



Association of
Title IX Administrators

Informal Resolution Foundations for Higher Education

Training and Certification Course

WELCOME!

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- The ATIXA Event Lobby can be accessed by scanning the QR code or by visiting **www.atixa.org/atixa-event-lobby**.
- You will be asked to enter your registration email to access the Event Lobby.
- Links for any applicable training evaluations and learning assessments are also provided in the ATIXA Event Lobby.
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Strategic Risk
Management Solutions



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.

Content Advisory

The content and discussion in this training will necessarily engage with sex- and gender-based harassment, discrimination, 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. It is not used gratuitously, and no offense is intended.

Introduction



The primary focus of this training is to introduce practitioners to Informal Resolution and its application to Title IX and allegations of sexual harassment.



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.

Update on the 2024 Title IX Regulations

- **January 9, 2025:** a federal district court in Kentucky vacated the 2024 Title IX Regulations in their entirety
 - The 2024 Title IX Regulations are now “off the books” and **not** in effect for **any** state, institution, or school effective immediately
- Implications:
 - All federal funding recipients are now subject to the 2020 Title IX Regulations
 - Revert to **2020-compliant** policies for sexual harassment
 - Ensure sex discrimination is covered under policy
 - Consult with legal counsel on strategies for handling completed and ongoing complaints initiated under the 2024 Regulations
 - Ensure compliance with all 1975 and 2020 regulatory requirements

Executive Order re: Sex & Gender

- The Executive Order (EO) defines sex as binary – male or female
 - Detaches the notion of gender or gender identity from the term “sex”
- Directs all federal agencies to enforce civil rights laws in alignment with the EO
 - The Dept of Education will **not** interpret Title IX to protect gender identity
 - The Dept of Justice will issue guidance that *Bostock* does **not** apply to Title IX
 - All agencies must ensure that intimate spaces are designated by sex, not identity
 - All Biden administration EOs addressing gender identity are revoked
- Prioritize investigations/litigation to enforce rights and freedoms to express binary nature of sex
- Prohibits grant funding from promoting gender ideology
- Foreshadows attempts to codify EO’s definitions into law
- Notably, the EO does **not** address sexual orientation

Rescinded Prior Guidance

Rescinds all guidance documents inconsistent with the EO or subsequent guidance including:

- White House Toolkit on Transgender Equality
- 2024 Title IX Regulations: Pointers for Implementation
- ED Toolkit: Creating Inclusive & Nondiscriminatory School Environments for LGBTQI+ Students
- Supporting Intersex Students
- Supporting Transgender Youth in School
- Letter of Educators on Title IX's 49th Anniversary
- Confronting LGBTQI+ Harassment in Schools
- Enforcement of Title IX...Based on Sexual Orientation and Gender Identity in Light of *Bostock v. Clayton County*
- AG's memorandum "Application of *Bostock v. Clayton County* to Title IX"
- EEOC's "Enforcement Guidance on Harassment in the Workplace"

Notes on Vocabulary

- Title IX resolution processes specifically address sexual harassment as defined by the regulations
- 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 sexual harassment and its effects
- The Department of Education and this training uses the term “informal resolution,” but that term may not be the best fit for your school/district

Informal Resolution and Title IX

Title IX: Scope

Sex Discrimination

- Disparate Treatment
- Disparate Impact
- Program Equity

Sexual Harassment

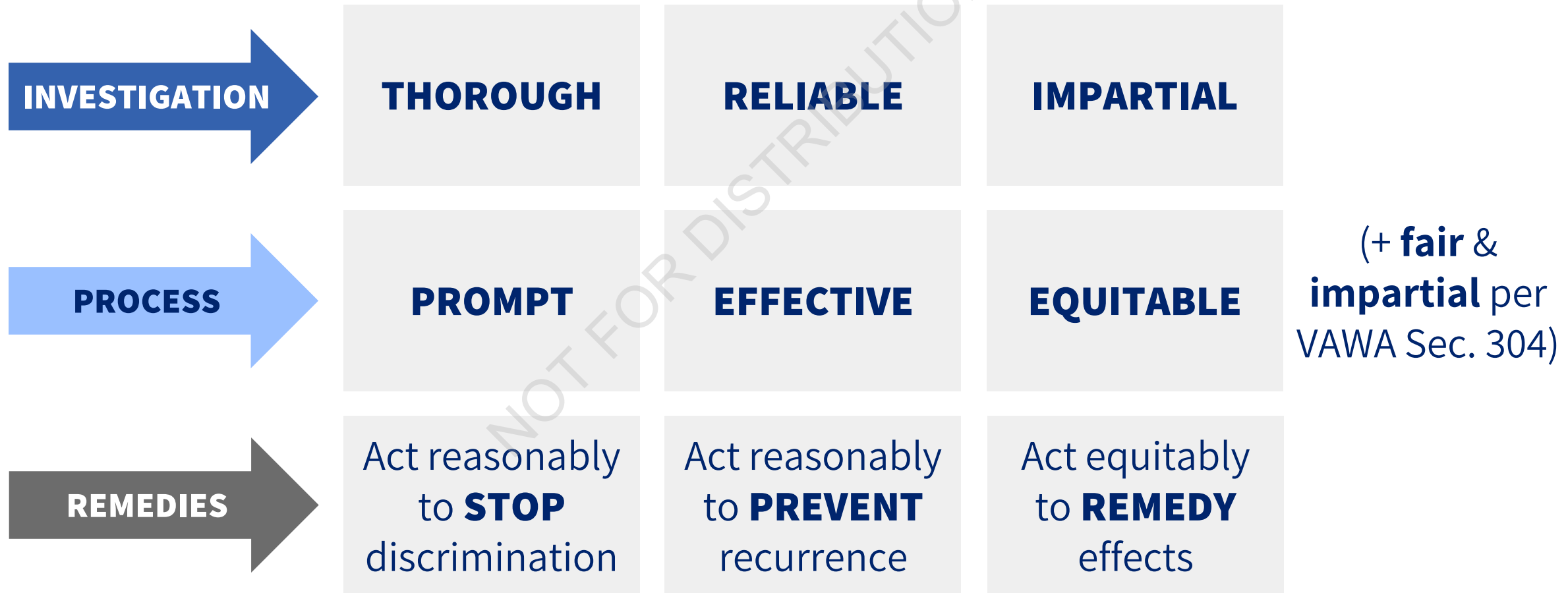
- Quid Pro Quo
- Hostile Environment
- Dating Violence
- Domestic Violence
- Stalking

Sexual Assault

- Rape
- Fondling
- Incest
- Statutory Rape

Retaliation

The IX Commandments



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)

Regulatory Requirements



Formal Complaint



Written Notice



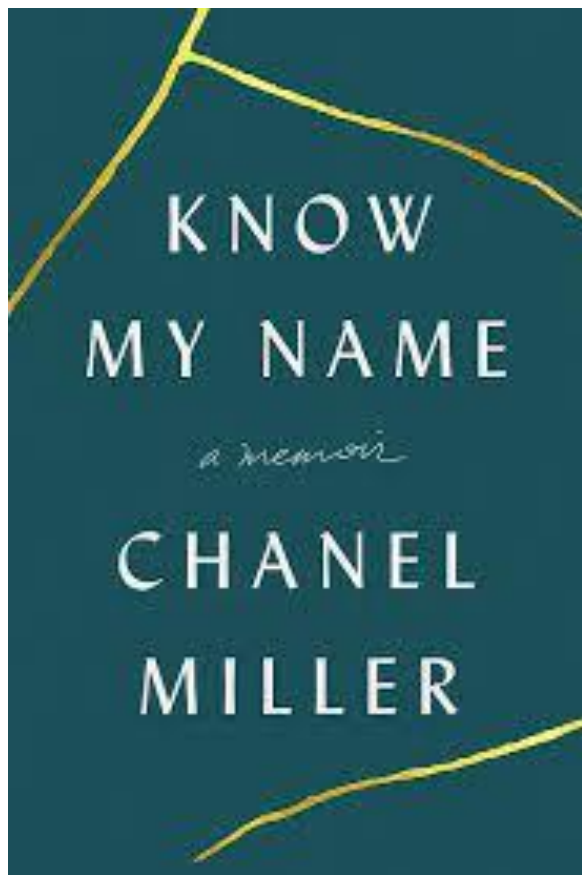
Voluntary Participation

Informal Resolution Overview



Discussion: Informal Resolution Benefits and Foundations

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“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?*”
[bold emphasis added]

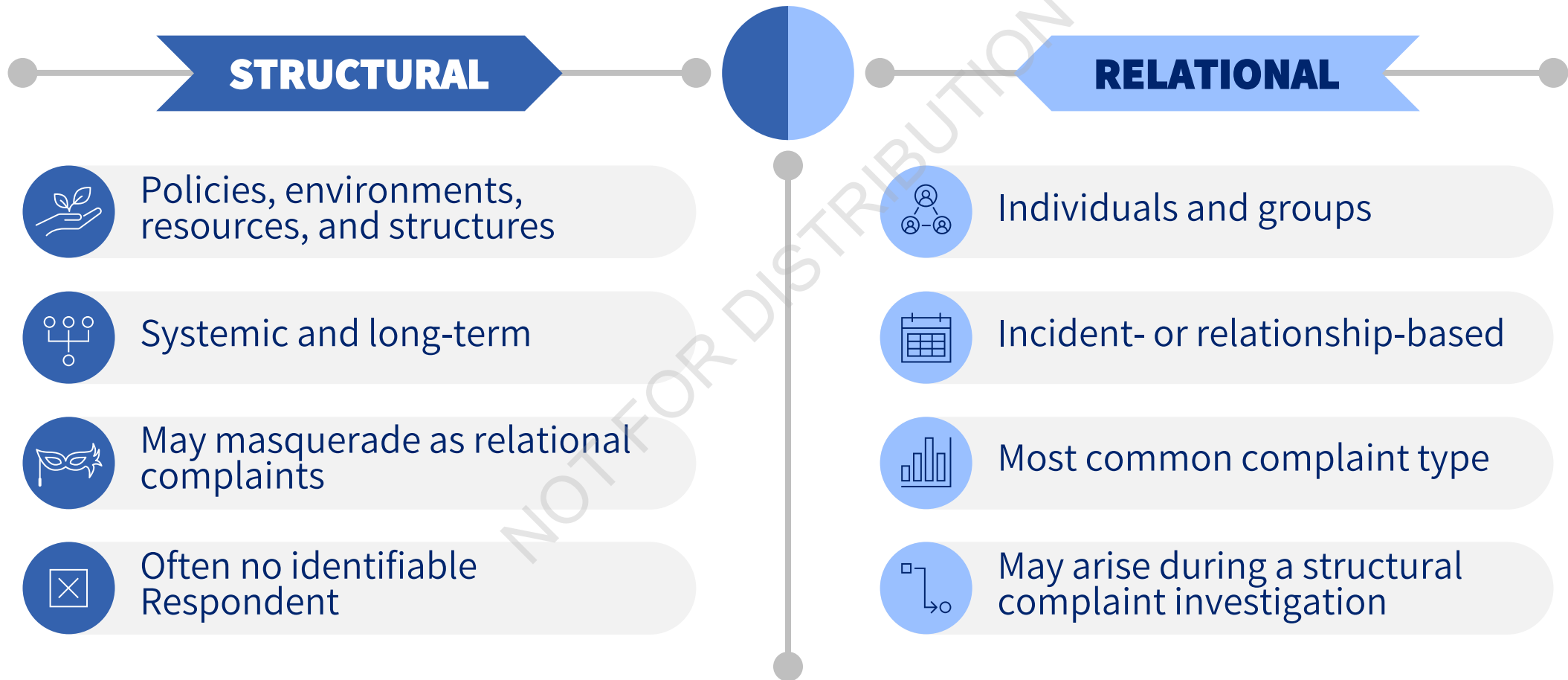
Informal Resolution Benefits

- Can be an effective way of addressing Formal Complaints for parties and impacted communities
- Resolution focuses on the people vs. focusing on the policy
- Empowers choice and agency over the resolution
- Provides a needs-based process to both address past harm and prevent future harm
- Focuses on ensuring educational access and restoration
- Honors privacy similar to the Formal Grievance Process
- Offers a space for communication and understanding among parties, if desired

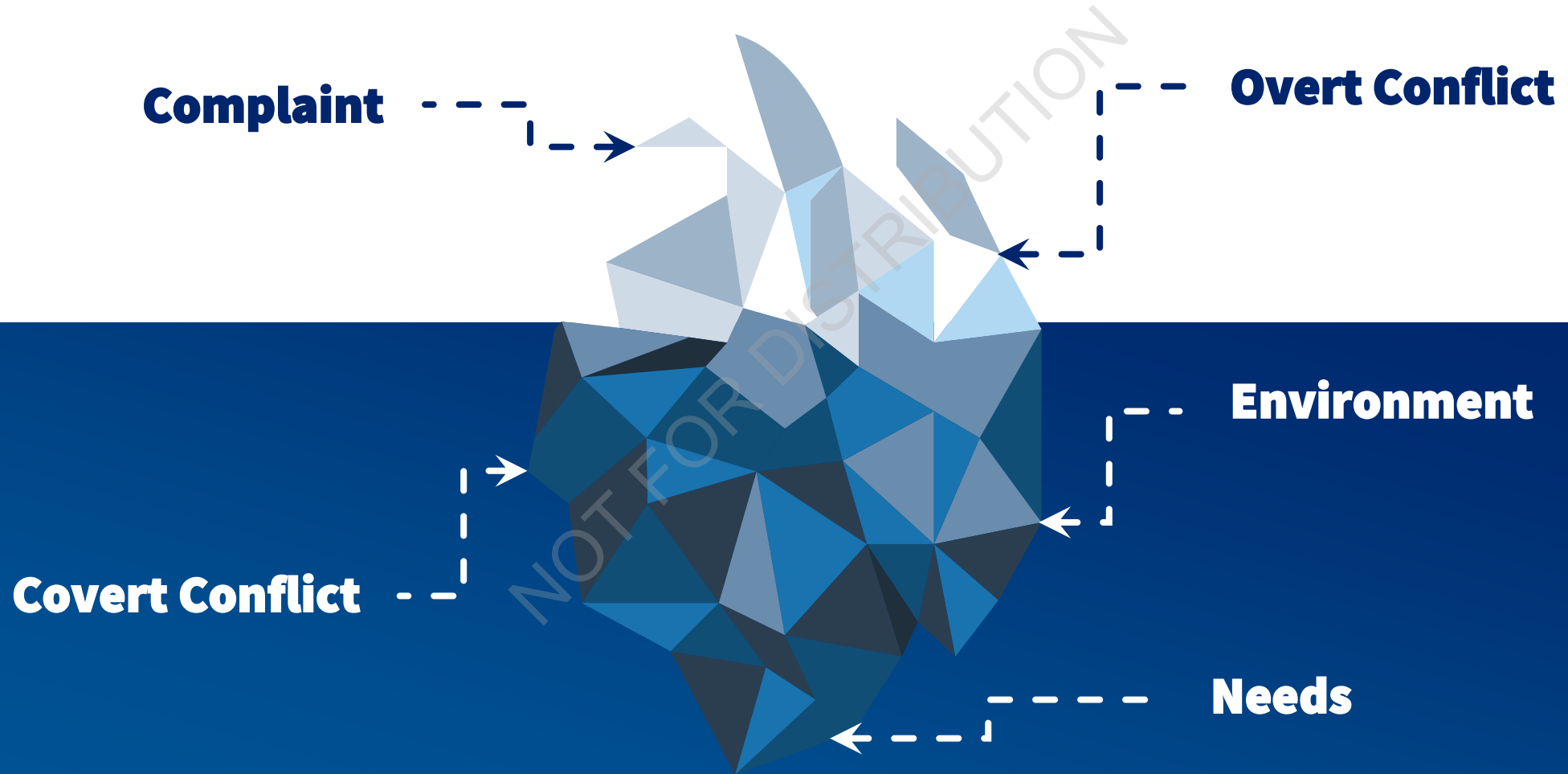
Informal Resolution Foundations

- 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

Types of Complaints



Complaints and Conflicts



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**

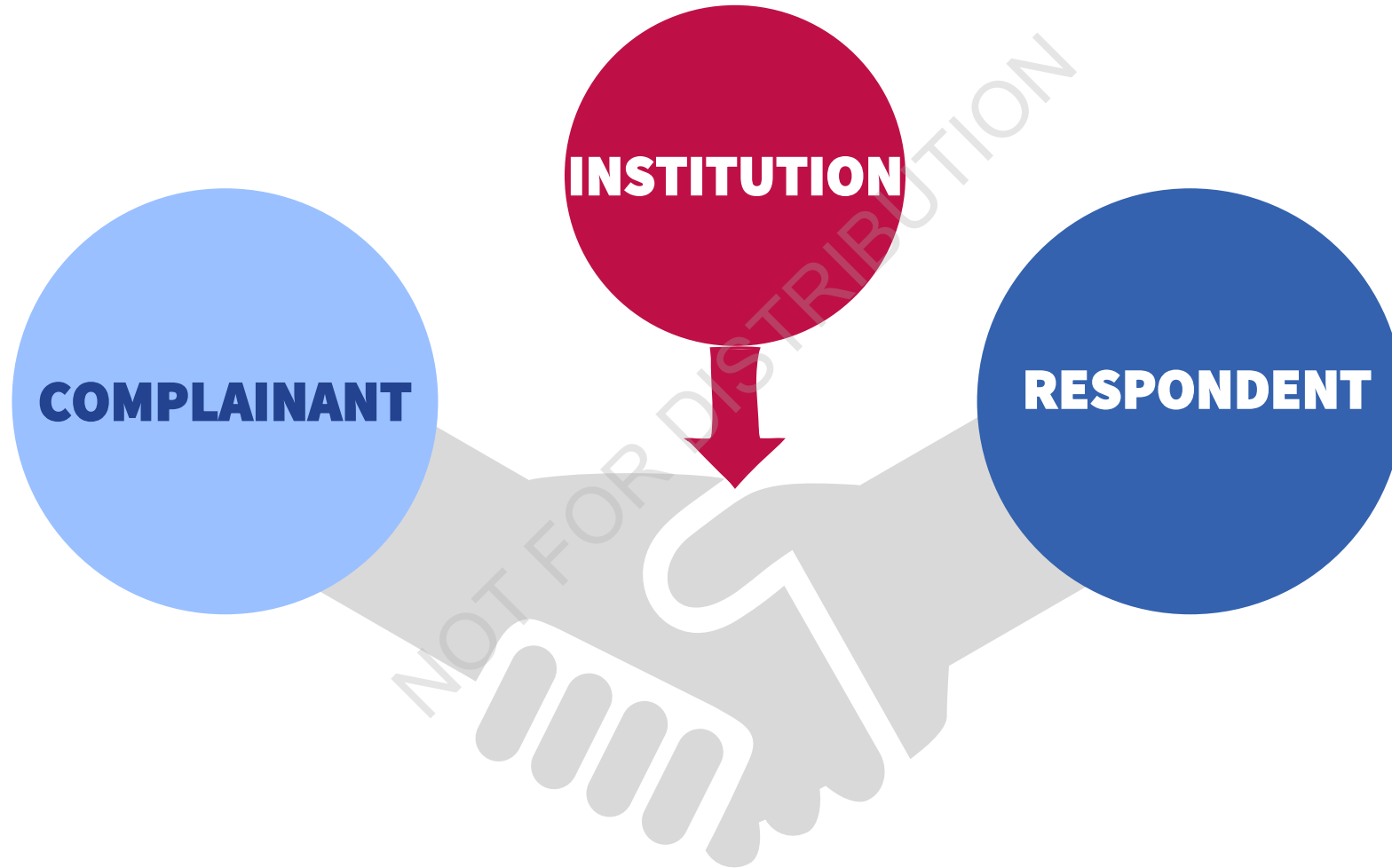
3

**Respect and
Recognition**

Contextual Considerations

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

Three-Party Model



Activity: Introduction to David & Andrea

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 since 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 David’s friends where he 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?

Informal Resolution Application

General Application Information

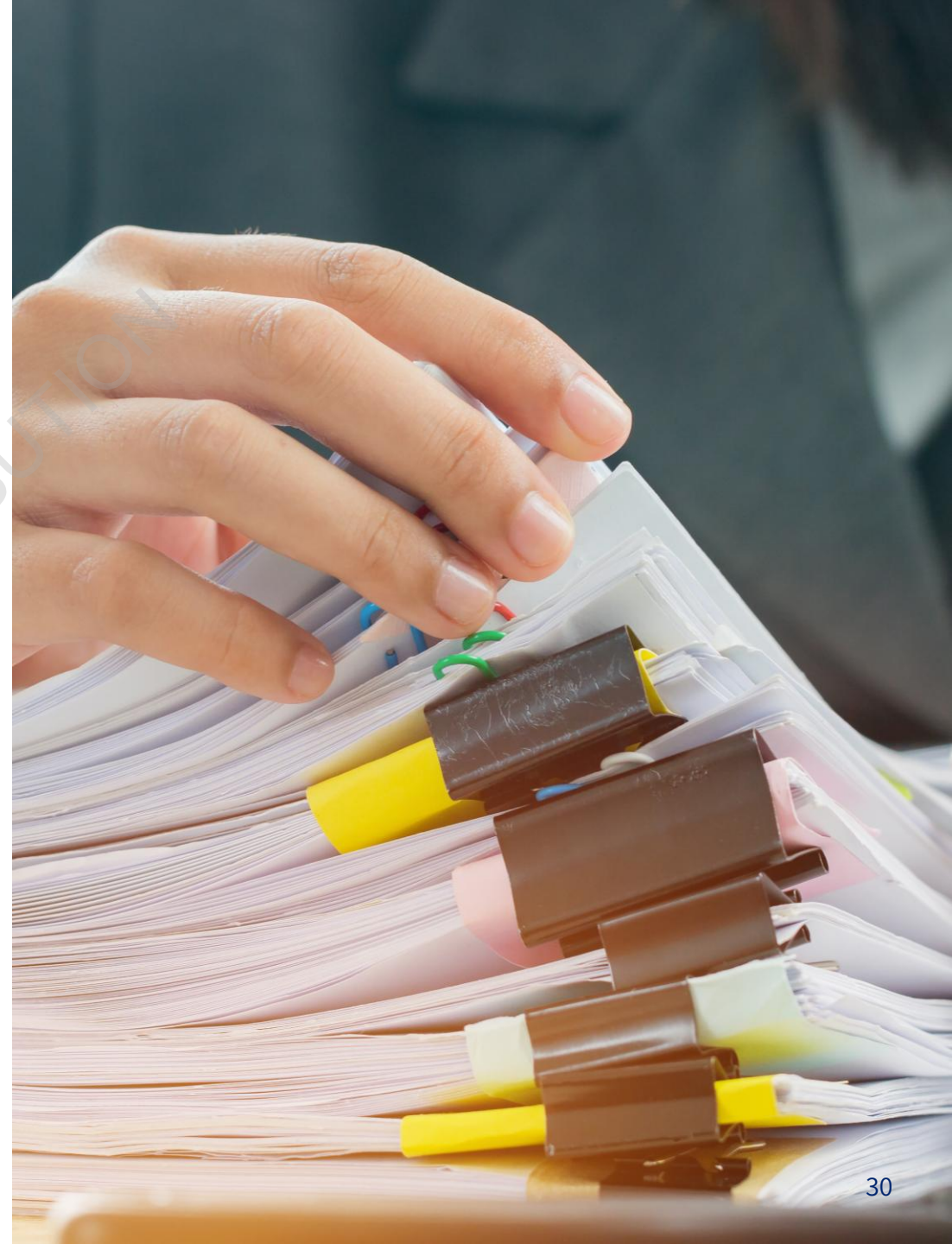
- IR can take place at any point before a Final Determination is made
- May offer IR for incidents that:
 - Could meet the regulatory definitions of Title IX sexual harassment, if proven
 - Fall under another policy
 - Do not yet rise to the level of a potential policy violation
- **IR is optional** and may be offered in a variety of forms

IR Under the Title IX Regulations

- Requires a Formal Complaint
- Alleged conduct must meet regulatory sexual harassment definition, if proven, and meet the institution's Title IX jurisdiction
 - Though if it doesn't, there is no prohibition on IR of any kind
- Complainant must be participating or attempting to participate in the education program or activity at the time of the Formal Complaint
- Respondent is the person alleged to have violated policy
 - Must be a student or employee
- Cannot be used for allegations of employee-on-student misconduct

IR Under the Title IX Regulations

- Recommend that the Facilitator not be the Investigator or Decision-Maker
 - Must be free of bias and conflicts of interest and have appropriate training
- Records maintained for minimum of **seven years**
- Policy/procedure should include option for IR, if available
- Parties must receive Notice prior to agreeing to participate in IR



Notice

- **Notice for IR must include:**

- Allegations
 - IR process requirements
 - Any party may withdraw from IR process and initiate/resume Administrative Resolution Process prior to agreeing to a resolution
 - When IR precludes the parties from initiating/resuming the Formal Grievance Process for the same allegations (unless the Agreement terms are not honored)
 - What information the institution will maintain and whether and how it could be shared
- IR information can be included in initial Notice of Investigation and Allegations

IR Outside the Regulations

- Can take place prior to or following a complaint
 - ATIXA recommends a written statement or complaint
- May address alleged policy violations and behaviors that would not violate policy but are impactful
 - Reports and complaints involving behaviors other than Title IX Sexual Harassment
- 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

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?

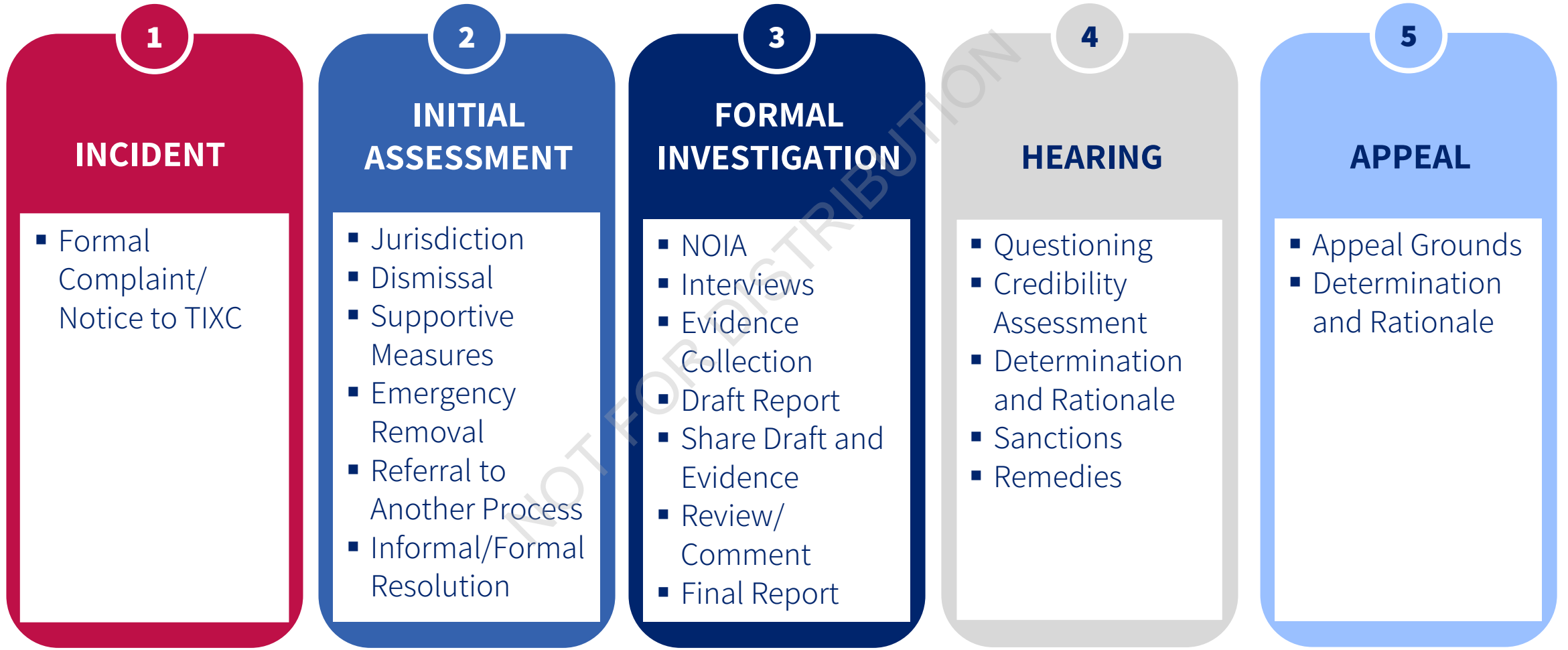
IR for Structural Complaints

- 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
 - Remediating the immediate complaint
 - System/policy/environmental change

Timing

- IR may be implemented prior to or in lieu of an Administrative Resolution
- 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

Title IX Formal Grievance Process Overview



Common Off-Ramps for IR

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



Intake Meeting

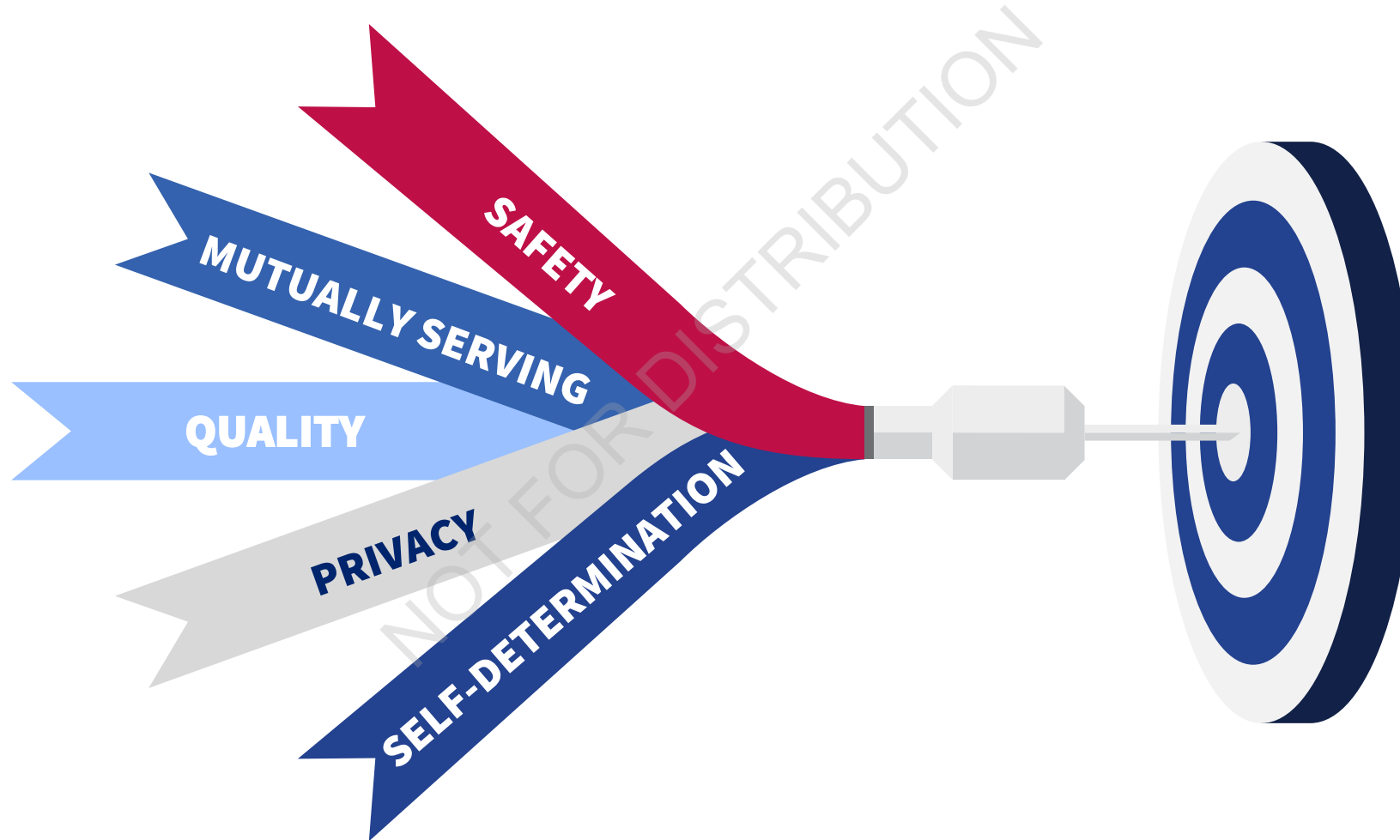
First Respondent Meeting

First 10-Day Report Review

Final Report Review

Determining Availability & Appropriateness

Key Values



Considerations for Appropriateness

- Not all Formal Complaints are appropriate for IR and not all parties are ready to participate
- Not all IR methods 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

Informal Resolution Structures & Implementations

Cross-Cultural Considerations

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.



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

Cultural Competence

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

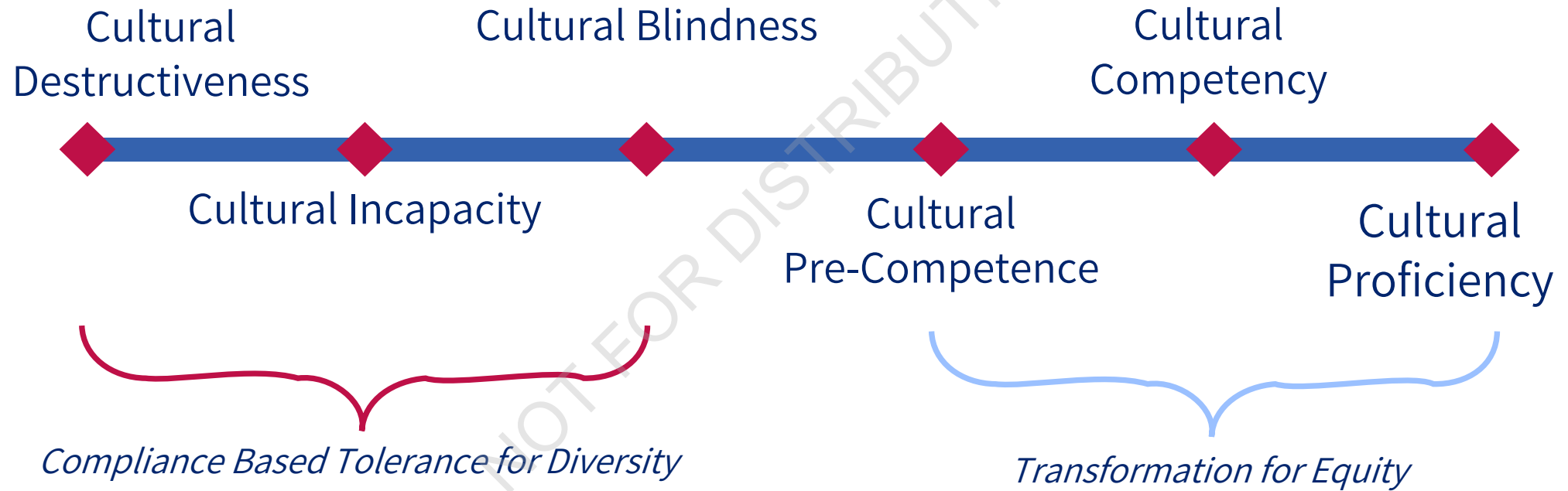
Individual

- 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

Cultural Competence Continuum



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

Cultural Competence Stages

4 **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 diverse populations

5 **CULTURAL COMPETENCE**
A demonstration of acceptance and respect for cultural differences

6 **CULTURAL PROFICIENCY**
Culture is held in high esteem and is the foundation that guides all organizational practices and endeavors

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 for all parties

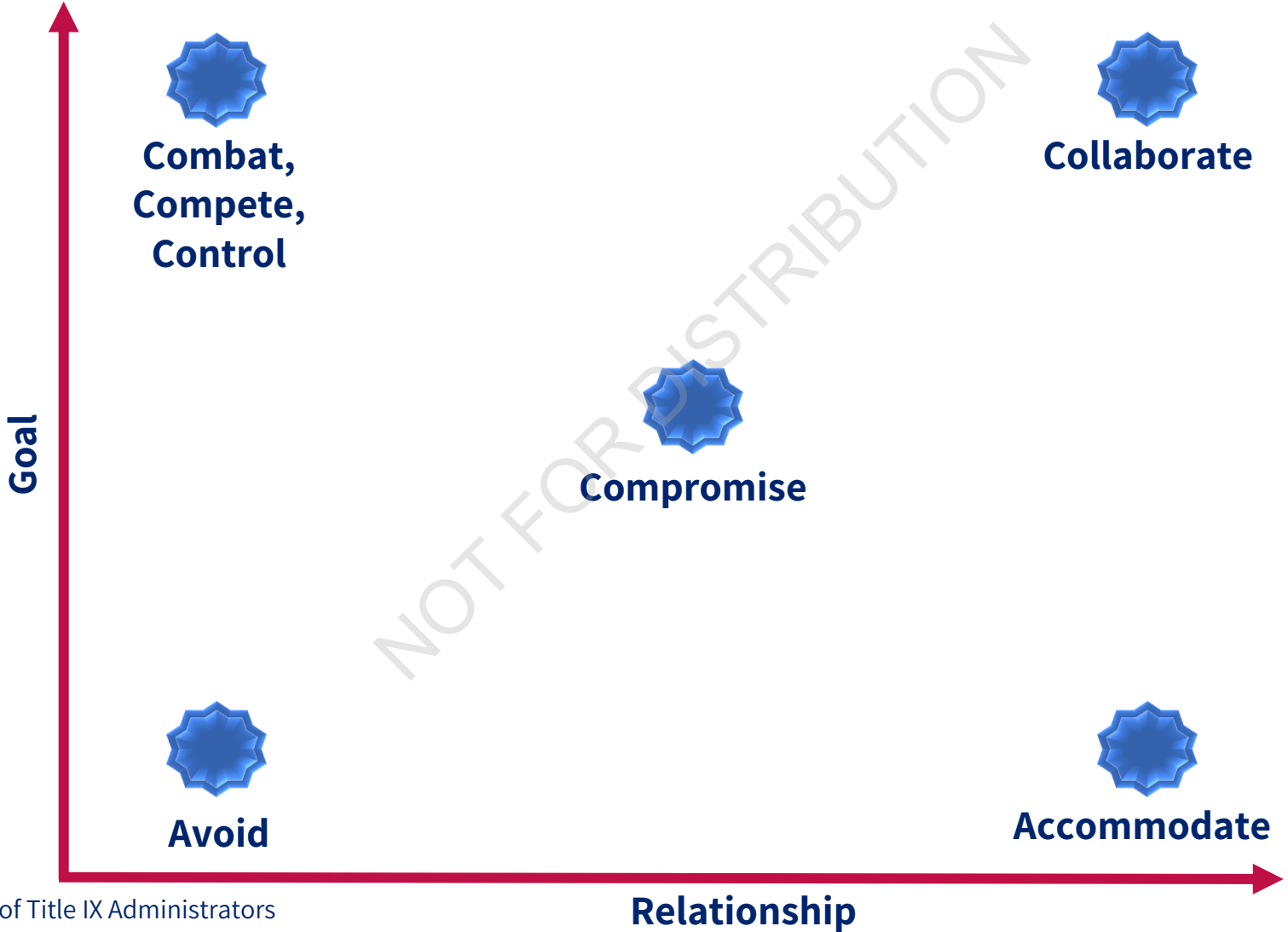
Dynamics of Sex-Based Violence

- Culture affects how individuals view and experience sex-based violence (SBV)
- SBV 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 effective responses
- Cultural aspects that may influence how SBV is experienced and viewed include:
 - Spoken and unspoken rules about behavior
 - Bodily autonomy
 - Fear, shame, and evaluation
 - Laws
 - Religious beliefs

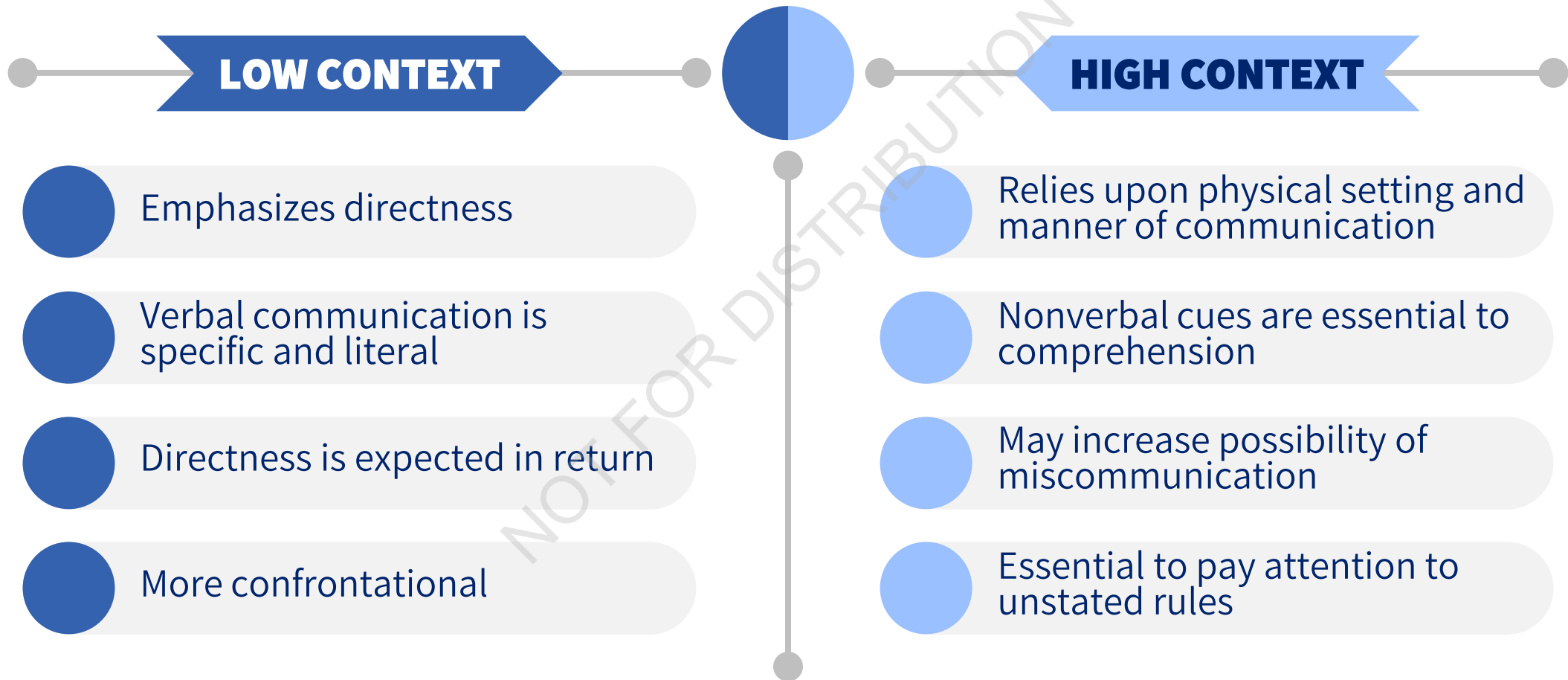
Culture and Conflict Resolution

- 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

Approaches to Conflict Resolution



Context and Communication



Culture and Contracts

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



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 with rather than use power over others
- Power and privilege can impact the way parties view the Facilitators' perceived identities in relation to their role

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



Intersectionality

Framework for understanding how aspects of a person's identities contribute to various disadvantages and privileges

RACE

Often a dominant identity when navigating systems

SEXUALITY

May be more dominant for males than females

ABILITY

Ability status often diminished based on intersecting identities

ETHNICITY

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

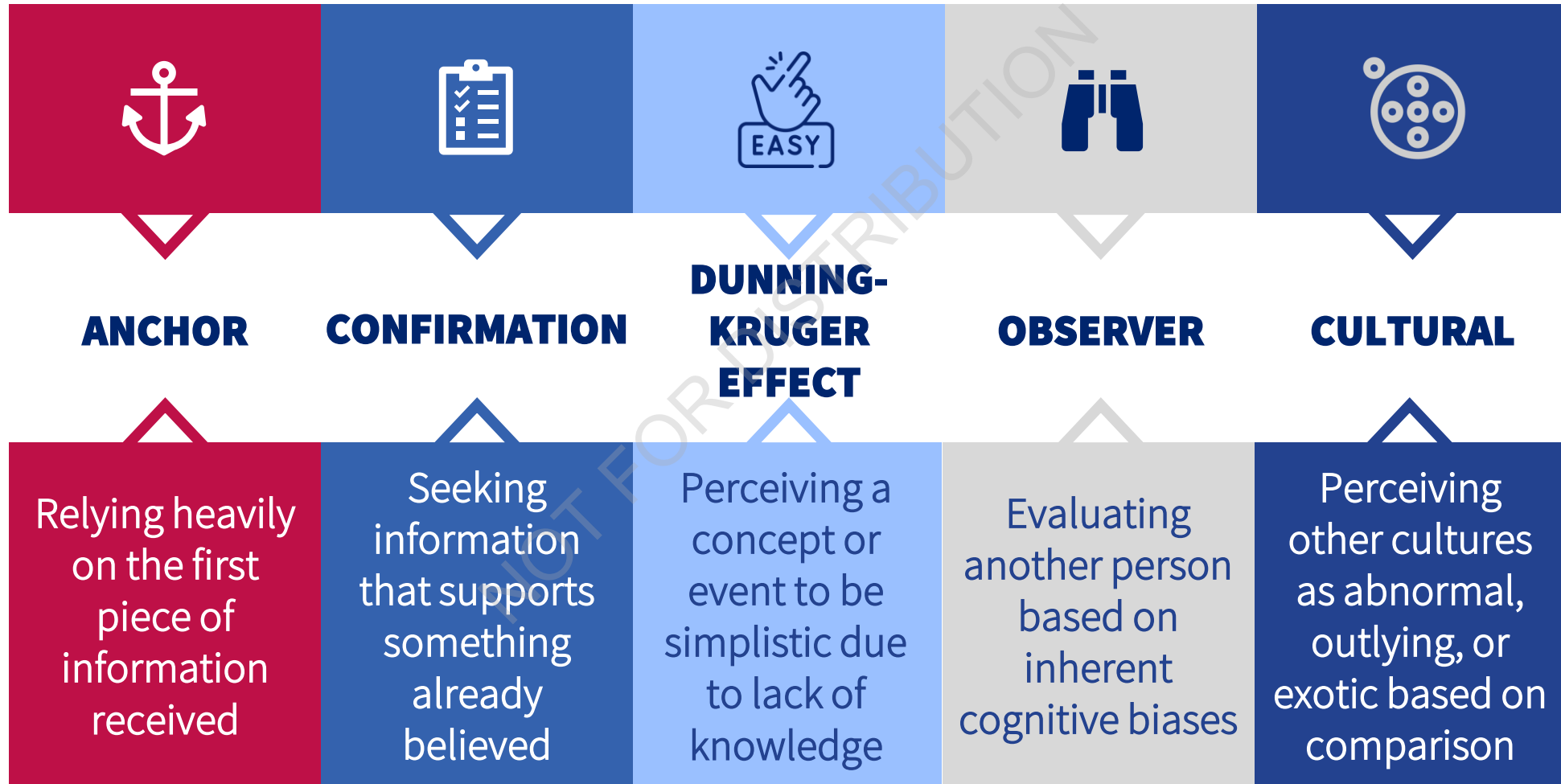
What is Bias?

- 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

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

Types of Bias



Common Bases for Implicit Bias

- Ability
- Age
- Citizenship status
- Ethnicity
- Health status
- Marital status
- Mental health status
- National origin
- Parental status
- Physical attributes
- Race
- Religion
- Sex
- Socioeconomic status

Strategies for Addressing Bias

- Provide robust training
 - Cultural Competency
 - Title IX regulatory requirements
 - IR skills and best practices
- Encourage IR Facilitator to share potential concerns or areas of bias with TIXC
 - Assign an alternative IR Facilitator if a potential concern or bias is present

ATIXA's Informal Resolution Framework

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ATIXA's Informal Resolution Framework

ATIXA's Framework contemplates three categories of IR:



Supportive Resolution

- Title IX Coordinator (TIXC) resolves the report or complaint by providing:
 - Supportive Measures
 - Remedies
- Offered after a Formal Complaint, whereas supportive measures are offered in response to Notice
- Respondents are typically not involved unless a supportive measure directly involves or impacts them
- Parties may challenge the provision, denial, modification, or termination of supportive measures



Supportive Resolution

- Complainant declines to pursue Formal Grievance Process
- TIXC works with Complainant to determine reasonable and appropriate supportive measures
 - May not **unreasonably** burden either party
 - No cost to the Complainant
- Cannot disclose supportive measures to anyone other than the Complainant, unless necessary to implement the supportive measure or restore or preserve access to the education program or activity

Supportive Resolution

Examples include:

- Academic adjustment
- Monitoring at certain times/locations
- Transportation assistance; escorts
- No Contact Orders; must notify the Respondent
- Counseling
- Modified work schedule
- Departmental training for faculty
- Revised student organization event policies



Supportive Resolution

▪ Facilitation Foundations

- What does TIXC and/or IR Facilitator need to know?
- Work collaboratively to identify reasonable and appropriate supports
- Empower choice
- Be cautious about incomplete accounts

▪ Appropriate Documentation

- Decision to decline or other resolution options at this time
- Option to pursue Formal Grievance Process in the future
- What was offered, declined, and implemented
 - How to request additional support or modifications
 - Document plan for future academic years

Supportive Resolution Agreement Example

“Agreement” between TIXC and Complainant that 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

Accepted Responsibility

- Respondent accepts responsibility for violating policy and accepts the recommended sanction(s) prior to a final determination
- Accepted Responsibility may allow, but does not require, the parties to communicate directly about the allegations with the assistance of a third-party Facilitator



Accepted Responsibility

- TIXC, Complainant, and Respondent agree to sanctions/corrective actions
- If the institution uses a **progressive sanctioning model**, the TIXC will need access to the Respondent's prior disciplinary history
- **No appeal process** if all parties agree on IR terms
- Document parties' decision to not pursue Formal Grievance Process



Accepted Responsibility

▪ **Facilitation Foundations**

- What does TIXC and/or IR Facilitator need to know?
- Discuss Complainant and Respondent needs and goals
- Ensure all parties are voluntarily participating
- All parties must agree to findings/sanctions
- Outcome enforcement procedures

▪ **Appropriate Documentation**

- Decision to decline the Formal Grievance Process and/or other resolution options
- Signed agreement

Signed Resolution Agreement Example

Respondent accepts responsibility for violating the Sexual Harassment policy by repeatedly making unwelcome sexual comments to Complainant in person and sending sexual content to Complainant via text message between March and September 2024

- Respondent agrees to attend Sexual Harassment prevention training provided by Human Resources by December 15, 2024
- Respondent agrees to have no contact with Complainant unless it is expressly work related
- Respondent will be placed on employment probation for a period of one calendar year through October 12, 2024
- Failure to adhere to this agreement will result in disciplinary action for Respondent's failure to comply

Alternative Resolution (AR)

- Parties agree to resolve the Formal Complaint through an AR mechanism such as facilitated dialogue, shuttle negotiation, or restorative practices
- AR may allow, but does not require, the parties to communicate directly about the allegations with the assistance of a third-party Facilitator



Alternative Resolution

- Encompasses any mechanism used to resolve a Formal Complaint that is not a Supportive Resolution, Acceptance of Responsibility, or the Formal Grievance Process
- May or may not result in formalized agreement between the parties and institution
 - Agreements are only binding on the parties
- Should always include intake, preparation, facilitation, and closure phases
- Five common alternative resolution mechanisms:
 - Conflict Coaching
 - Facilitated Dialogue
 - Shuttle Negotiation
 - Mediation
 - Restorative Practices

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



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 may struggle with reading social cues
-

BEHAVIORS

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

Facilitated Dialogue

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



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 speech
- Not respecting boundaries
- Behaviors occurring around but not directed at the Complainant

Shuttle Negotiation

- Most common approach being used at institutions offering IR
- Third-party Facilitator acts as a go-between for the parties
- Often takes several conversations with each party before resolution is reached

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Shuttle Negotiation

STRENGTHS

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

CHALLENGES

- Relies heavily upon Facilitator's 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 activities
-

BEHAVIORS

- Hostile Environment Harassment
- Dating or Domestic Violence
- Sexual Exploitation

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 matter hidden



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

- Hostile Environment Harassment
- Sexual Exploitation
- Structural Complaints

Restorative Practices

- May take the form of a circle, 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
 - Reintegrating the Respondent
 - Responsibilities and commitments to community



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 or transform a pre-existing relationship
 - Openness to listening to others' experiences and perspectives
-

BEHAVIORS

- Sexual Exploitation
- Stealthing
- Hazing

Alternative Resolution Process

Who Should Facilitate?

- Institutions have discretion to determine who can serve as an IR Facilitator
 - ATIXA recommends it not be the Investigator or Decision-Maker for the same matter
- Models:
 - TIXC can serve as Facilitator (not preferred)
 - Identified Deputy TIXC who typically facilitates
 - Facilitator pool
 - Student affairs, human resources, faculty
- Institutions may contract or hire external Facilitators
- TIXC will need to determine appropriateness of Facilitator preference requests from parties

Alternative Resolution Process



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

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 accessible and navigable for the parties
- Do not take parties' actions personally
- Avoid making assumptions and challenge assumptions the parties make

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

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

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 Informal Resolution Framework

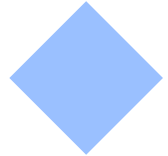
10 D's of Opposition



DEFLECT



DELAY



DENY



DISCOUNT



DECIEVE



DIVIDE



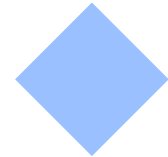
DULCIFY



DISCREDIT



DESTROY



DEAL

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Four Levels of Accountability

Want to repair
harm and
relationships

Desire to
understand
impact of harm

Ability to
acknowledge
you caused
harm

Ability to
acknowledge
someone was
harmed

ATIXA's IR 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

ACTIVITY: David and Andrea Part II

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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 that he decided to end 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 (e.g., no shared children, pets, property). He requests a No Contact Order and is considering whether to file a Formal Complaint.

David and Andrea

Initial Screening

- Is this situation appropriate for a possible IR?
- Is this a scenario where we need to follow IR procedures as specified under the Title IX Regulations?
- What IR method might be appropriate?
- What potential outcomes can you envision based upon the information-provided?
- What other issues do you “spot” as you think about approaching the parties regarding IR?

Next Steps

- Based on the information David has provided, what would your next steps be?
- What is your process for issuing a No Contact Order?

Conversation with Andrea

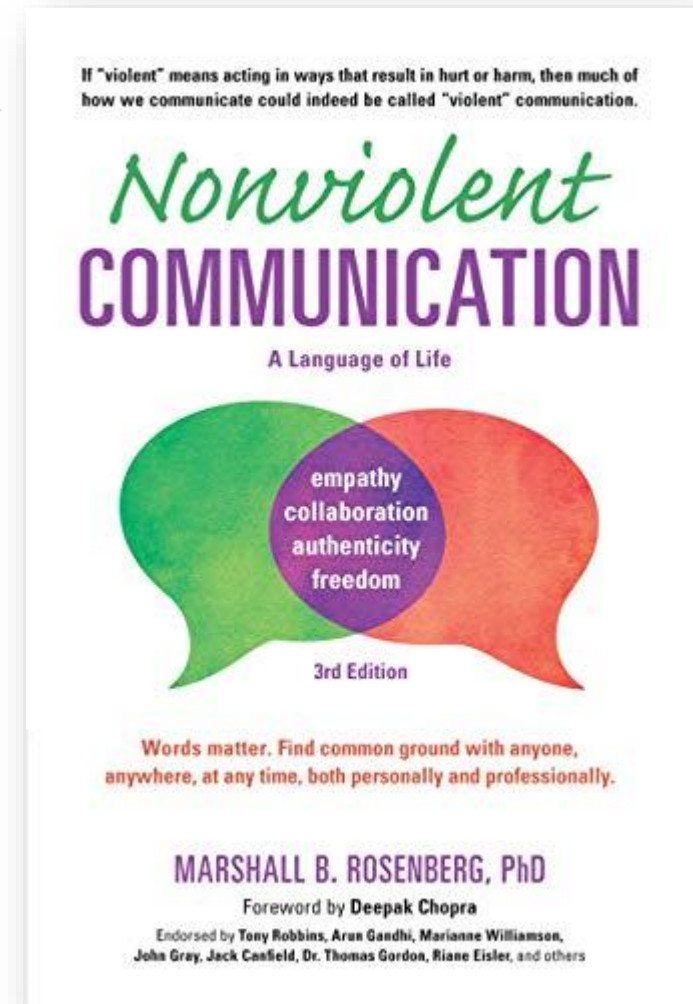
Andrea provides similar information regarding the history of her relationship with David. She explains that when they were together, she consented to allowing David to take nude photographs of her multiple times. Andrea has heard a rumor that David still has the photos and has commented to mutual friends 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.

Preparation Meetings

- Number and structure of preparation meetings depends on AR mechanism and parties
- Facilitator should go into each meeting prepared with what they want to achieve during the meeting
 - AR 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

Nonviolent Communication (NVC)

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



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?
- What would you like the Complainant to know/understand from your perspective?
- 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?

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

ACTIVITY: David and Andrea Part III

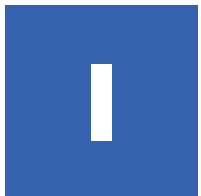
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Positions, Interests, and Needs

David



I want Andrea to leave me alone



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



Space, independence

Andrea



David needs to delete the photos



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



Integrity, cooperation, respect

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
- If behavior continues after reaching a resolution, Complainant can initiate/resume the Administrative Resolution Process to address the additional instance(s)



Resolution Agreements

- Facilitator documents resolution from process notes
- Once approved by TIXC: clear communication regarding what is required of parties, if anything
- Copies of resolution are provided to parties for review
- Institution will determine whether parties will sign an acknowledgment of acceptance
- Final copy is provided to the parties and maintained by TIXC
- Document sufficient details to allow for an evaluation of a possible pattern in the event of a future complaint

Unsuccessful Resolution

- Facilitator 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 Administrative Resolution Process to begin or resume as appropriate
 - Complainant has option to withdraw the complaint
- For unapproved proposed resolutions, TIXC must provide a rationale
- Facilitator should provide process notes to the TIXC to be included in the complaint file

Non-Compliance with Agreements

- Failure to abide by the resolution agreement may result in appropriate responsive/disciplinary actions depending upon the circumstances of the non-compliance
 - Dissolution of the agreement and resumption of the Formal Grievance Process
 - Renegotiating the agreement
 - Referral to a conduct process for failure to comply
 - Application of the enforcement terms of the agreement
- Where the failure to abide by the Informal Resolution agreement terms results in a failure to remedy Title IX Sexual Harassment, the TIXC may need to initiate/reinstate the Formal Grievance Process

Institutional Support for Alternative Resolution

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Interest and Openness

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

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

Program Proposal

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

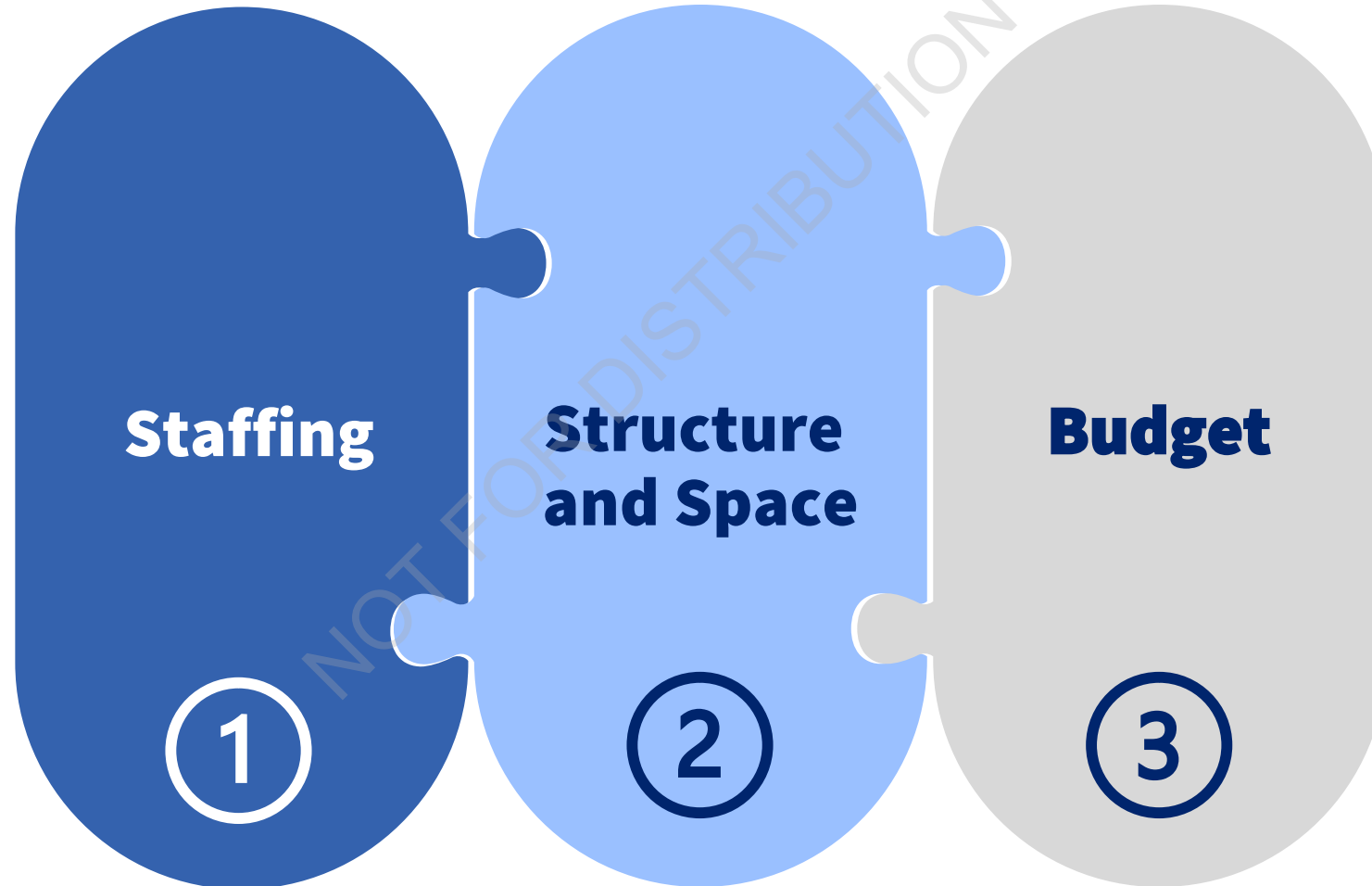
Formal Proposal

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

Informal Proposal

- General information gathering
- Meeting with stakeholders
- Find champions

Resource Considerations



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 institutional processes and timelines for policy revision and approval
 - Submission and review
 - Approval
 - Legal counsel review

Training Considerations

Scope

Training
Costs

Time

Ongoing
Training

Process Considerations

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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

Process Structure Considerations

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

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 institution will resolve with internal vs. external Facilitators



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

Advisors

- Institutional policy determines if Advisors are permitted during IR
- Assess whether institutional policy allows Advisors in other similar processes
 - Full participation/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

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



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 Formal 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

ATIXA's Recommended Policy Language

“The Parties may agree, as a condition of engaging in Informal Resolution, on what statements made or evidence shared during the Informal Resolution process will not be considered in the Formal Grievance Process, should Informal Resolution not be successful.”

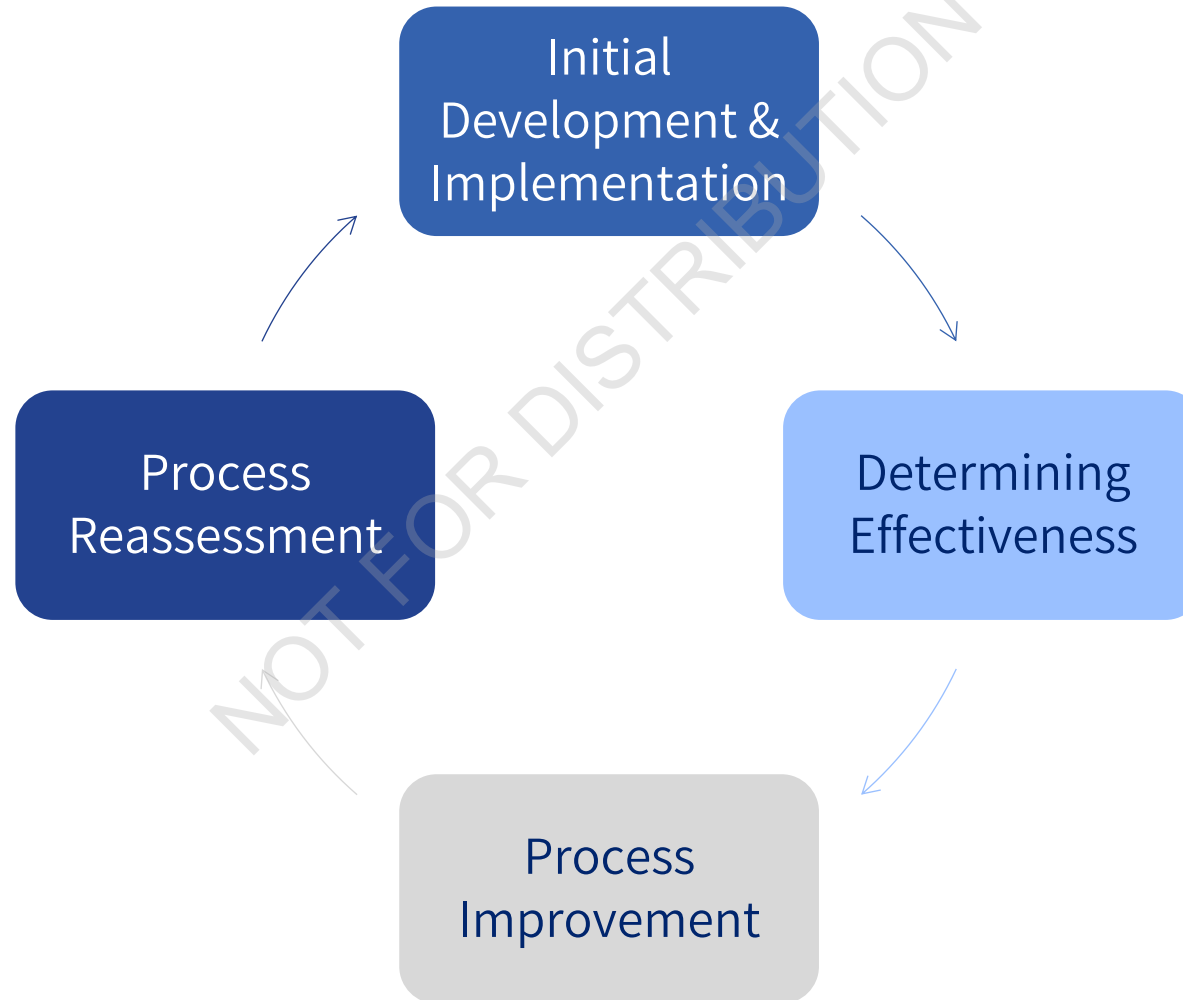
Record Retention

- Title IX Formal Complaints and associated information must be maintained for a minimum of **seven** (7) years
 - IR is part of this recordkeeping requirement
- Institutions 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
 - What is considered a “disciplinary record”

Assessing Effectiveness

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Life Cycle of a Program



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

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

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 messaging
- Benchmarking best practices



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



Association of
Title IX Administrators

Questions?

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