

Association of Title IX Administrators

Informal Resolution Foundations for Higher Education

Training and Certification Course

NOT FOR DISTRIBUTION

WELCOME!

- Please log in to your ATIXA Event Lobby each day to access the course slides, supplemental materials, and to log your attendance.
- The ATIXA Event Lobby can be accessed by the QR code or visiting **www.atixa.org/atixa-event-lobby** in your internet browser.
- Links for any applicable course evaluations and learning assessments are also provided in the ATIXA Event Lobby. You will be asked to enter your registration email to access the Event Lobby.
- If you have not registered for this course, an event will not show on your Lobby. Please email events@atixa.org or engage the ATIXA website chat app to inquire ASAP.

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

NOT FOR DISTRIBUTION

Any advice or opinion provided during this training, either privately or to the entire group, is never to be construed as legal advice or an assurance of compliance. Always consult with your legal counsel to ensure you are receiving advice that considers existing case law in your jurisdiction, any applicable state or local laws, and evolving federal guidance.

Course Introduction



The primary focus of this course is to introduce practitioners to Informal Resolution and its application to Title IX and allegations of sex- and gender-based discrimination.



Practitioners will learn about the variety of structural and policy decisions that need to be made when implementing an Informal Resolution process.



Our goal is to provide practitioners with a deep-dive into the applicable foundational elements and considerations regarding whether and how to implement Informal Resolution options.

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Content Advisory

The content and discussion in this course will necessarily engage with sex- and gender-based harassment, discrimination, and violence and associated sensitive topics that can evoke strong emotional responses.

ATIXA faculty members may offer examples that emulate the language and vocabulary that Title IX practitioners may encounter in their roles including slang, profanity, and other graphic or offensive language.

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Note on Vocabulary

- Title IX resolution processes specifically address sex- and gender-based discrimination, harassment, and violence
- Common alternative resolution processes focus on opportunities to reduce "conflict" or resolve a "dispute"
- Use of existing alternative resolution terminology is not meant to diminish the reality of sex- or gender-based misconduct

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Informal Resolution and Title IX

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Title IX and Equity

- Title IX is a gender equity law
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
  - Equity focuses on providing support and resources to reduce disparities in access to the education program
  - Title IX seeks to remedy the inequities sex and gender discrimination create
- Institutions may determine their own Informal Resolution processes
  - Processes must be equitable in execution and access

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Title IX: Scope

Title IX

Discrimination

- Sex-Based Discrimination
- Program Equity

Harassment

- Quid Pro Quo
- Hostile Environment
- Sexual Assault
- Dating Violence
- Domestic Violence
- Stalking
- Retaliation

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

The IX Commandments

PROCESS	**THOROUGH**	**RELIABLE**	**IMPARTIAL**
INVESTIGATION	**PROMPT**	**EFFECTIVE**	**EQUITABLE**
REMEDIES	Act reasonably to **STOP** discrimination	Act reasonably to **PREVENT** recurrence	Act equitably to **REMEDY** effects

(+ **prompt** & **fair** per VAWA Sec. 304)

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Historical OCR Informal Resolution Guidance

- OCR does not define Informal Resolution (IR)
  - Uses alternative resolution as an undefined synonym
- Human resource departments have long used forms of Informal Resolution such as mediation and arbitration
- OCR Guidance
  - 2001 Revised Sexual Harassment Guidance (rescinded)
  - 2011 Dear Colleague Letter (rescinded)
  - 2017 Q&A on Campus Sexual Misconduct (rescinded)
  - 2020 Title IX Regulations
  - 2021 Title IX Q&A (updated 2022)

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Regulatory Requirements



- Formal Complaint
- Written Notice
- Voluntary Participation

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Informal Resolution Overview

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ATIXA's Informal Resolution Framework

ATIXA's Framework contemplates three categories of Informal Resolution.

1

Supportive Measures Only

2

Accepted Responsibility

3

Alternative Resolution

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Supportive Measures Only

- Title IX Coordinator (TIXC) resolves the report by providing the Complainant with remedies and supportive measures
- Formal complaint not required
- Respondents are typically not involved unless a supportive measure directly involves or impacts them

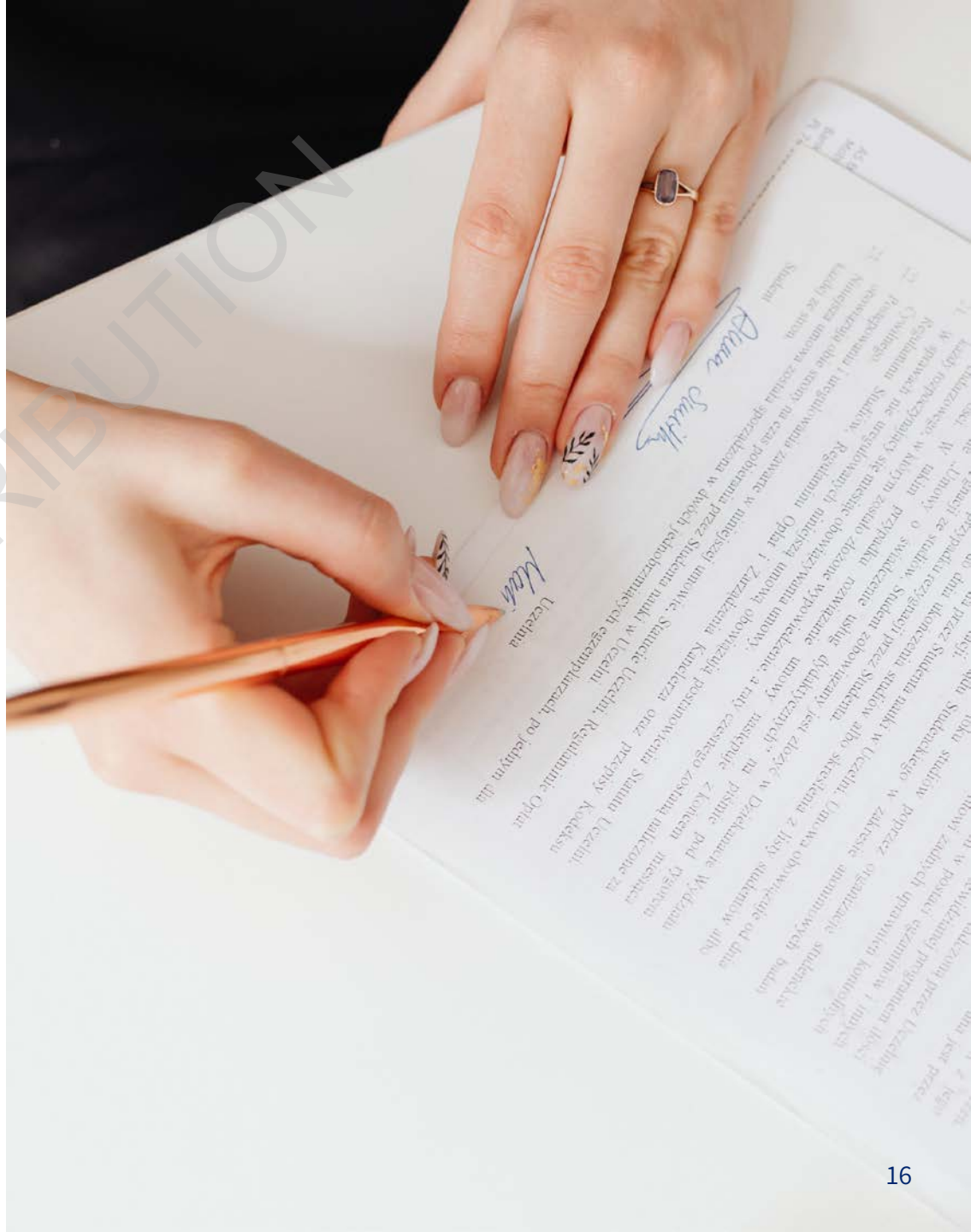


NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Accepted Responsibility

- Respondent accepts responsibility for violating policy and accepts the recommended sanction(s), ending the grievance process
- Accepted Responsibility may allow, but does not require, the parties to communicate directly about the complaint with the assistance of a third-party facilitator



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Alternative Resolution (AR)

- Parties agree to resolve the complaint through an AR mechanism such as facilitated dialogue, mediation, or restorative practices
- AR may allow, but does not require, the parties to communicate directly about the complaint with the assistance of a third-party facilitator



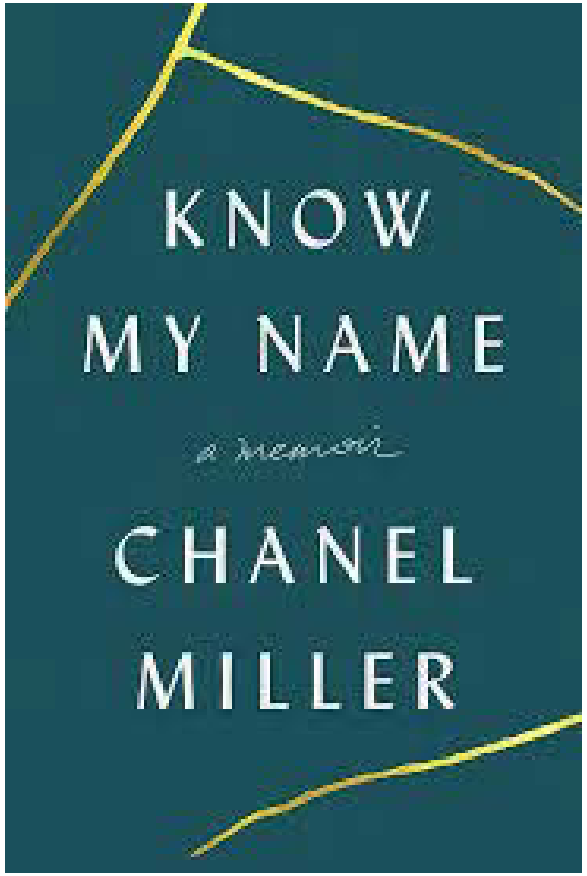
NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Discussion: Informal Resolution Goals and Foundations

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators



"When society questions a victim's reluctance to report, I will be here to remind you that you ask us to sacrifice our sanity to fight outdated structures that were designed to keep us down. Victims do not have the time for this. Victims are also students, teachers, parents, who can't give up work or education…It is not reasonable to casually demand that victims put aside their lives to spend more time pursuing something they never asked for in the first place…**This is about society's failure to have systems in place in which victims feel there is a probable chance of achieving safety, justice, and restoration** rather than being retraumatized, publicly shamed, psychologically tormented, and verbally mauled. The real question is not, *Why didn't she report*, the question is, *Why would you?"* (emphasis added)

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Informal Resolution Goals

- Restore educational access
- Empower choice and agency over the resolution
- Identify and address parties' and community needs
- Address past harm
- Prevent future harm
- Create space for communication and understanding among parties, if desired

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Informal Resolution Foundations

- Safety (physical, psychological, and emotional)
- Focus on needs
- Mutually serving
- Intentionality
- Informal ≠ casual
- Presence
- Meet parties where they are
- Pre- and post-process support and resources

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Types of Complaints

STRUCTURAL

- Policies, environments, resources, and structures
- Systemic and long-term
- May masquerade as relational complaints
- Often no identifiable Respondent

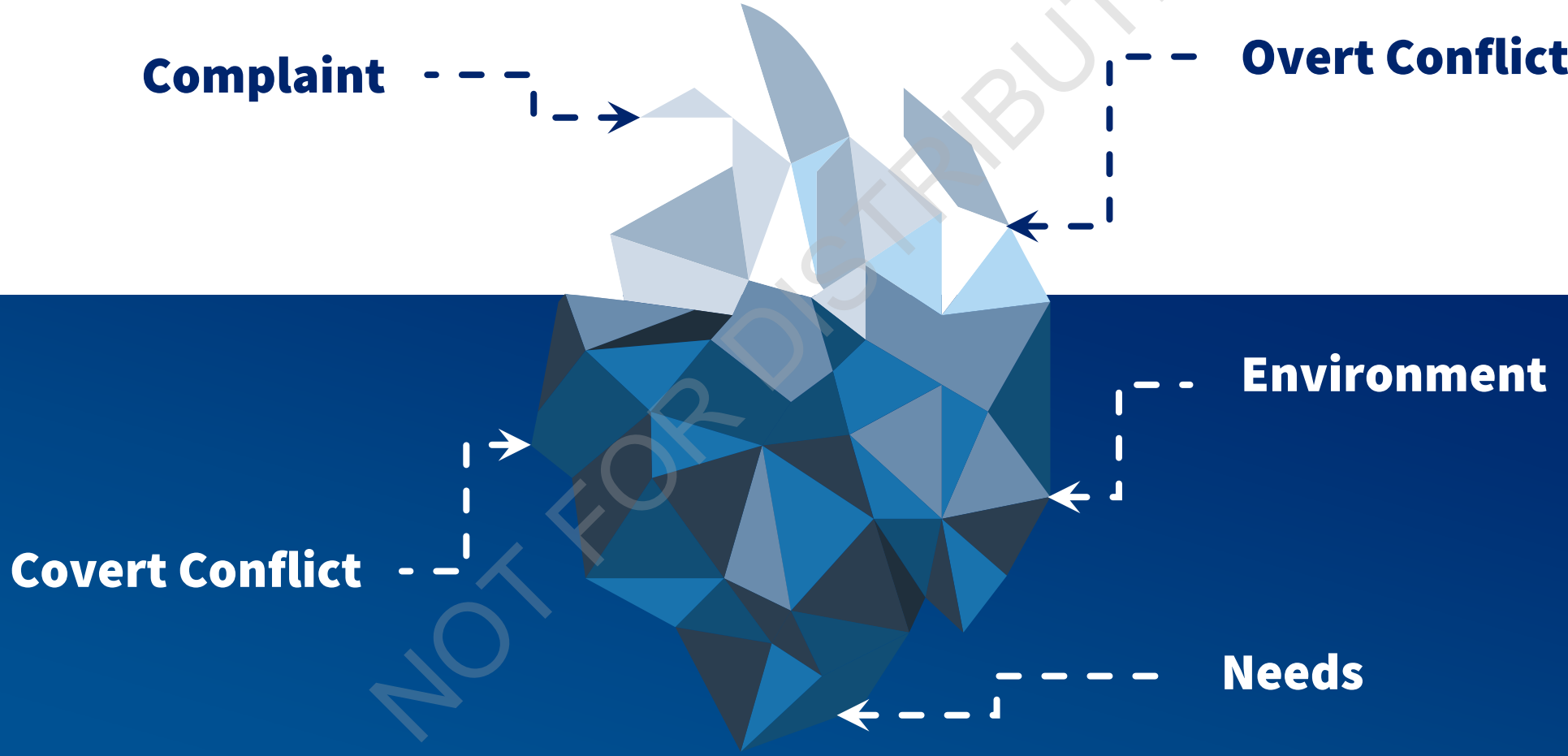
RELATIONAL

- Individuals and groups
- Incident- or relationship-based
- Most common complaint type
- May arise during a structural complaint investigation

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Complaints and Conflicts



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Sources of Conflict

- Conflicts are a sign of unmet needs
- There are three root causes of conflict

1 **Power and Control**

2 **Care and Connection**

3 **Respect and Recognition**

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Contextual Considerations

- No one-size-fits-all approach to IR
- Not all structures will fit the unique circumstances of sex- and gender-based misconduct complaints
- Policies and processes should be designed with a variety of complaints and parties in mind
- IR within an educational institution is inherently different than community agency processes

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ACTIVITY: Introduction to David & Andrea

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Initial Contact

David has been referred to the Title IX Office by the Office of Student Conduct. He shared that his ex-fiancé Andrea (also a student) has repeatedly contacted him after their relationship ended, including leaving notes on his vehicle on campus that stated, “This is not over;” approaching him after classes; appearing at his off-campus residence; and multiple phone calls and text messages demanding that he speak to her. Andrea has also asked his friends where David is and has shown up at off-campus locations where they are hanging out based on their Instagram posts.

David explains that he has repeatedly asked Andrea to leave him alone and not to contact him. But she will not comply with his requests. He believes Andrea is having a hard time letting go of their relationship, and he is now seeking your help to resolve the situation.

What steps would you take upon hearing this information from David?

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Informal Resolution Application

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

General Application Information

- IR can take place at any point before a final determination is made
- May offer IR for incidents that:
  - Meet the regulatory definition of Title IX sexual harassment
  - Fall under another policy
  - Do not yet rise to the level of a potential policy violation
- IR is **optional** and may be offered in a variety of forms

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Title IX Sexual Harassment

Quid Pro Quo

Hostile Environment



Sexual Assault

Stalking

Dating Violence

Domestic Violence

NOT FOR DISTRIBUTION

IR Within the Title IX Regulations

- Formal complaint required
- Cannot be used for allegations of employee-on-student misconduct
- Alleged conduct must meet regulatory sexual harassment definition if proven and have occurred in the United States
- Complainant must be participating or attempting to participate in education program or activity
- Respondent must be a student or employee
- Facilitator must be free of bias and conflicts of interest
- Facilitator must have appropriate training
- Records maintained for minimum of **seven** years

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

IR Outside the Regulations

- Formal complaint not required
  - ATIXA recommends a written statement or complaint
- May address alleged policy violations and behaviors that would not violate policy but are impactful
  - Non-sexual-harassment civil rights complaints
  - Sexual harassment falling outside the TIX regulations
- Complainant does not have to be affiliated with institution
- Respondent must be a student or an employee
- Recommend same facilitator neutrality and training expectations
- Records maintained per institutional policy

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

IR for Relational Complaints

- Can be effective way of addressing relational complaints for parties and impacted community
- IR for Parties
  - Resolution focuses on the parties
  - Empowers choice
  - Needs-based
  - Honors privacy similar to the Formal Grievance Process
  - Focuses on ensuring educational access and restoration

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

IR for Impacted Groups and Communities

- Some incidents have a far-reaching impact on a larger group
- Opportunities for IR to address gaps that may exist between individual and community harm
- Considerations
  - Are the involved parties agreeable?
  - Are the involved parties present?
  - Do the power dynamics allow for voluntary choice?
  - How expansive is the impact?

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

IR for Structural Complaints

- No specific Respondent
- Individuals in current roles are not always the same individuals who wrote/implemented the discriminatory policy/practice
- Can necessitate facilitator with positional authority within the institution
- Two-phase resolution
  - Remedying the immediate complaint
  - System/policy/environmental change

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Timing

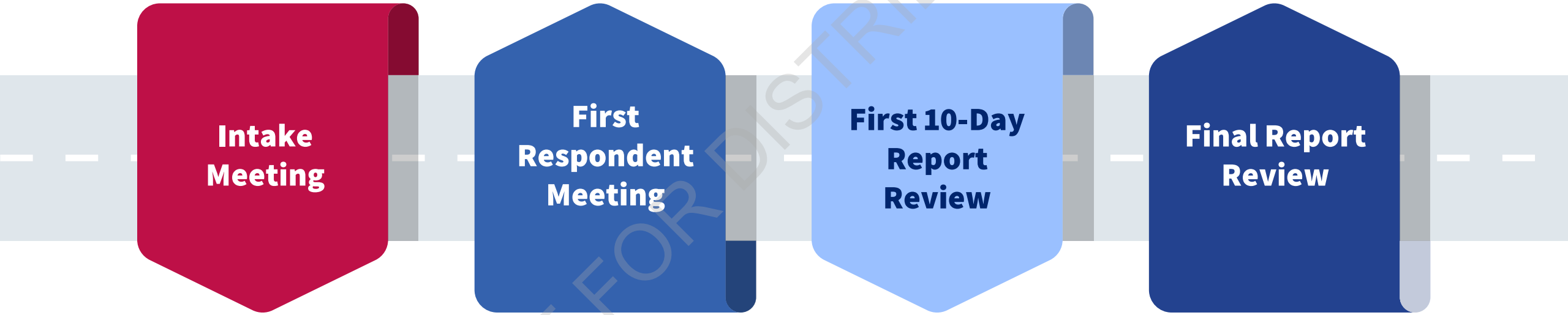
- IR may be implemented prior to, in lieu of, or following a Formal Grievance Process
- Institutions determine whether an investigation should proceed or be paused while IR is attempted
  - Jurisdiction over Respondent
  - Party and witness availability
  - Evidence availability
- Timing may inform IR structure or options that may be available

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Common Off-Ramps for IR

Any party may request to pursue an IR at any point prior to a final determination



NOT FOR DISTRIBUTION

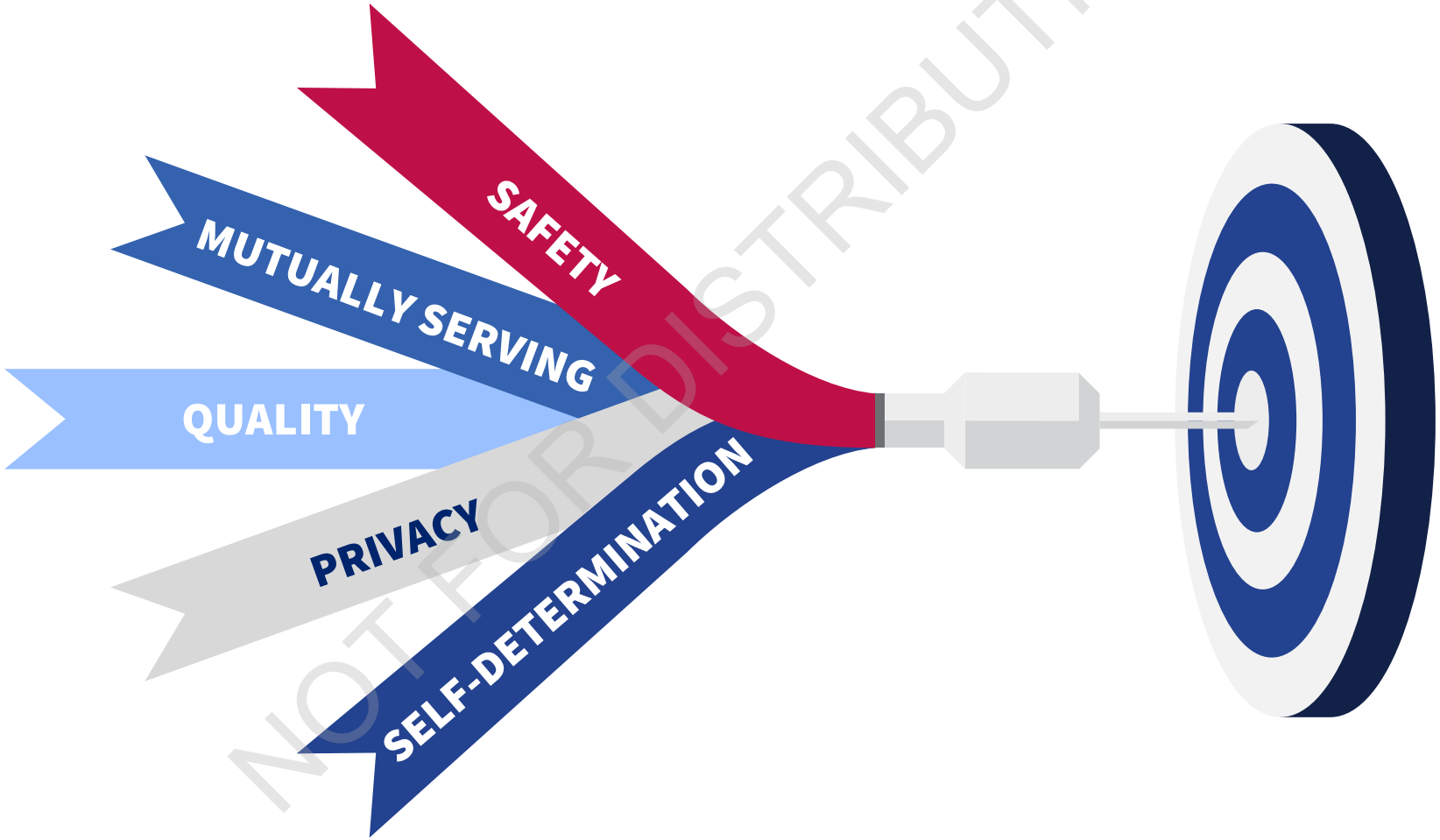
© 2023 Association of Title IX Administrators

Determining Availability & Appropriateness

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Key Values



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Considerations for Appropriateness

- Not all complaints are appropriate for IR and not all parties are ready to participate
- Not all forms of IR are appropriate for all circumstances
- Factors to consider:
  - History of emotional, physical, or sexual violence between parties
  - Power imbalances between parties
  - Potential to jeopardize safety or well-being
  - Situations involving minors harmed by adults
  - Party or parties not sincere or acting in good faith

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Informal Resolution Structures & Implementations

Cross-Cultural Considerations

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Culture

"[A] set…of rules for being in the world…[and] shared cognitive approaches to reality that distinguish a given group from others."

Adler, Nancy & Jelinek, Mariann. (2006). Is "Organizational Culture" culture bound?. Human Resource Management. 25. 73 - 90.



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Cross-Cultural Considerations

> Culture eats strategy for breakfast.

Peter Drucker
Management Theorist

- Practitioners need a thorough understanding of institutional culture and needs
- Culture is learned and adaptable
- People tend to defend and protect their culture
- People are often oblivious to the unique customs of their own culture

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Cultural Competence

Awareness of one's own cultural beliefs and values and how they may be similar to or different from other cultures

Individual

- Awareness of one's own worldview
- Developing positive attitudes toward cultural differences
- Willingness to accept and respect cultural differences
- Gaining knowledge of different cultural practices and worldviews
- Incorporating knowledge into interactions across cultures

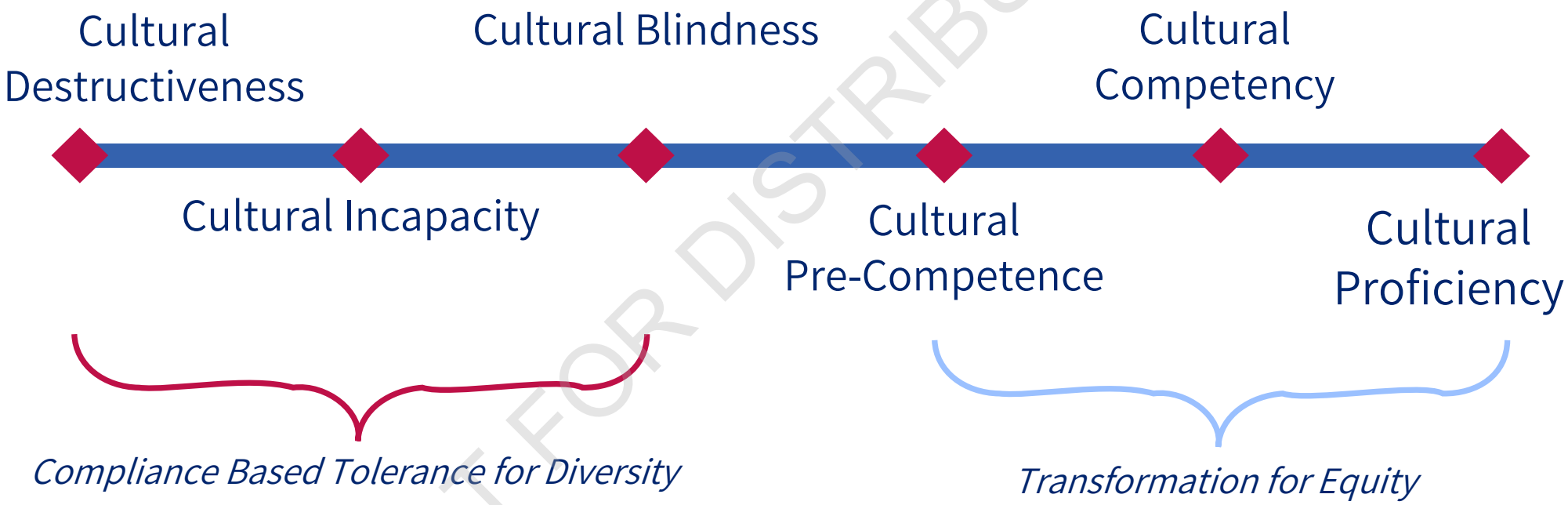
Organizational

- Defined values and principle
- Behaviors, attitudes, policies, and structures that allow support effective cross-cultural communication
- Capacity to acquire and apply cultural knowledge
- Managing dynamics of difference
- Adapting to cultural contexts

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Cultural Competence Continuum



NOT FOR DISTRIBUTION

Adapted from CCPEP.org

© 2023 Association of Title IX Administrators

Cultural Competence Stages

1

CULTURAL DESTRUCTIVENESS

Attitudes, policies, structures, and practices within a system or organization that are destructive to a cultural group

2

CULTURAL INCAPACITY

Lack of systemic and organizational capacity to respond effectively and efficiently to the needs, interests, and preferences of culturally and linguistically diverse groups

3

CULTURAL BLINDNESS

Expressed philosophy of viewing and treating all people the same

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Cultural Competence Stages



CULTURAL PRE-COMPETENCE

A level of awareness of an institution or organization's own strengths and weaknesses in order to effectively respond to culturally and linguistically divers populations



CULTURAL COMPETENCE

A demonstration of acceptance and respect for cultural differences



CULTURAL PROFICIENCY

Culture is held in high esteem and is the foundation that guides all organizational practices and endeavors

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Trauma and Culture

A trauma-informed approach refers to the manner in which an institution thinks about and responds to those who have experienced or may be at risk of experiencing trauma.

- Anyone can experience trauma and reactions vary from person to person
- Culture influences how an individual interprets and assigns meaning to trauma
- Practitioners must understand trauma-informed practices in relation to cultural differences
- Trauma-informed institutions have a culture that incorporates a thorough understanding of trauma-informed principles and practices
- Offering IR is one way to move toward trauma-informed practices

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Dynamics of Sex- and Gender-Based Violence

- Culture affects how individuals view and experience gender-based violence (GBV)
- GBV occurs across many different types of relationships
- Relationships, and the power dynamics of those relationships, have an enormous impact on what strategies will provide the most effect responses
- Cultural aspects that may influence how GBV is experienced and viewed include:
  - Spoken and unspoken rules about behavior
  - Bodily autonomy
  - Fear, shame, and evaluation
  - Laws
  - Religious beliefs

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

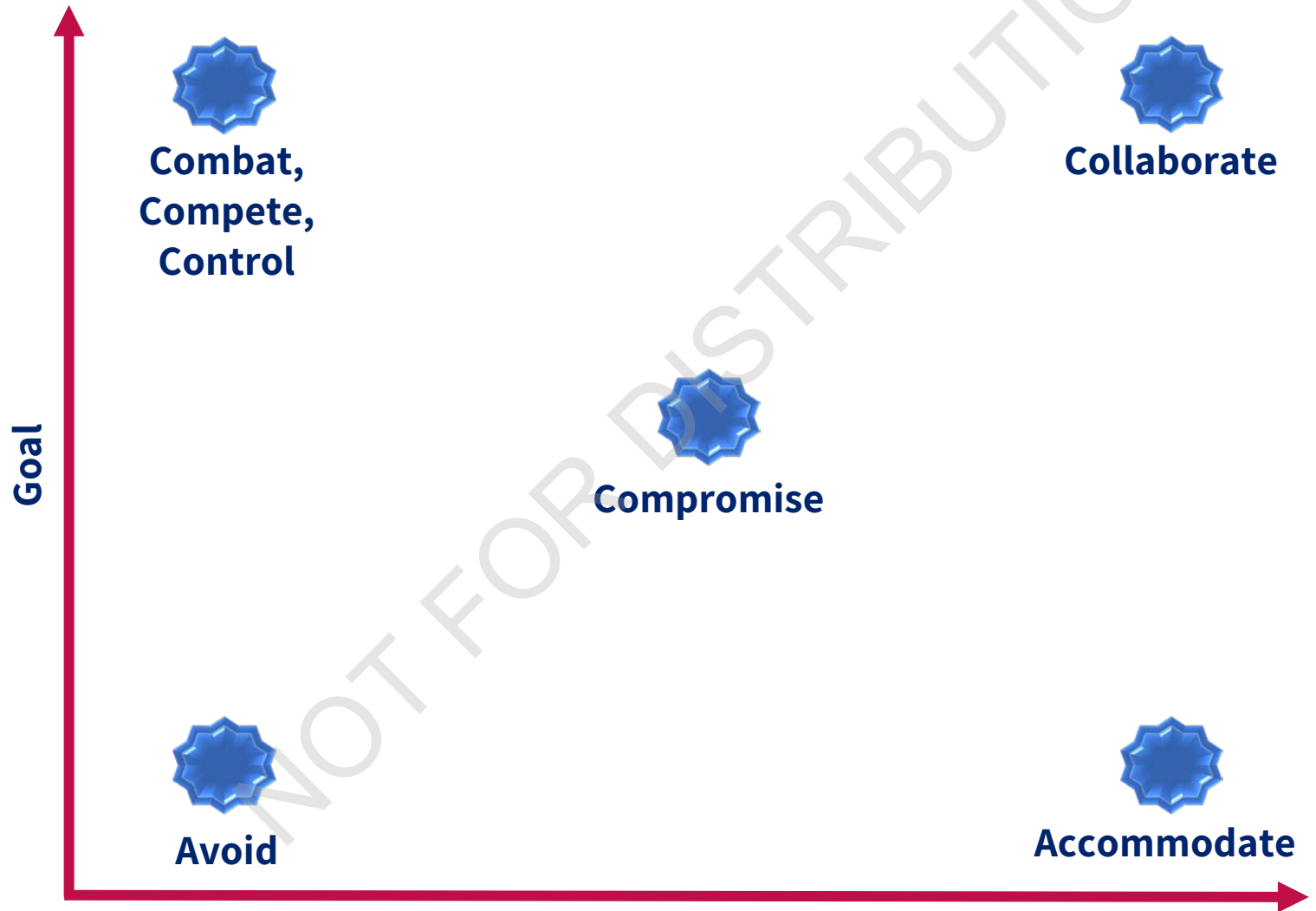
Culture and Conflict Resolution

- Cultures are embedded in every conflict because every conflict arises within human relationships
- Affects the ways we name, frame, blame, and attempt to tame conflict
- Influences how individuals engage in conflict resolution

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

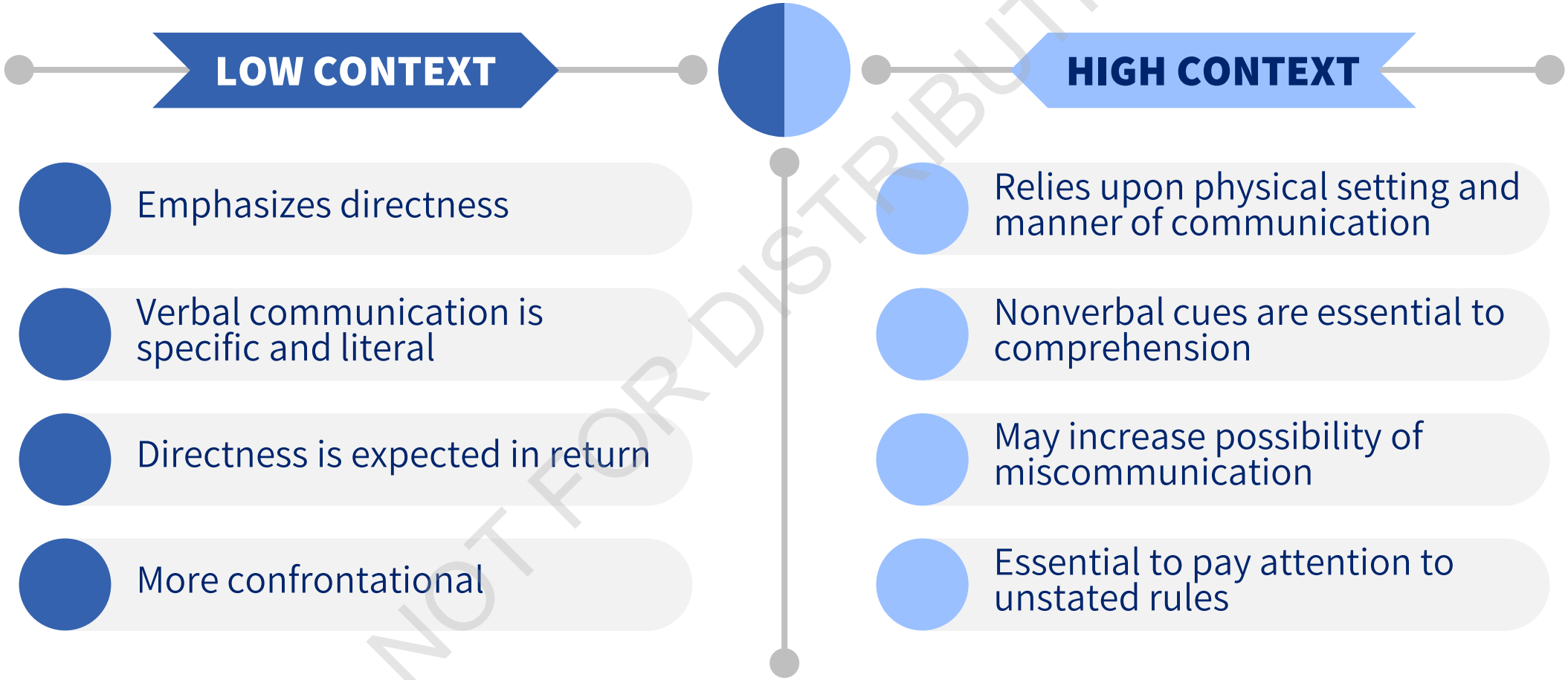
Approaches to Conflict Resolution



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Context and Communication



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Culture and Contracts

- Not all cultures view negotiations and contracts the same way
- Institutions should be cognizant of this if implementing IR processes seek to reach an agreement



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Power and Privilege

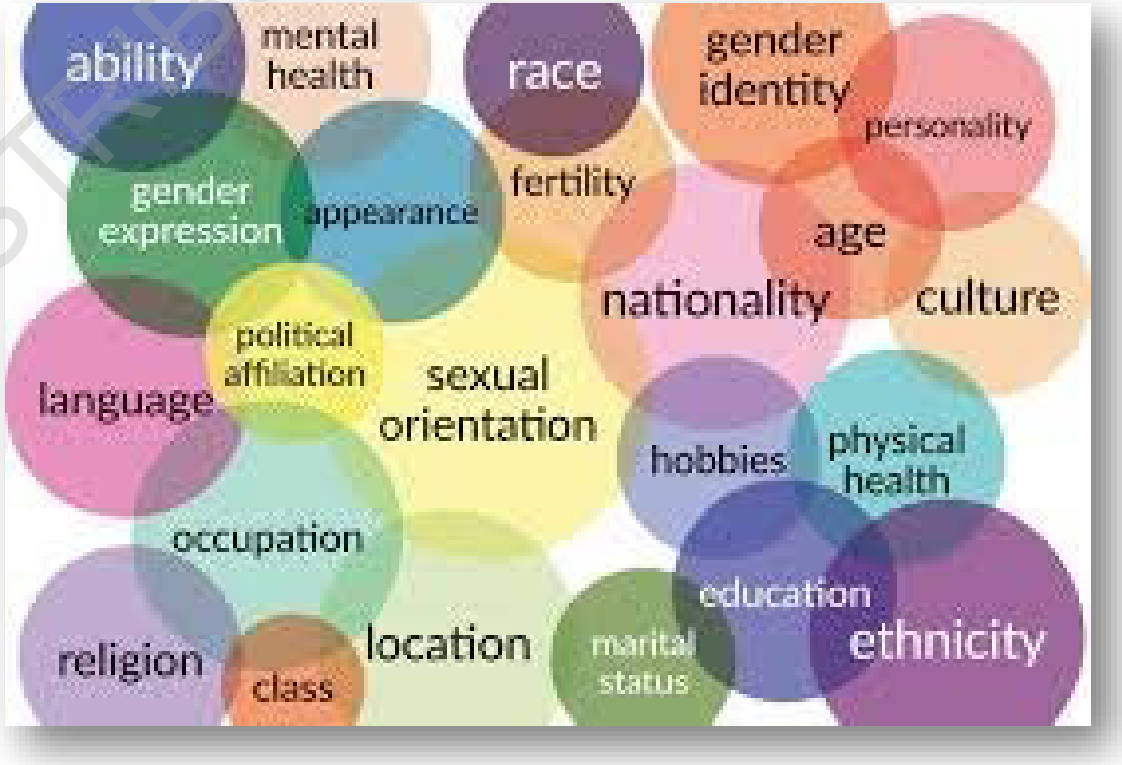
- **Power:** right or ability to govern, rule, or strongly influence people or situations, including determining who will have access to resources
- **Privilege:** refers to the unearned benefits given to a member of one social group as a result of the systemic targeting or marginalization of another social group
- Many IR mechanisms require parties to share power rather than use power over others
- Power and privilege can impact the way parties view the facilitators' perceived identities in relation to their role

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Intersectionality

- Framework for understanding how aspects of a person's identities contribute to various disadvantages and privileges
- Recognizes that identity markers do not exist independently, and each informs the others
- How one travels the world
- Some identities may be more salient than others depending upon context



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Intersectionality

RACE
Often a dominant identity when navigating systems

GENDER
More salient for gender diverse individuals encountering lack of knowledge or understanding

ABILITY
Ability status often diminished based on intersecting identities

ETHNICITY
Can create a feeling of being siloed into one group or another

SEXUALITY
Often more dominant for males than females

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

What is Bias?

- A preference or tendency to like or dislike
- A cognitive process
- Can be a systematic error in our thinking process
- Mental shortcuts
- A thought process developed over time through repeated personal experience
- Implicit or explicit
- Can be intentional, but generally unintentional

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

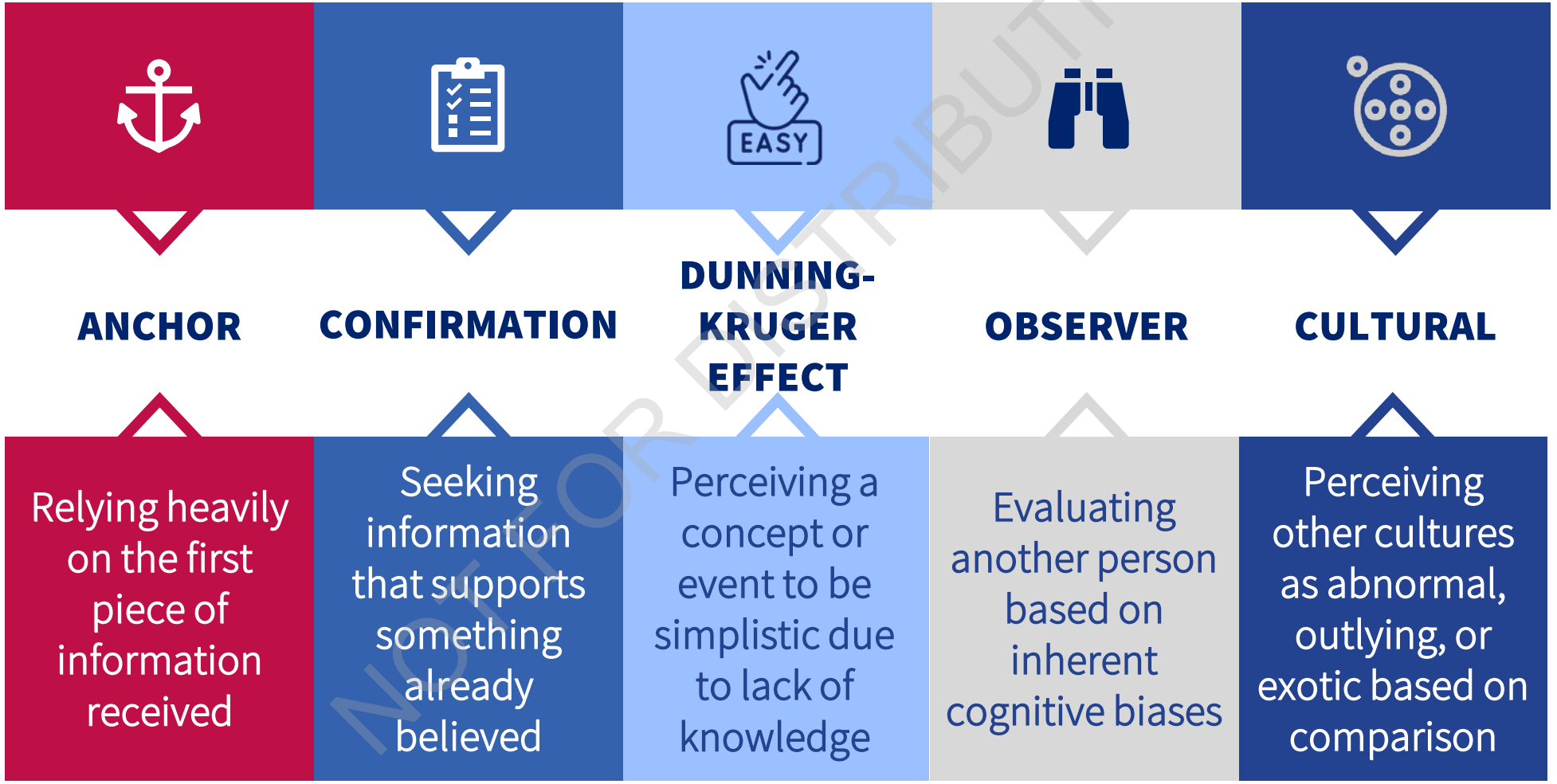
What is Bias?

- Formed from stereotypes, societal norms, cultural experiences, expectations of the people around you
- Can affect our perceptions of Complainants **and** Respondents
- Common pre-conceptions about Complainants and Respondents
- Can affect our perceptions of others within the process or associated with the process

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Types of Bias



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Common Bases for Implicit Bias

- Ability
- Age
- Citizenship status
- Ethnicity
- Gender
- Gender Identity/Expression
- Health status
- Marital status
- Mental health status
- National origin
- Parental status
- Physical attributes
- Race
- Religion
- Sexual orientation
- Socioeconomic status

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ATIXA's Informal Resolution Framework

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Supportive Measures Only

- Institutions have been offering this response for years
- Formal complaint not required
- Complainant declines to pursue Formal Grievance Process
- TIXC works with Complainant to determine reasonable and appropriate supportive measures
- May not adversely impact the Respondent

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Supportive Measures Agreement Example

- Outlines specific supportive measures to be implemented

Example:

- Title IX Coordinator will contact Dr. Simmons (ENG 4301), Dr. Gaines (MAT 2205), and Dr. Lyles (POL 3700) to request they work directly with Complainant regarding academic adjustments appropriate to their courses for the Fall 2023 term. Complainant will be cc'ed on e-mails and is encouraged to work directly with faculty to make specific arrangements.
- Title IX Coordinator will work with Office of the Registrar to facilitate a late withdrawal from HIST 2011 without academic or financial penalty.

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Accepted Responsibility

- Respondent accepts responsibility for policy violation(s) prior to final determination
- TIXC, Complainant, and Respondent agree to sanctions/corrective actions
- No appeal process if all parties agree on IR terms
- Facilitation foundations and appropriate documentation are core to this process
- Document parties' decision to not pursue Formal Grievance Process

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Signed Resolution Agreement Example

- Respondent accepts responsibility for violating the Sexual Harassment policy by repeatedly making unwelcome sexual comments to the Complainant in person and sending sexual content to the Complainant via text message between March and September 2023
- Respondent agrees to attend sexual harassment training provided by Human Resources by December 15, 2023
- Respondent agrees to have no contact with the Complainant unless it is expressly work related
- Respondent will be placed on employment probation for a period of one calendar year

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Alternative Resolution

- Umbrella term that can encompass any mechanism used to resolve a formal complaint that is not supportive measures only, acceptance of responsibility, or the Formal Grievance Process
- May or may not result in formalized agreement between the parties and institution
- Should always include intake, preparation, facilitation, and closure phases
- Five common conflict resolution mechanisms
  - Conflict Coaching
  - Facilitated Dialogue
  - Shuttle Negotiation
  - Mediation
  - Restorative Practices

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Conflict Coaching

- Party, usually the Complainant, works one-on-one with a trained facilitator
- Discuss the behavior they want to address
- Explore strategies for addressing the behavior directly with other party
- Often includes role-playing practice



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Conflict Coaching

STRENGTHS

- Prevents low-level concerns from escalating
- Empowers parties and builds conflict resolution skills

CHALLENGES

- Relies on one party's version of the events
- Dependent upon initiating party's willingness to engage

CONTEXT CUES

- Pre-existing relationship
- Low-level conduct
- Respondent struggles with social cues

BEHAVIORS

- Unwelcome communication
- Lingering or lurking
- Repeated requests for dates

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Facilitated Dialogue

- Parties engage in direct conversation about incident/conflict
- Use the assistance of a mutually serving facilitator
- Focus on providing space and framework for communication versus finding agreement



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Facilitated Dialogue

STRENGTHS

- Allows for dialogue without pressure to reach an agreement
- Easily adaptable to in-person or virtual settings

CHALLENGES

- May leave parties feeling the situation is unresolved
- Can easily turn into debate rather than dialogue

CONTEXT CUES

- Parties open to direct interaction
- Conduct may not rise to the level of a policy violation
- Goal of perspective sharing and increasing understanding

BEHAVIORS

- Offensive or hate speech
- Hosting/supporting controversial speakers or events
- Not respecting boundaries

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Shuttle Negotiation

- Third-party facilitator acts as a go-between for the parties
- Takes several conversations with each party before resolution is reached



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Shuttle Negotiation

STRENGTHS

- Allows for resolution without direct interaction
- Flexible to accommodate different communication preferences

CHALLENGES

- Relies heavily upon facilitators accuracy and skill
- Often does not address underlying feelings and needs

CONTEXT CUES

- Parties do not want or are restricted from direct communication
- Goal of sharing perspectives and reaching agreements
- Parties have ongoing relationship/overlap in education, social, or employment

BEHAVIORS

- Sexual harassment
- Dating or domestic violence
- Sexual exploitation

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Mediation

- Structured process where mutually serving facilitator fosters an environment of open communication between parties with an intention of reaching an agreement
- Facilitators tend to follow facilitative and/or transformative mediation models for Title IX complaints
- Mediators tend to keep their own views of the conflict hidden



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Mediation

STRENGTHS

- Seeks to address short- and long-term issues
- Structured to facilitate developing a tangible agreement

CHALLENGES

- Assumption that both parties contributed to causing the matter being mediated
- Not appropriate for matters with unresolved power imbalances
- Often results in compromise; no party is fully satisfied

CONTEXT CUES

- Parties willing to be in the same space
- Limited or no power imbalances
- Flexibility about what outcome may result

BEHAVIORS

- Sexual harassment
- Sexual exploitation
- Structural complaints

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Restorative Practices

- Commonly designed as a circle process with a mutually serving facilitator
- May take the form of conferencing or an exchange of statements
- Focuses on identifying:
  - Who was harmed
  - How they were harmed
  - Respondent taking accountability for causing harm
  - Parties determining how Respondent can best repair the harm



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Restorative Practices

STRENGTHS

- Provide Complainant opportunity to be heard and have questions answered
- Allow parties to work collaboratively to determine how harm and relationships can be repaired

CHALLENGES

- Cultural shift for Respondents to take accountability
- Require highly skilled and experienced facilitator
- Often time-intensive for preparation and facilitation

CONTEXT CUES

- Respondent is taking accountability for causing harm
- Desire to repair a pre-existing relationship
- Openness to listening to others' experiences and perspectives

BEHAVIORS

- Sexual exploitation
- Stealthing
- Hazing

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Transformative Practices

- Focuses on addressing issues of injustice and oppression
- Practices are gaining popularity in circumstances in which the community wants to take responsibility for resolution

Strengths

- Provides means to address community impact beyond involved parties
- Often focuses on harmful behaviors outside of policy scope
- Useful for responding to structural complaints

Challenges

- Intentionally takes place outside system/policy, which prevents institution from being able to ensure the behavior has been stopped, prevented, and remedied

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Alternative Resolution Process

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Who Should Facilitate?

- Institutions have discretion to determine who can serve as an IR facilitator
- ATIXA recommends:
  - Facilitator pool
  - TIXC does not serve as a facilitator
- Institutions may contract or hire external facilitators
- TIXC will need to determine appropriateness of facilitator preference requests from parties

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Intake

- First step in process
- Best facilitated by the person or pair running the process
- All parties need to participate in individual intake sessions

Intake Session Goals

- Build rapport
- Evaluate emotional, mental, and physical safety for participation
- Ascertain motivation and goals
- Explain AR process and manage expectations
- Identify support resources for parties
- Determine what would prevent continuation of process for each party

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Facilitator Reminders

- For most parties, this is a new process
- Provide reference materials for parties after the intake meeting
- Facilitator's goal is to make the process or action easier for parties
- Do not take parties' actions personally
- Avoid making assumptions and challenge assumptions the parties make

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Positions, Interests, and Needs

P	**Positions:** specific demands; a chosen stance; a solution a upon which a party has decided Example: “I want the Respondent suspended”
I	**Interests:** underlying motivations, hopes, concerns, desires, or worries that led a party to their position; what helps a party choose their solution Example: “I don’t want to have classes with the Respondent”
N	**Needs:** what a party actually must have Example: safety

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Intake Meeting Structure



GATHER PARTY'S PERSPECTIVE



EXPLORE POSITIONS, INTERESTS, NEEDS, AND FEELINGS



ASCERTAIN PARTY'S MOTIVATION

ASK WHAT CANNOT BE SHARED WITH OTHER PARTY



DISCUSS PARTY'S GOALS



OBTAIN WRITTEN CONSENT

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Evaluation Frameworks

- Pay attention to cues indicating whether a party is in a conducive mental and emotional state for Alternative Resolution participation
- Assessing readiness and amenability for Alternative Resolution is both an art and a science
- Three example frameworks:
  - The 10 D's of Opposition
  - Four Levels of Accountability
  - ATIXA's 1P2P Framework

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

10 D's of Opposition

- **DEFLECT**
- **DELAY**
- **DENY**
- **DISCOUNT**
- **DECIEVE**
- **DIVIDE**
- **DULCIFY**
- **DISCREDIT**
- **DESTROY**
- **DEAL**

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Four Levels of Accountability



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ATIXA's 1P2P Framework

Checklist outlining considerations for determining appropriateness and parties' preparedness for Alternative Resolution

Considerations:

- Parties' amenability to AR
- Likelihood of resolution
- Parties' motivation
- Civility
- Results of violence risk assessment
- Emergency removal implications
- Complaint initiation
- Facilitator skill
- Emotional investment
- Rationality
- Parties' goals
- Resources

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ACTIVITY: David and Andrea Part II

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Intake with David

David explained that he started dating Andrea in high school, and they came to college as a couple. During their sophomore year, David proposed, and Andrea accepted. They moved in together in an off-campus apartment for their junior year. However, at the end of their junior year their relationship became strained, and they started arguing on a regular basis. David shared the he decided to tend the relationship over the summer and moved into an apartment with friends. David stated that he does not want to have any further contact with Andrea and there is no reason she should be continuing to contact him (i.e. no shared children, pets, property, etc.). He requests a No Contact Order and is considering whether to file a formal complaint.

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Conversation with Andrea

Andrea provides similar information regarding the history of her relationship with David. She explains that when they were together, she consented to allowing David to take nude photographs of her multiple times. Andrea has heard a rumor that David still has the photos and has commented to mutual friends that he plans to post them online. Andrea has been trying to speak to David about deleting the photos, but he refuses to answer or return her calls or speak to her in person. Although Andrea was not happy about the relationship ending and would be open to rekindling things with David, all she really wants at this point is for David to delete the photos.

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Preparation Meetings

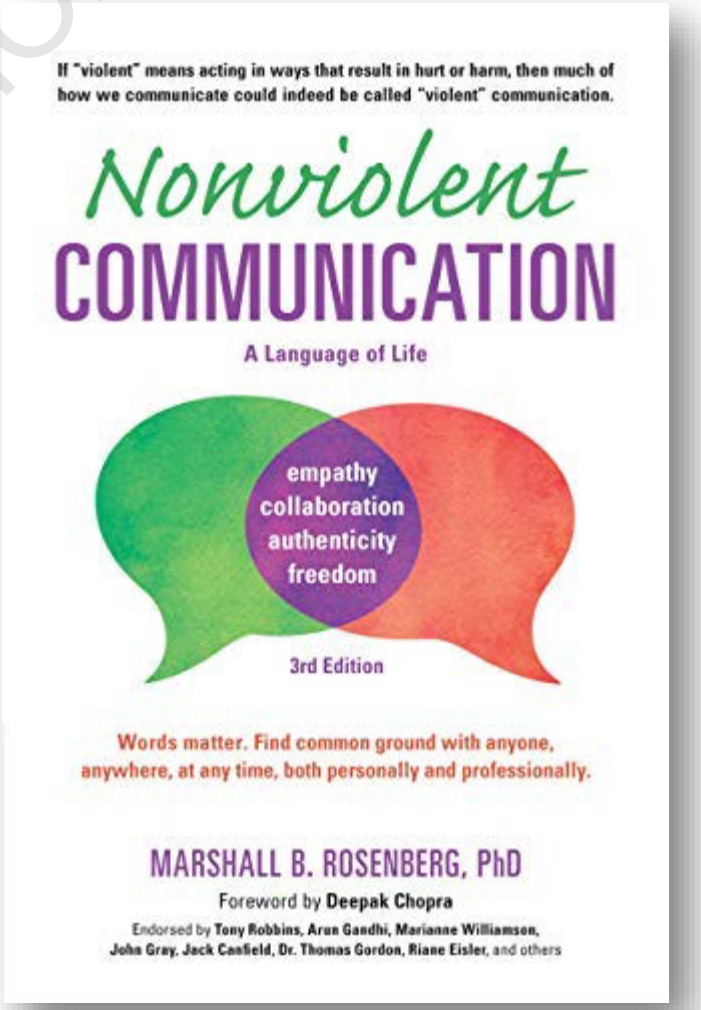
- Number and structure of preparation meetings depends on Alternative Resolution mechanism and parties
- Facilitator should go into each meeting prepared with what they want to achieve during the meeting
  - Alternative Resolution can take unexpected turns and facilitators should not plan for a particular outcome
- Parties may not get to a place where they are ready to interact

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Nonviolent Communication (NVC)

- Method of communication claimed to increase empathy and improve quality of life
- Four stages include:
  - Observations
  - Feelings
  - Needs
  - Requests/Offers



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Additional Preparation Questions

Complainant

- What would you like the Respondent to learn as a result of this incident?
- What would help you feel confident that this behavior will not happen again?
- Do you want to be able to have contact with the Respondent following this incident?
- What did you need in the moment that the incident was happening?

Respondent

- What do you think you need to learn as a result of this incident?
- Are there any underlying issues that contributed to your choices and behaviors that need to be addressed?
- What would help you feel confident that this behavior will not happen again?

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Facilitation

1

Opening

- Introductions
- Process explanation
- Guidelines/ ground rules

2

Connection and Communication

- Exchange of information between parties
- Reflections and responses

3

Developing Agreements

- Requests and offers
- Negotiation
- Expectations for non-compliance

4

Closing

- Conversation recap
- Review and finalize any agreements

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ACTIVITY: David and Andrea Part III

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Positions, Interests, and Needs

David

P I want Andrea to leave me alone

I We aren't in a relationship; there is no reason for us to communicate

N Space, independence

Andrea

P David needs to delete the photos

I He has no reason to keep the photos and I don't want them being shared

N Integrity, cooperation, respect

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Process Closure

- Involves responsibilities for TIXC and the facilitator(s)
- ATIXA recommends the TIXC approve any agreements before they are finalized
- Process closure includes:
  - Written agreements
  - Follow-up with the parties
  - Facilitation debrief
  - Documentation



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Institutional Support for Alternative Resolution

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Interest and Openness

- Identify existing conflict/alternative resolution processes at the institution
- Determine if there are community-based resources in the area
- Consider whether the institution's culture and speak to support for AR processes

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Involving Stakeholders

- President
- Executive Team/Cabinet-level Administrators
- Legal Counsel
- Title IX Coordinator
- Clery Act Compliance Coordinator
- Prevention/Sexual Health Educators
- Human Resources
- Faculty/Staff
- Student Conduct
- Residence Life
- Student Activities
- Student Government
- ADA/Section 504 Coordinator
- Campus Safety/Law Enforcement
- Faculty/Staff Senate
- Unions

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Program Proposal

- Understand the process to submit new program ideas at the institution
- Consider proposing a pilot

NOT FOR DISTRIBUTION

Formal Proposal

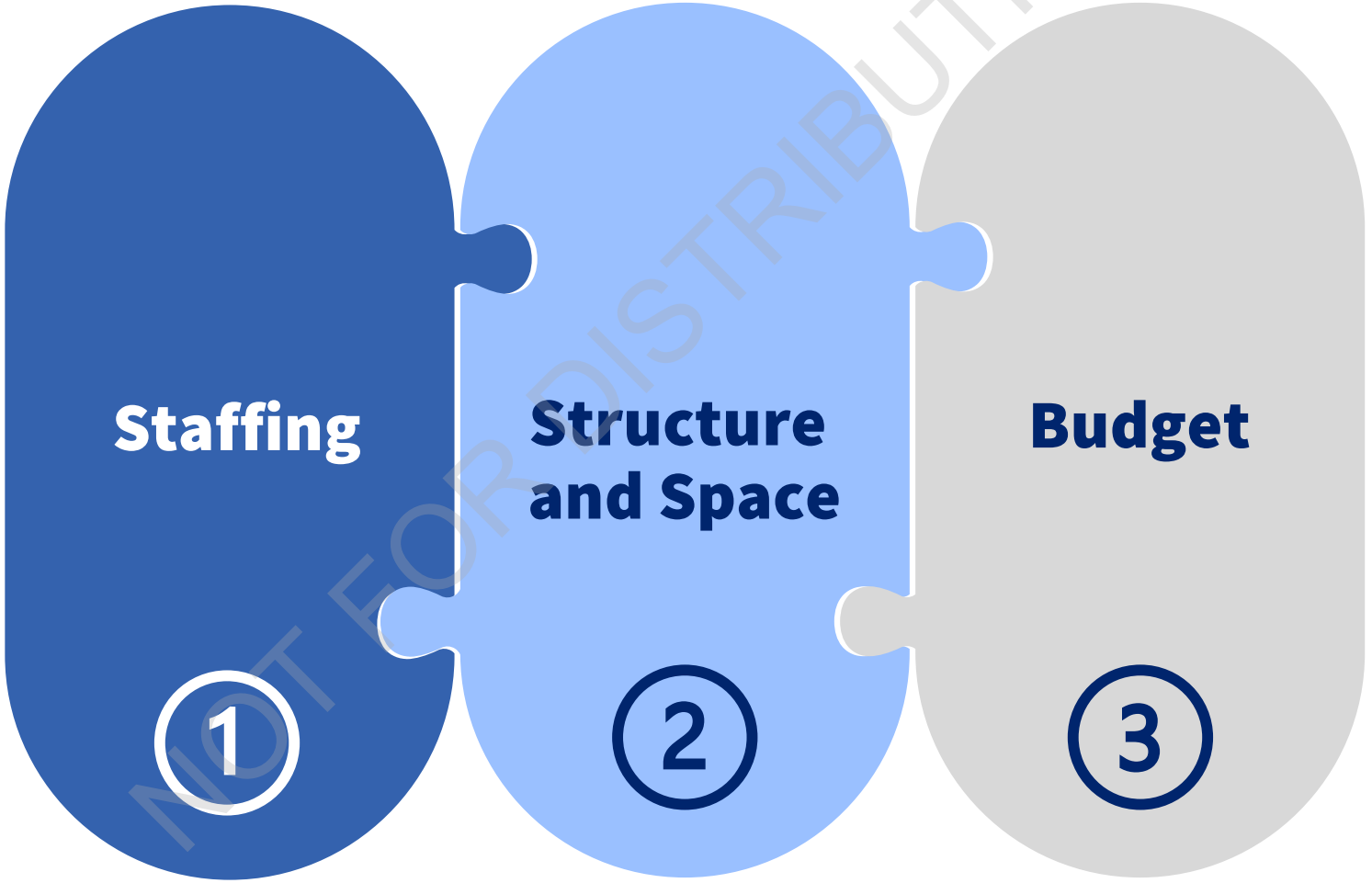
- Cost, resources, human resource analysis
- Space allocation
- Policy changes
- Benchmarking data

Informal Proposal

- General information gathering
- Meeting with stakeholders
- Find champions

© 2023 Association of Title IX Administrators

Resource Considerations



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Policy Considerations

- Determine if institutional policy allows for AR
  - Permissiveness
  - Deal breakers
- Determine whether institutional support exists for AR and to review/amend policies
- Know your institutional processes to review/amend policies
  - Process
  - Approval
  - Legal counsel review

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Training Considerations

Scope

Training Costs

Time

Ongoing Training

NOT FOR DISTRIBUTION

Process Considerations

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Setting the Tone

Practitioners need to consider the tone they hope to set for IR in their process

- Participant experience from intake through resolution
- Policy language
- Print and web-based materials
- Presentations and training
- On- and off-ramps
- Structural complaint resolution mechanisms

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Facilitation Structuring

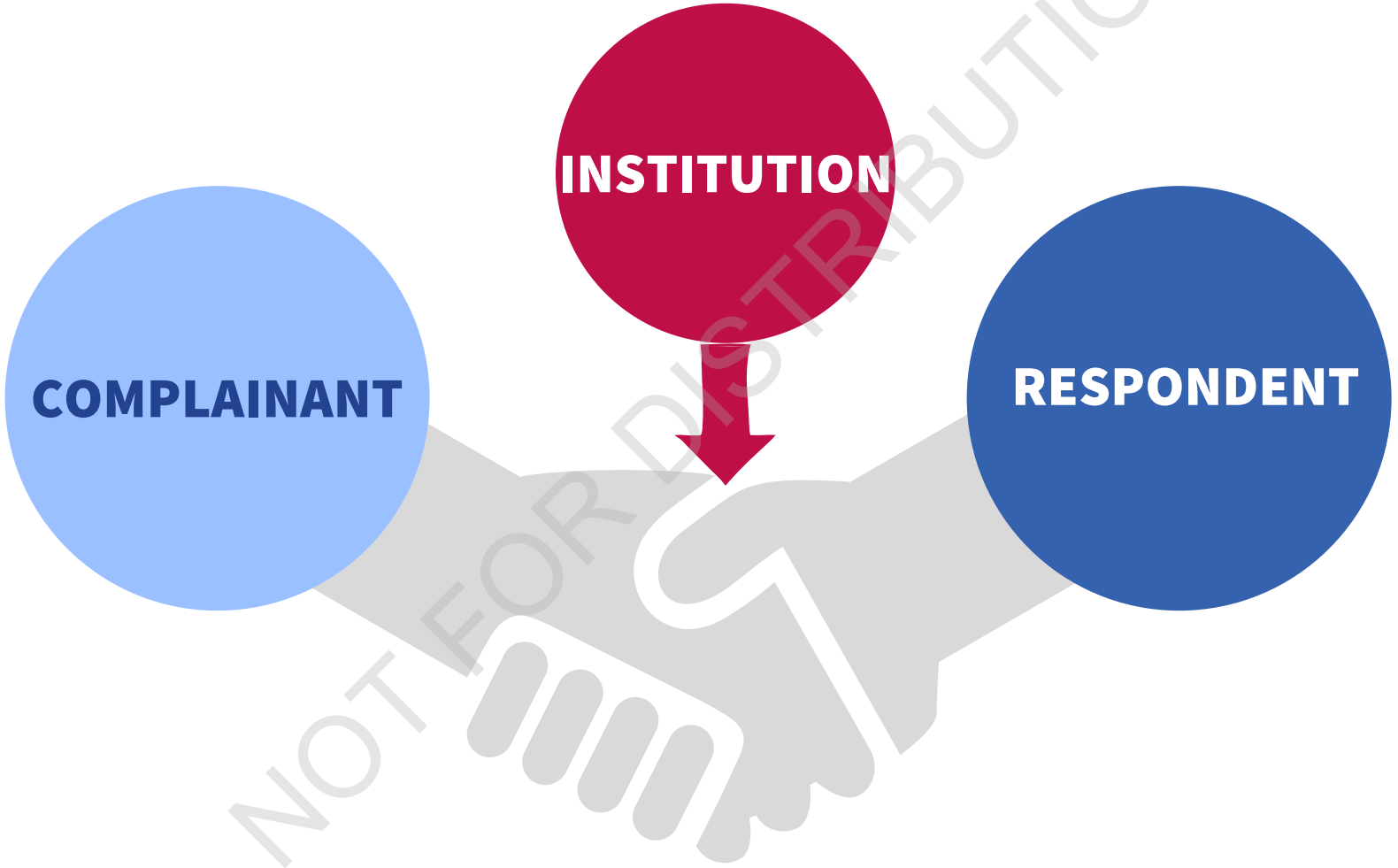
- Institutions need to determine which of the IR and AR options they will offer
- Identify and train facilitators
- Determine the types of complaints the school will resolve with internal vs. external facilitators



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Three-Party Model



NOT FOR DISTRIBUTION

Process Structure Considerations

- ATIXA recommends the TIXC have authority to disapprove a proposed resolution
  - Responsible for ensuring equity within a complaint and across complaints
  - Requirement to stop, prevent, and remedy
- Institutions need clearly defined deal breakers
- Accurate understanding of the support and comfort level in applying alternative resolution to in Title IX complaints

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Confidentiality vs. Privilege vs. Privacy

1

CONFIDENTIALITY

Those who receive reports from students (and sometimes employees) and need not report to the TIXC

2

PRIVILEGE

A legal obligation, such as an attorney giving advice in an attorney/client relationship or clergy providing pastoral advice

3

PRIVACY

Only disclosing the allegations to those who need to know, but cannot guarantee confidentiality

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Privacy Considerations

- Who is invited to participate?
- Non-Disclosure Agreements
  - All parties sign?
  - Advisors
  - How to address a violation of the agreement?
    - Violation by non-affiliated parties?
- Mandatory Reporting
  - Abuse of minor/elder/person with a disability
  - Threats of harm to self
  - Threats of harm to others

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Advisors

- Institutional policy determines if Advisors are permitted during IR
- Assess whether institutional policy allows Advisors in other similar processes
  - Full participations/representation vs. limited role
  - Representative for institution
- Only primary parties should be permitted to have Advisors in circle or community processes
- Clearly explain Advisor role and expectations in published policy/procedures and first Advisor interaction

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Notetaking

- Facilitators often take notes to help all participants track issues and agreements during the IR process
- Institutions must determine if facilitator notes are maintained, and if so, by whom and how



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Documentation: Resolution Agreements

- Once approved by TIXC: clear communication regarding what is required of parties, if anything
- Complaint File Documentation
  - Formal Complaint
  - Communication with the parties
  - Signed participation agreements
  - Rationale for how the school's response is not deliberately indifferent
  - Verification of any action items completed or pending
  - Memorialize any confidential/non-confidential understandings established
- Document sufficient details to allow for an evaluation of a possible pattern in the event of a future complaint

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Information Admissibility in Formal Grievance Process

Institutional choice to allow information from an AR to be used in the Formal Grievance Process

- A flexible approach allows institutions options and sets expectations with parties involved in each complaint
- Respondents may hesitate to participate without some assurance that information they share won't be used against them in another venue
- Confidentiality agreements/NDAs and/or information sharing expectations can be part of the agreement to participate
- Carve out for "admissions" about one's own conduct vs. a blanket statement covering all information discussed in IR

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

ATIXA's Recommended Policy Language

"Under circumstances approved by the TIXC, the parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent."

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Record Retention

- Title IX complaints and associated information must be maintained for a minimum of **seven** (7) years
  - Informal Resolutions are part of this recordkeeping requirement
- Schools need to determine:
  - Who maintains records
  - How records are retained
  - Whether to create and maintain recordings of AR meetings
  - Whether parties may request to review or amend records
  - Protocol for releasing records as requested and permitted by law

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Unsuccessful Resolution

- Facilitators or TIXC should meet with the parties individually to discuss why AR was unsuccessful
  - Gauge ability and willingness to revisit outcome and continue AR process
- Refer the complaint back to the Formal Grievance Process to resume or start as appropriate
  - Complainant has option to withdraw the complaint
- For unapproved proposed resolutions, TIXC must provide a rationale

NOT FOR DISTRIBUTION

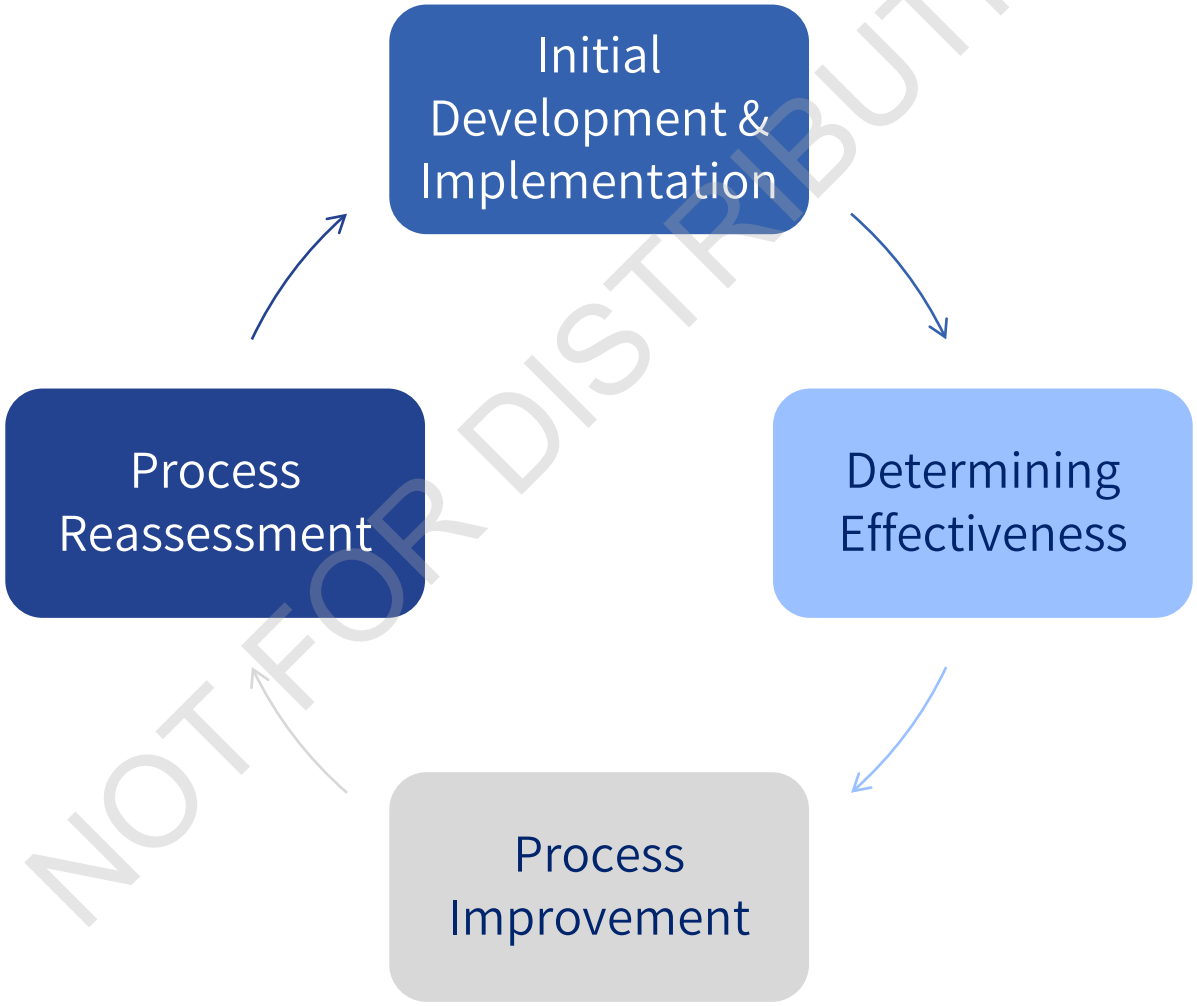
© 2023 Association of Title IX Administrators

Assessing Effectiveness

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Life Cycle of a Program



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Determining Effectiveness

- Demonstrate IR effectiveness through qualitative and quantitative data

Qualitative Data Sources

Parties | **Facilitators** | **Stakeholders**

- Post- facilitation surveys
- Informal check-ins
- Formal closure interviews

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Determining Effectiveness

Quantitative data for benchmarking and trend analysis:

- Recidivism rates
- Retention rates
- Adherence to agreements
- Number of complaints eligible for IR compared to the number that chose IR
- Successful vs. unsuccessful IR
- Process length for IR vs. Formal Grievance Process
- Staff time spent per complaint on IR vs. Formal Grievance Process

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Process Improvement

Data collection will inform improvements for a variety of areas:

- Facilitator training and education
- Staffing and resource allocation
- Process/policy updates
- Community awareness
- Benchmarking best practices



NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Process Reassessment

- **Self-Assessment** completed by individuals within the TIX office
- **External review** conducted by consultants or peer reviewers with substantive experience and expertise in IR
- **Internal review/audit** conducted within the institution but not the TIX office
- Benchmarking best practices
- Complaint statistics and program data

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Questions?

NOT FOR DISTRIBUTION

© 2023 Association of Title IX Administrators

Association of
Title IX Administrators

LIMITED LICENSE AND COPYRIGHT. By purchasing, and/or receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for its use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes, only. These materials may be used to train Title IX personnel, and thus are subject to 34 CFR Part 106.45(b)(10), requiring all training materials to be posted publicly on a website. No public display, sharing, or publication of these materials by a licensee/purchaser is permitted by ATIXA. You are not authorized to copy or adapt these materials without explicit written permission from ATIXA. No one may remove this license language from any version of ATIXA materials. Licensees will receive a link to their materials from ATIXA. That link, and that link only, may be posted to the licensee's website for purposes of permitting public access of the materials for review/inspection, only. Should any licensee post or permit someone to post these materials to a public website outside of the authorized materials link, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.

NOT FOR DISTRIBUTION