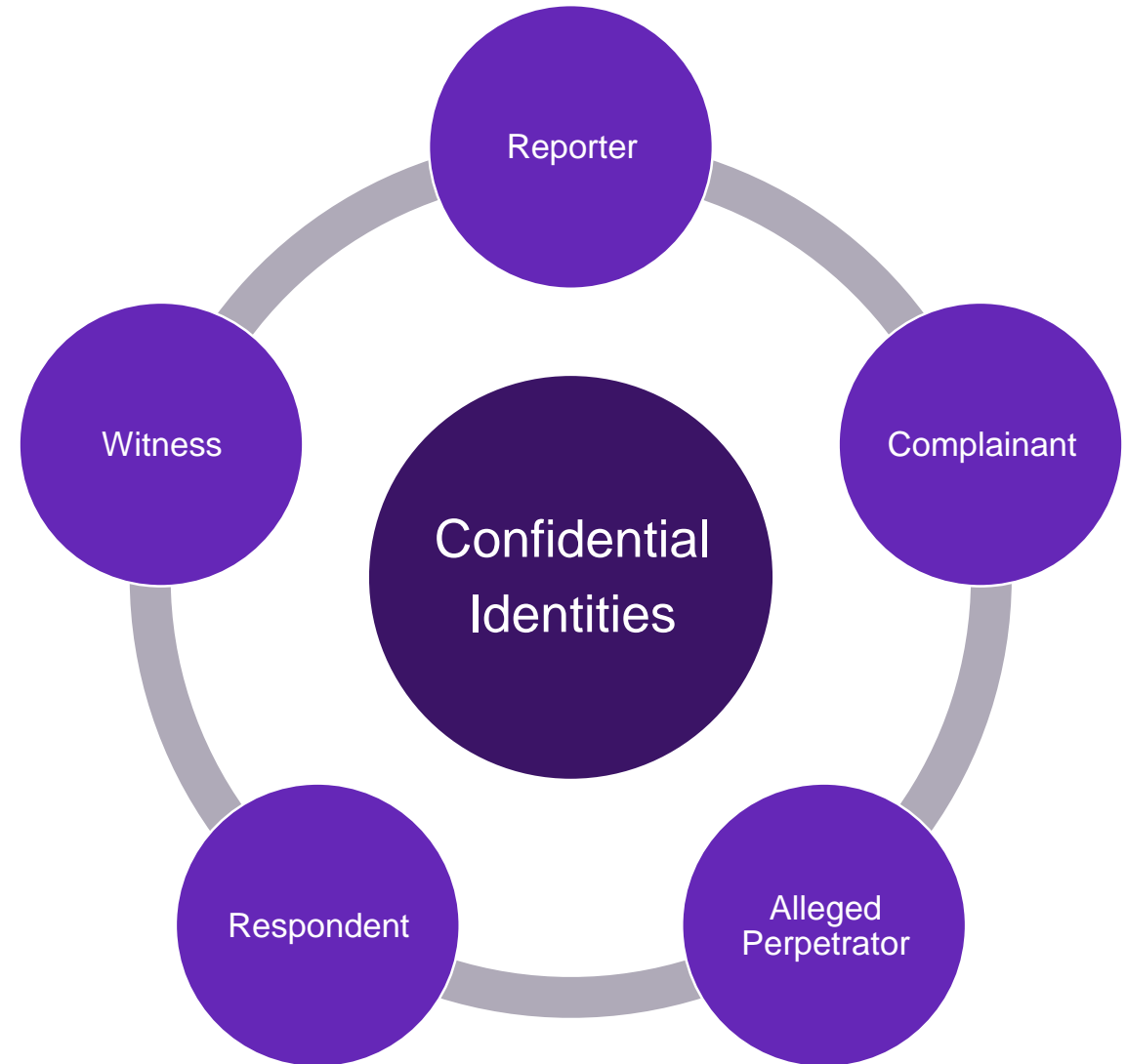
- Records of any actions taken in response to a report, including supportive measures or why not providing supportive measures was not clearly unreasonable.
- Document basis for conclusion that school's response was not deliberately indifferent.

Records of each investigation, including

- Any informal resolution process and result
- Determination of responsibility
- Recording/transcript of hearing
- Any sanctions imposed on respondent
- Any remedies provided to complainant
- Any appeal and the result

Three Exceptions

1. As required by law
2. To carry out Title IX proceedings
3. As permitted by FERPA:
 - Other school officials
 - In accordance with transcript/disciplinary record sharing



Employees as Respondents

Title VII of the Civil Rights Act

- Respondent's employment may be terminated for lack of cooperation with investigation
- Expressive harassment may be severe or pervasive
- Respondent not entitled to see evidence
- No hearing or cross examination required in order to impose discipline
- No explicit standard of proof

Employees as Respondents (cont'd)

Title IX of the Education Amendments Act

- Respondent may refuse to participate in investigation
- Expressive harassment must be severe and pervasive
- Respondent entitled to see evidence
- Hearing and cross examination required before imposition of discipline
- Standard must be “clear and convincing” or “preponderance of the evidence” for all cases

Thank you.