



Association of
Title IX Administrators

Informal Resolution Foundations for Higher Education

Training and Certification Course

WELCOME!

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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 sexual harassment, sex 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.



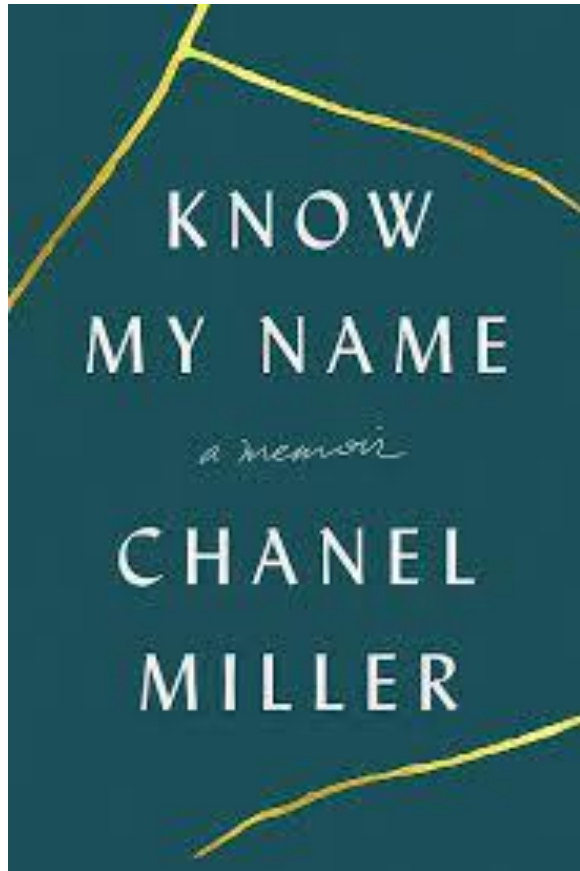
Our goal is to provide practitioners with a deep-dive into the applicable foundational elements and considerations regarding whether and how to implement Informal Resolution options.

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 institution

Informal Resolution Overview

Discussion: Informal Resolution Benefits and Foundations



“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]

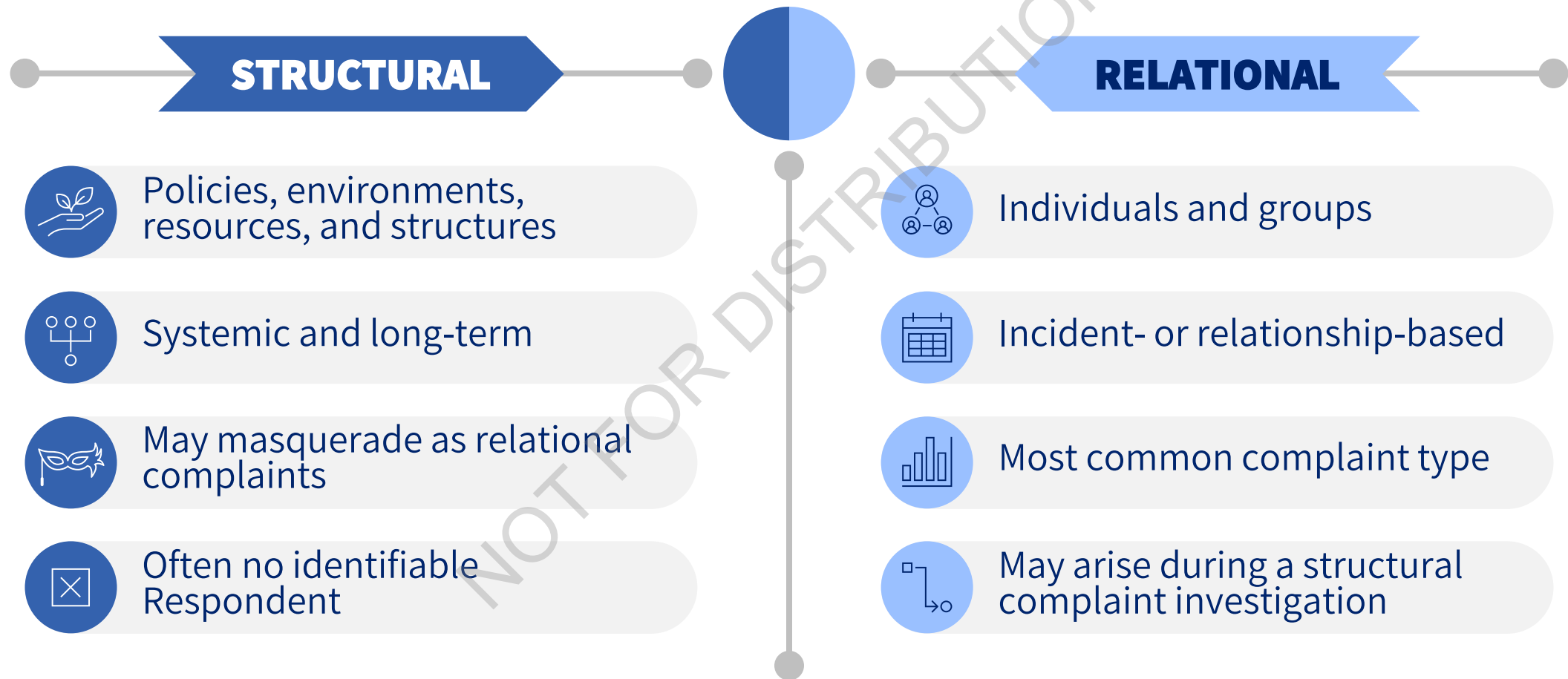
Benefits

- Can be an effective way of resolving matters 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 formal processes
- Offers a space for communication and understanding among parties, if desired

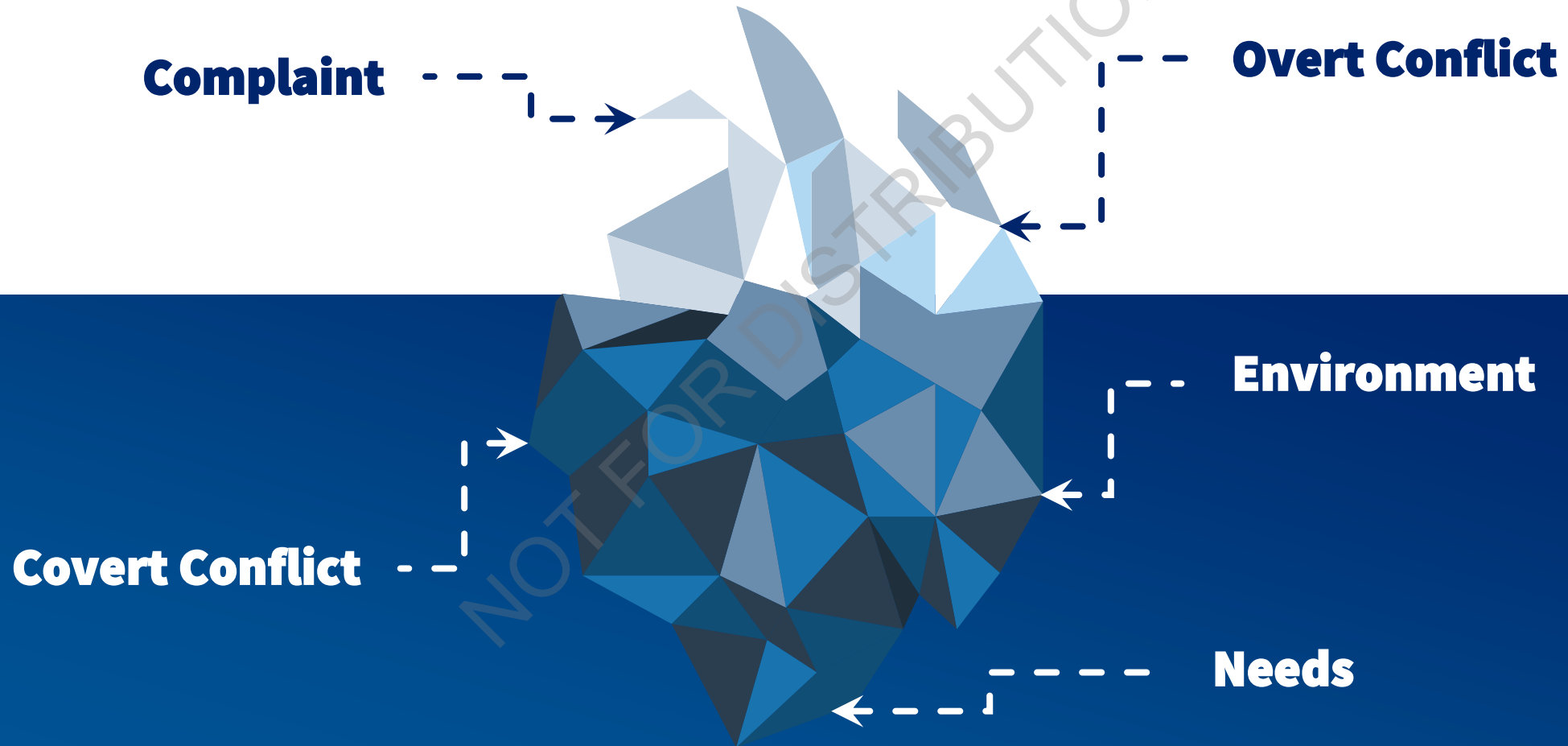
Foundations

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

Complaint Types



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

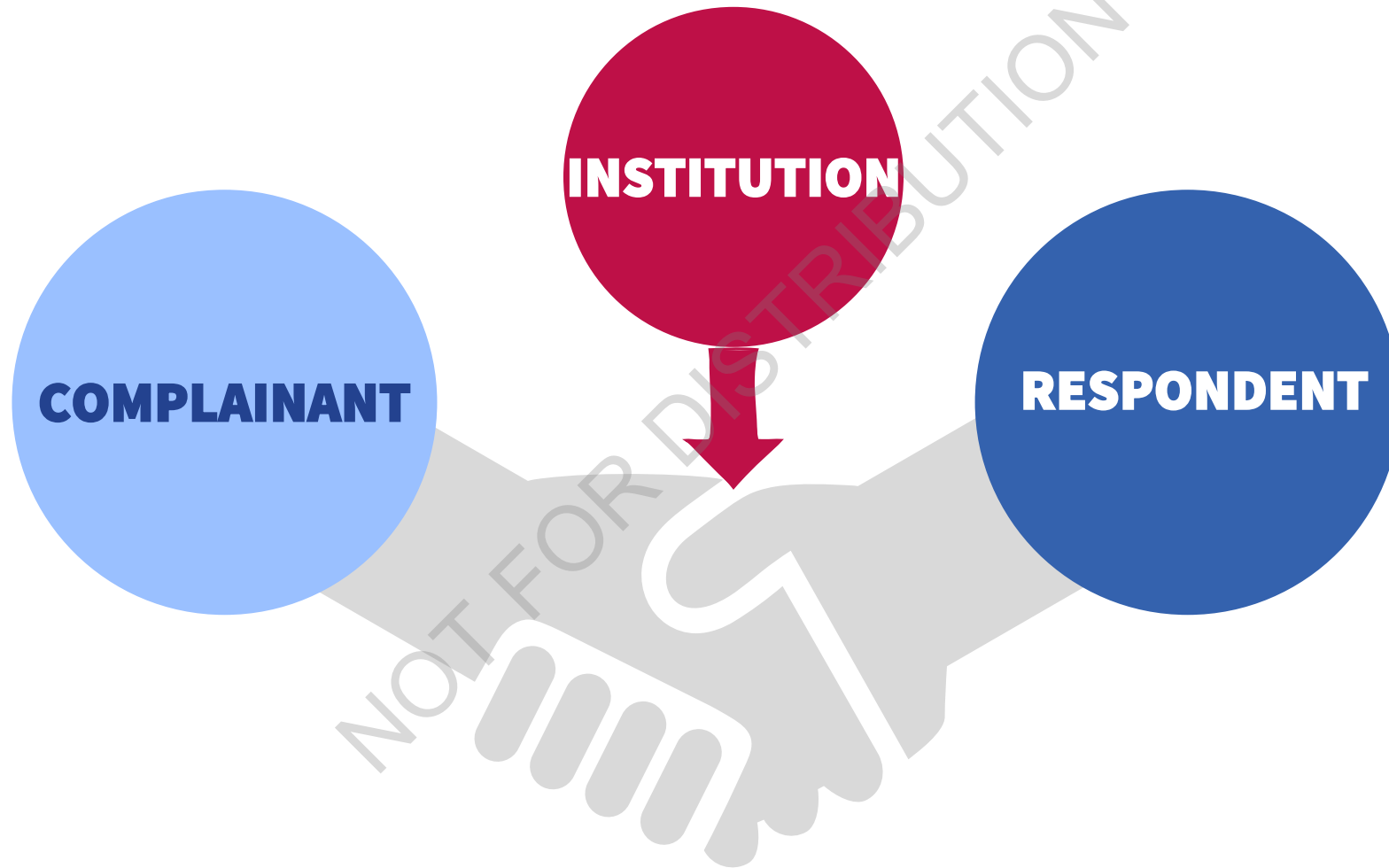
**Respect and
Recognition**

Contextual Considerations

- No one-size-fits-all approach to Informal Resolution (IR)
- Not all structures will fit the unique circumstances of the allegations
- Policies and processes should be designed with a variety of allegations and parties in mind
- IR within an educational institution is inherently different than community agency processes



Three-Party Model



Informal Resolution and Title IX

Title IX

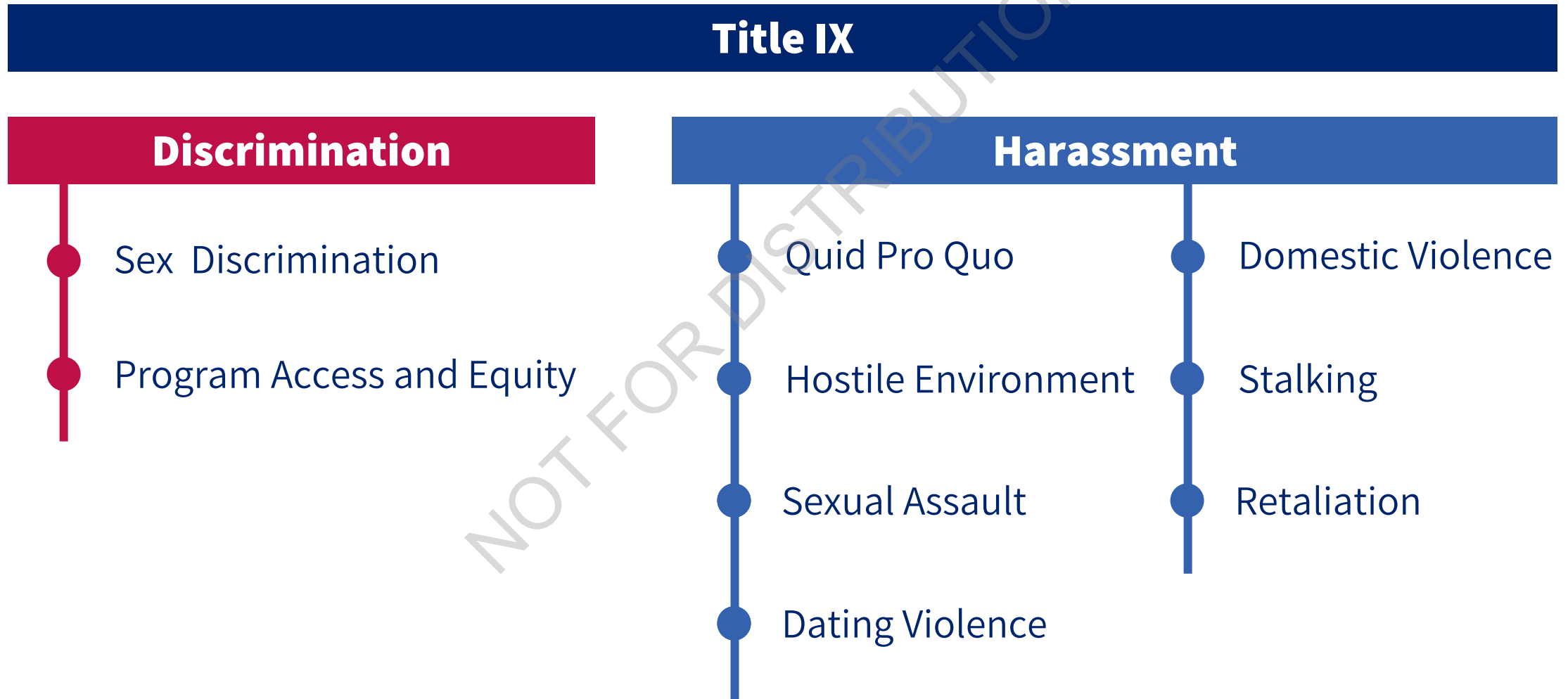
“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance.”

20 U.S.C. § 1681 & 34 C.F.R. Part 106 (1972)

Title IX has always mandated a response to sex discrimination; however, the 2020 Title IX Regulations **only** apply to sexual harassment complaints



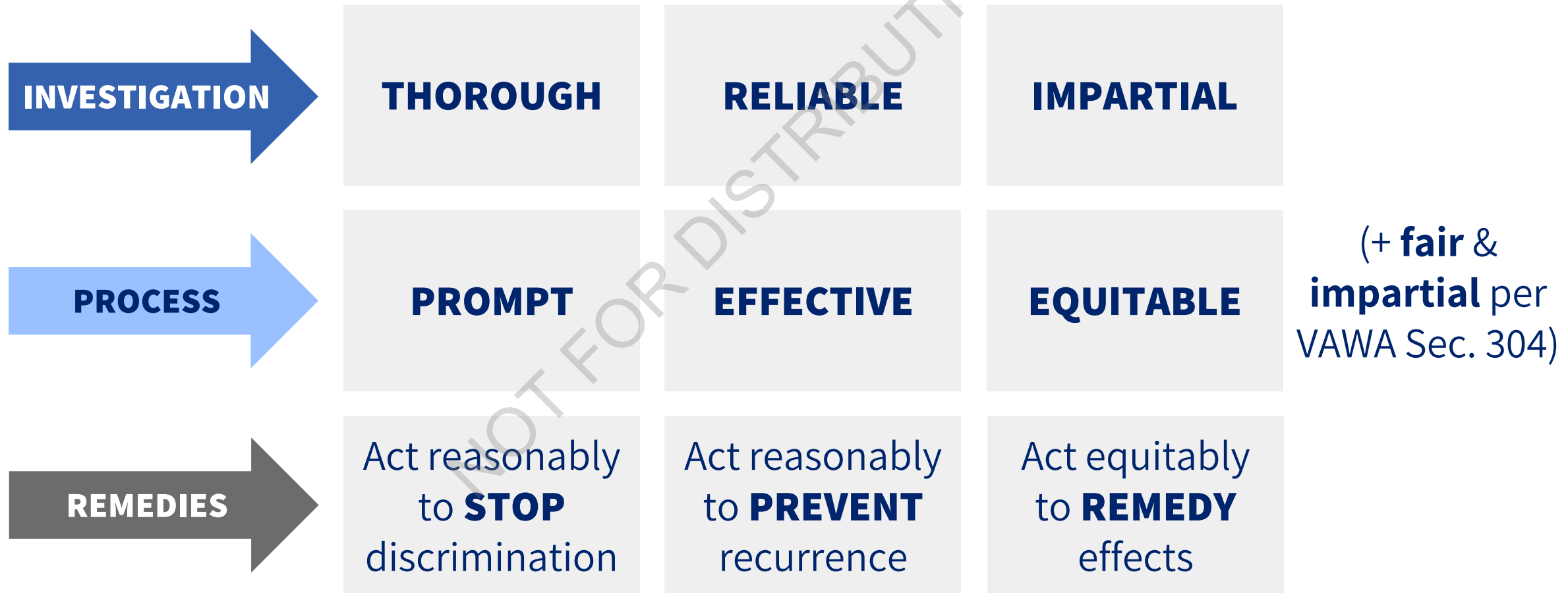
Title IX: Scope



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)

The IX Commandments



Informal Resolution Application

Application

- Title IX Regulations only control how institutions implement IR for **Sexual Harassment** allegations that would fall within Title IX jurisdiction
- **IR is optional** and may be offered in a variety of forms
- May offer IR for incidents that:
 - Fall within Title IX policy jurisdiction
 - Fall within another policy's jurisdiction
 - Do not yet rise to the level of a potential policy violation
- Collateral misconduct allegations may be resolved with Title IX sexual harassment allegations



Title IX Regulatory Jurisdiction

Allegations are subject to the 2020 Title IX Regulatory IR procedural requirements if:

1. The alleged conduct would meet the regulatory **Title IX Sexual Harassment** definition, if proven
2. The alleged conduct occurred **within** the Title IX policy's jurisdiction
3. Complainant is/was participating or attempting to participate in the institution's education program or activity at the time of the Formal Complaint
4. Respondent is a student or employee

Procedural Requirements & Recommendations

- Facilitator must be free of bias and conflicts of interest and have appropriate training
- Records maintained for minimum of **seven years**
- **Cannot be used for allegations of employee-on-student sexual harassment**
- **ATIXA recommends:**
 - Facilitator not be the same person as the Investigator or Decision-maker
 - Clear policy/procedure language for IR



Formal Complaint



Written Notice



Voluntary Participation

Informal Resolution Notice

- **Notice for IR must include:**
 - Allegations
 - IR process requirements
 - Any party may withdraw from IR process and initiate/resume the Formal Grievance 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 Title IX Regulations

If the alleged conduct would **not** meet the regulatory **Title IX Sexual Harassment** definition, if proven, and/or falls **outside** the Title IX policy's jurisdiction:

- Institution can determine its own procedural standards
 - **ATIXA recommends:**
 - A written statement or complaint
 - Notice
 - Facilitator being trained and free of bias and conflicts of interest
 - Maintain records per institutional policy
- May address alleged policy violations and behaviors that would not violate policy but are impactful
- Complainant does not have to be affiliated with institution
- Respondent must be a student or an employee

IR for Groups and Communities

- Groups cannot be Respondents for alleged Title IX Sexual Harassment
- 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

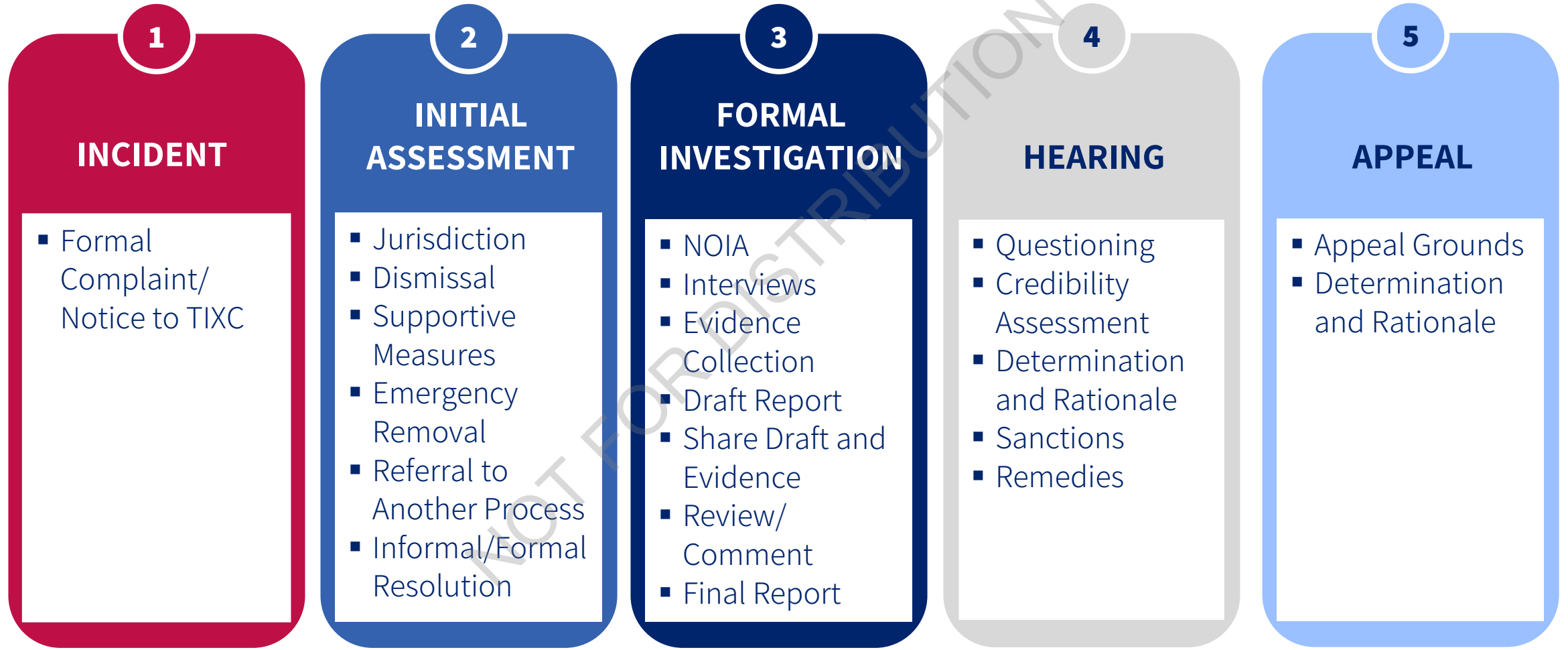
- No specific Respondent
- Individuals in current roles are not always the same individuals who wrote/implemented the discriminatory policy/practice
- Can necessitate Facilitator with positional authority within the institution
- Two-phase resolution
 - Remediating the immediate complaint
 - System/policy/environmental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

Timing

- IR may be attempted at any point prior to a final determination for Title IX Sexual Harassment allegations
- 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**

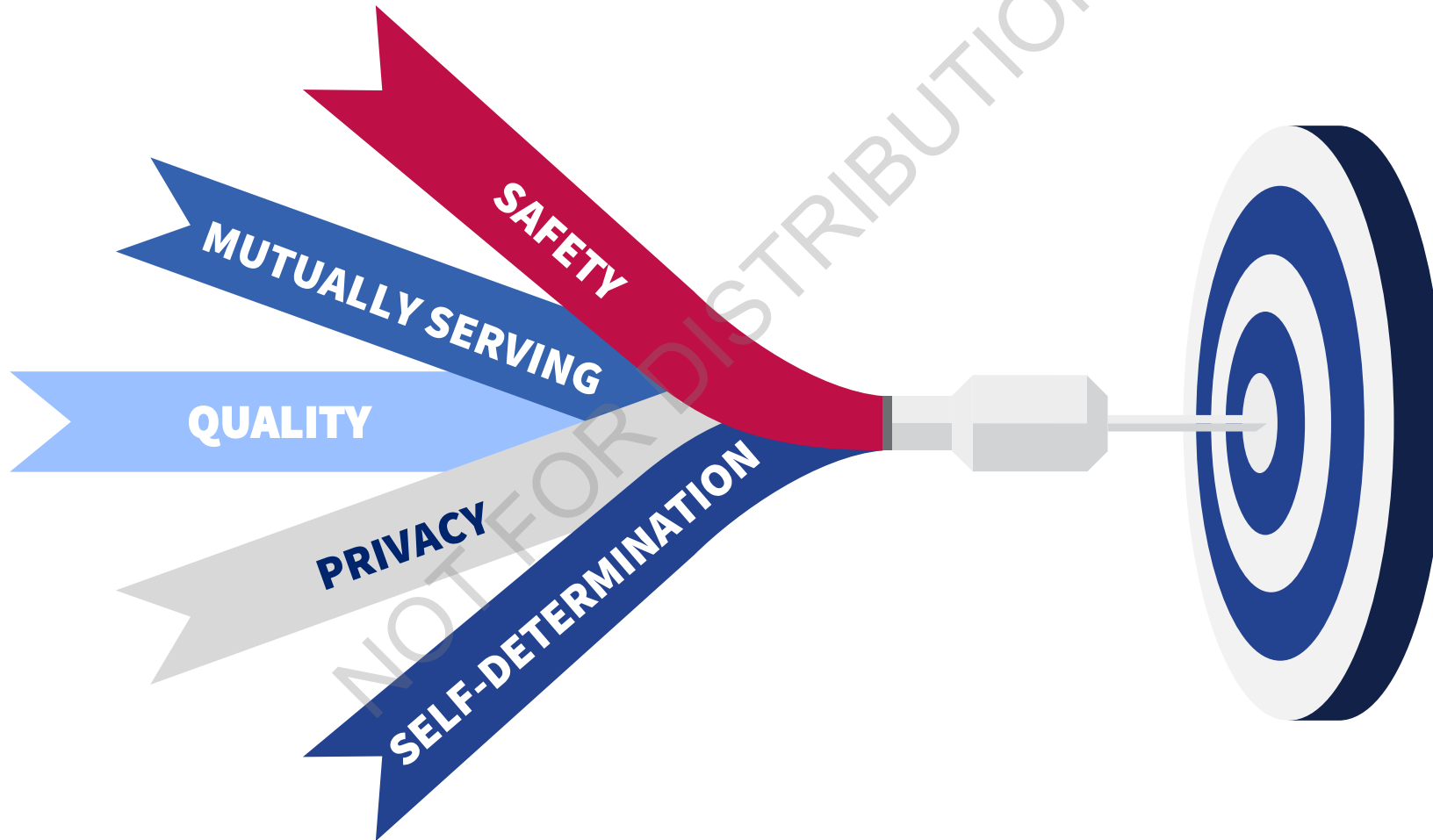
**First
Respondent
Meeting**

**First 10-Day
Report
Review**

**Final Report
Review**

Determining Availability & Appropriateness

Key Values



Considerations for Appropriateness

Factors to consider:

- Allegations
- Respondent's disciplinary history
- 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
- Whether parties are sincere and acting in good faith

ATIXA's Informal Resolution Framework

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 (e.g., No Contact Order)



Supportive Resolution, Cont.

- 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 Foundations

▪ **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 Examples

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 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 2024 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, Cont.

- 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 Foundations

- **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
 - Sufficiently detailed Findings

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, Cont.

- 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

NOT FOR DISTRIBUTION



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

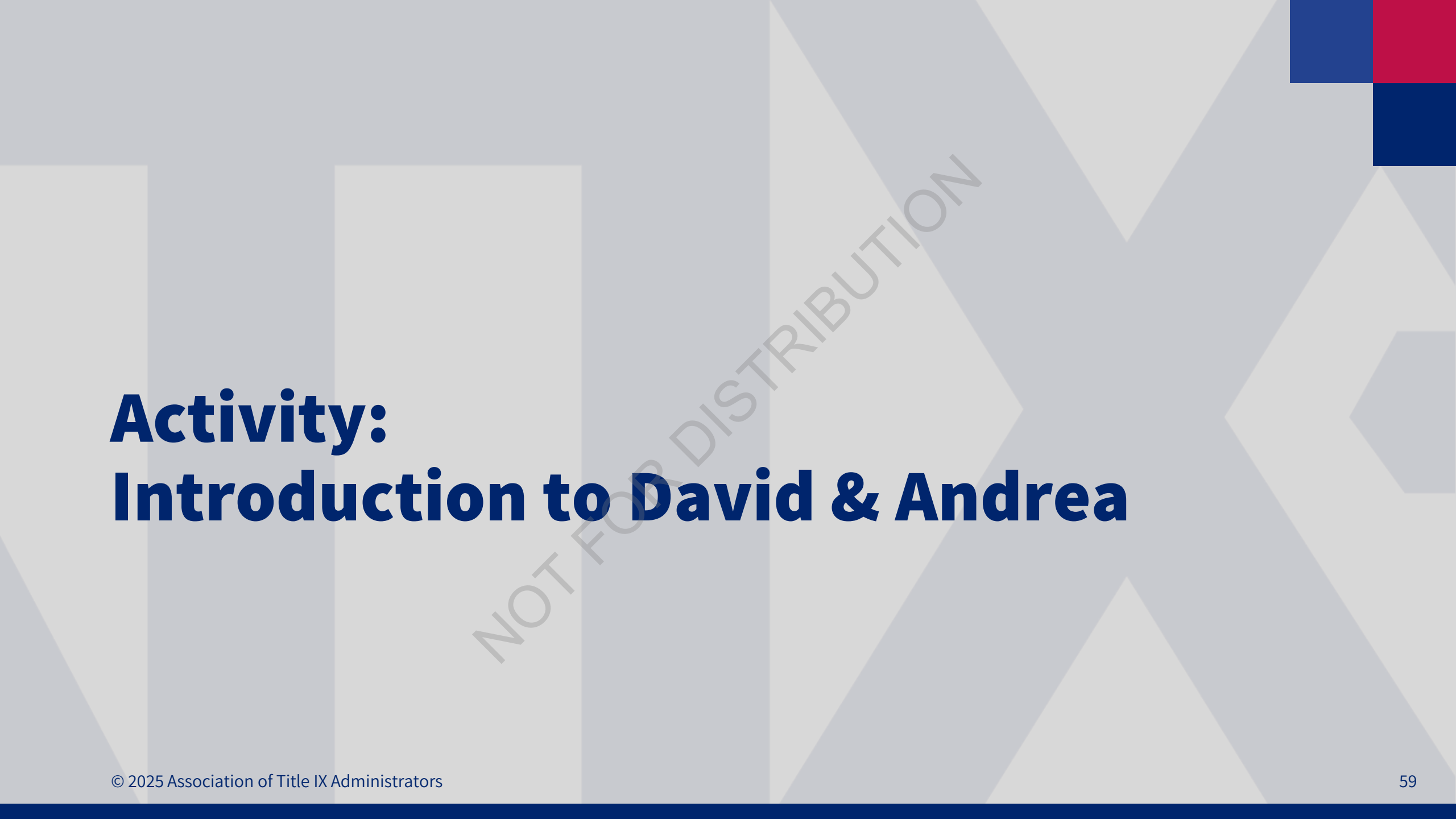
- Cultural shift for Respondents to take accountability
 - Require highly skilled and experienced Facilitator
 - Often time-intensive for preparation and facilitation
-

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



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 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
- Individuals and institutions each have cultural norms

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 often influences how an individual interprets and assigns meaning to trauma
- Practitioners should understand trauma-informed practices in relation to cultural differences
- Trauma-informed institutions have a culture that incorporates trauma-informed principles and practices
- Offering IR is one way to move toward trauma-informed practices for all parties

Dynamics of Sex-Based Violence

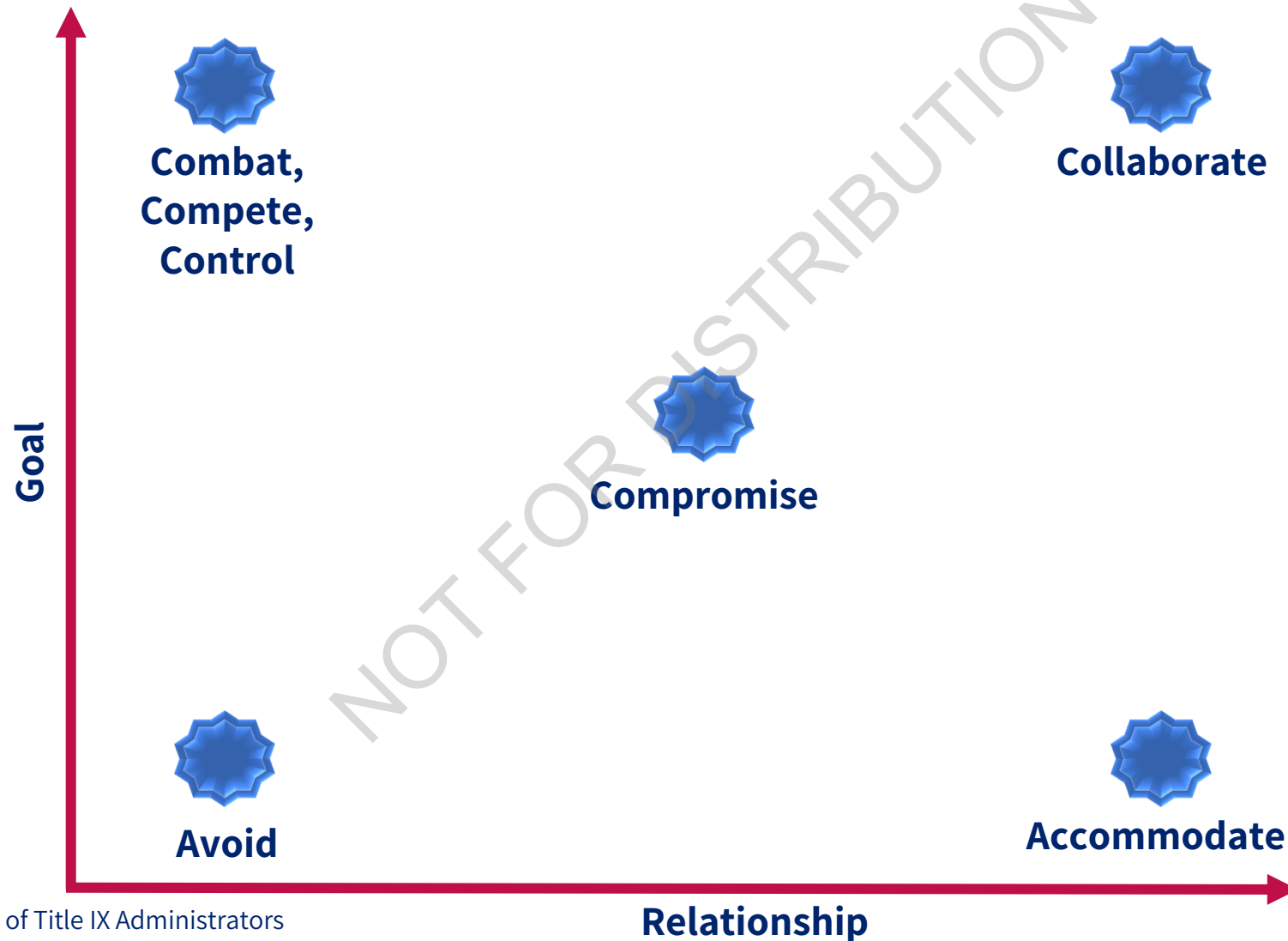
- Culture often affects how individuals view and experience sex-based violence (SBV)
- SBV occurs across many different types of relationships
- Relationships, and the power dynamics of those relationships, have an impact on what strategies will provide the most effective responses
- Cultural aspects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

Culture and Conflict Resolution

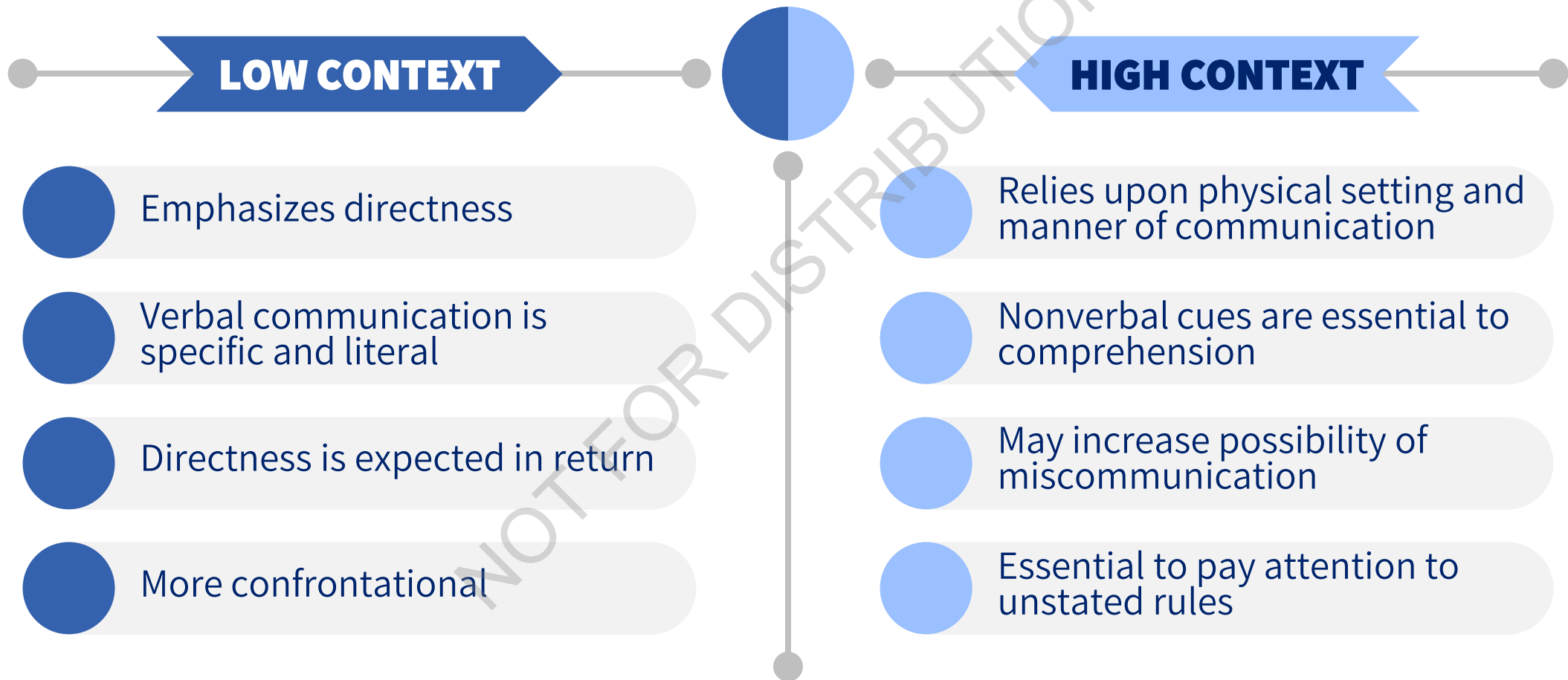
- Cultures are embedded in every conflict because every conflict arises within human relationships
- Affects the ways we name, frame, blame, and attempt to tame conflict
- Influences how individuals engage in conflict resolution



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 Dynamics

- **Power:** right or ability to govern, rule, or strongly influence people or situations, including determining who will have access to resources
- 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 parties' views of themselves, of others, values, perceptions, and experiences they may have had
- 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 may impact IR processes, including how the parties engage with each other, the Facilitator, and the process as a whole

Bias and Informal Resolution

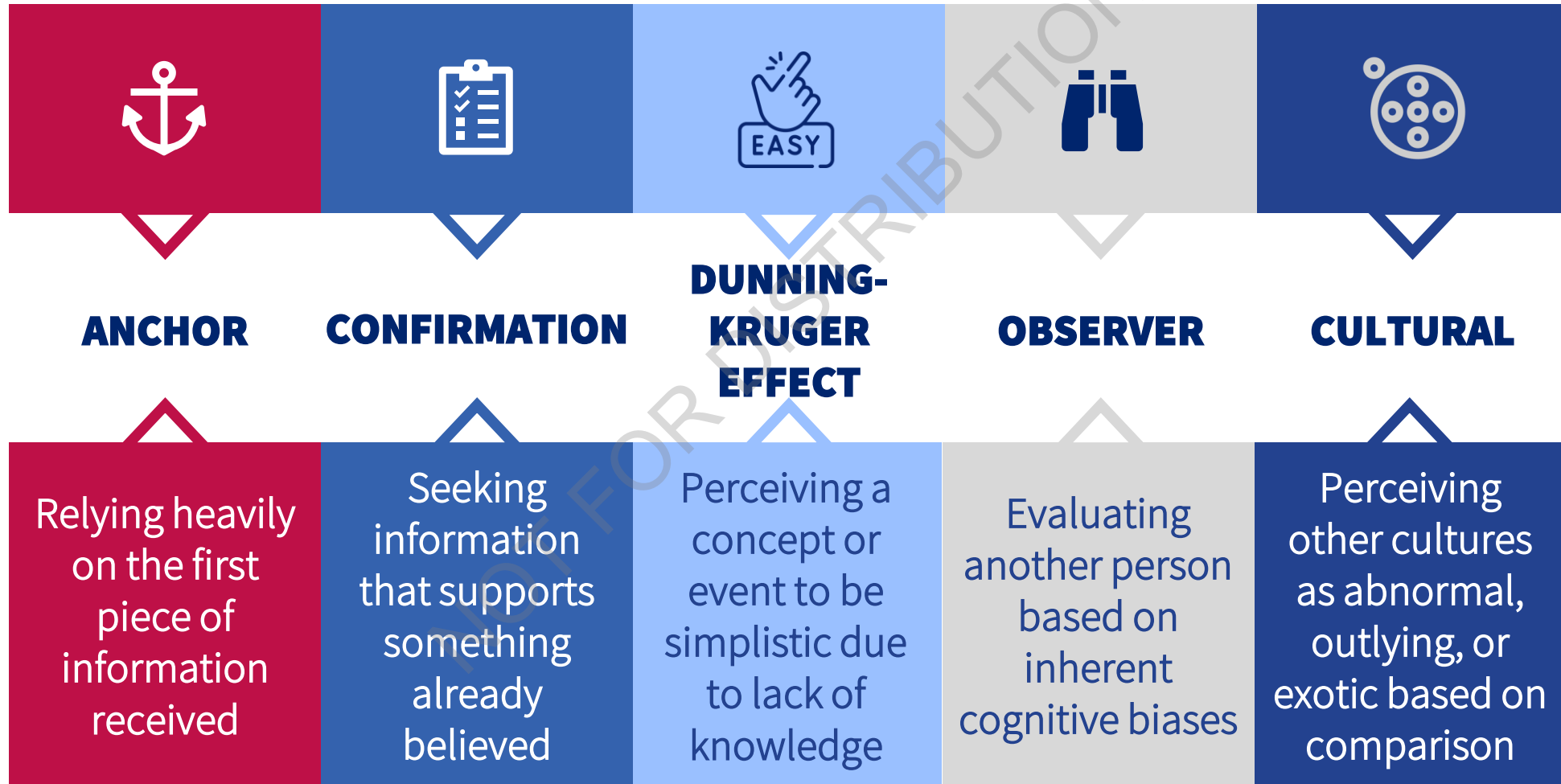
- Bias is defined as a preference or tendency to like or dislike
 - A cognitive process developed over time through repeated personal experience
 - Implicit or explicit
 - Can be intentional, but generally unintentional
 - Can be a systematic error in our thinking process
- Title IX Regulations mandate that the IR Facilitator must not have a bias or conflict of interest (e.g., against or for the parties, Complainants or Respondents generally, the content of the Complaint)

What is Bias?

- Formed from stereotypes, societal norms, life 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



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

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 Meeting

- 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 AR participation
- Assessing readiness and amenability for AR 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



DECEIVE



DIVIDE



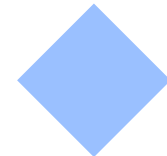
DULCIFY



DISCREDIT



DESTROY



DEAL

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 AR

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

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

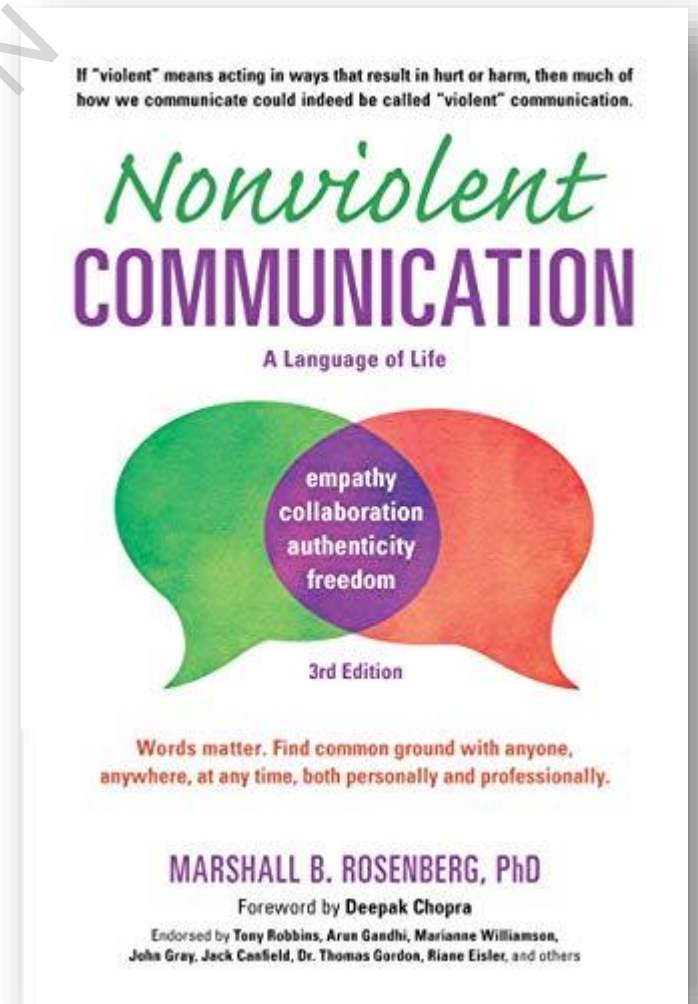
Andrea provides similar information regarding the history of her relationship with David. She explains that when they were together, she consented to allowing David to take nude photographs of her multiple times. Andrea has heard a rumor that David still has the photos and has commented to mutual friends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



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

Agreement Terms

Considerations:

- Academic or employment overlap
- Facility access and use
- Social overlap
- Group overlap (e.g., student organizations, employee committees)
- Confidentiality and non-disparagement expectations
- Contact restrictions
- Respondent's education or employment record
- Financial implications (e.g., scholarships, grants, loans)
- Institutional minimum sanctions
- Associated costs (e.g., Advisor fees, medical bills, travel costs)

ACTIVITY:

David and Andrea Part III

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

David Andrea's Resolution Agreement

- What might David request as terms of the Resolution Agreement?
- What might Andrea request as terms of the Resolution Agreement?
- Are there any terms that may be requested that the TIXC should not approve?

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 Formal Grievance 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

Example Enforcement Terms

If any party violates any provision of this agreement, the <<Title>> may (1) declare this agreement to be null and void and refer the underlying allegations back to <<Office>> for a formal investigation and hearing; (2) refer the party in breach of the agreement to the <<Office>> for additional disciplinary action related to their failure to comply with a proper and lawful directive of a College official; (3) modify the terms of this agreement to address the breach and/or to protect the safety and wellbeing of the parties and/or the College community; and/or (4) refer the party in breach of the agreement to another College Department with authority to discipline the party based on their conduct.

Used with permission from Lake Forest College and Texas A&M University

Process Closure

- TIXC and Facilitator responsibilities
- ATIXA recommends the TIXC approve any agreements before they are finalized
- **Process closure includes:**
 - Written agreements (if applicable)
 - Follow-up with the parties
 - Facilitation debrief
 - Documentation
- If behavior continues after reaching a resolution, Complainant can initiate/resume the Formal Grievance Process to address the additional instance(s)



Policy and Process Considerations

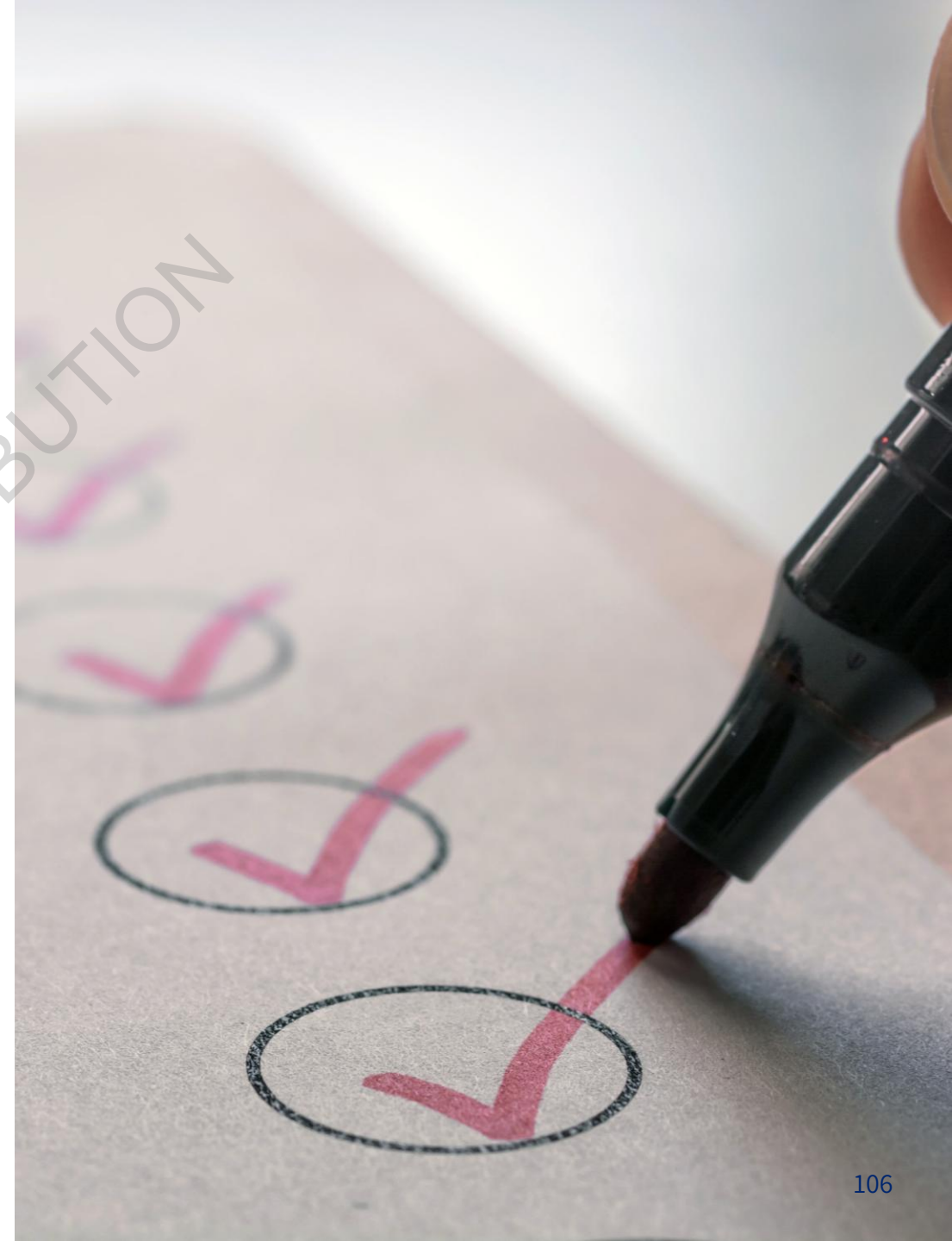
Setting the Tone

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

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

Institutional Support for Alternative Resolution

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 mission speaks to support for AR processes

Involving Stakeholders

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

Program Proposal

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

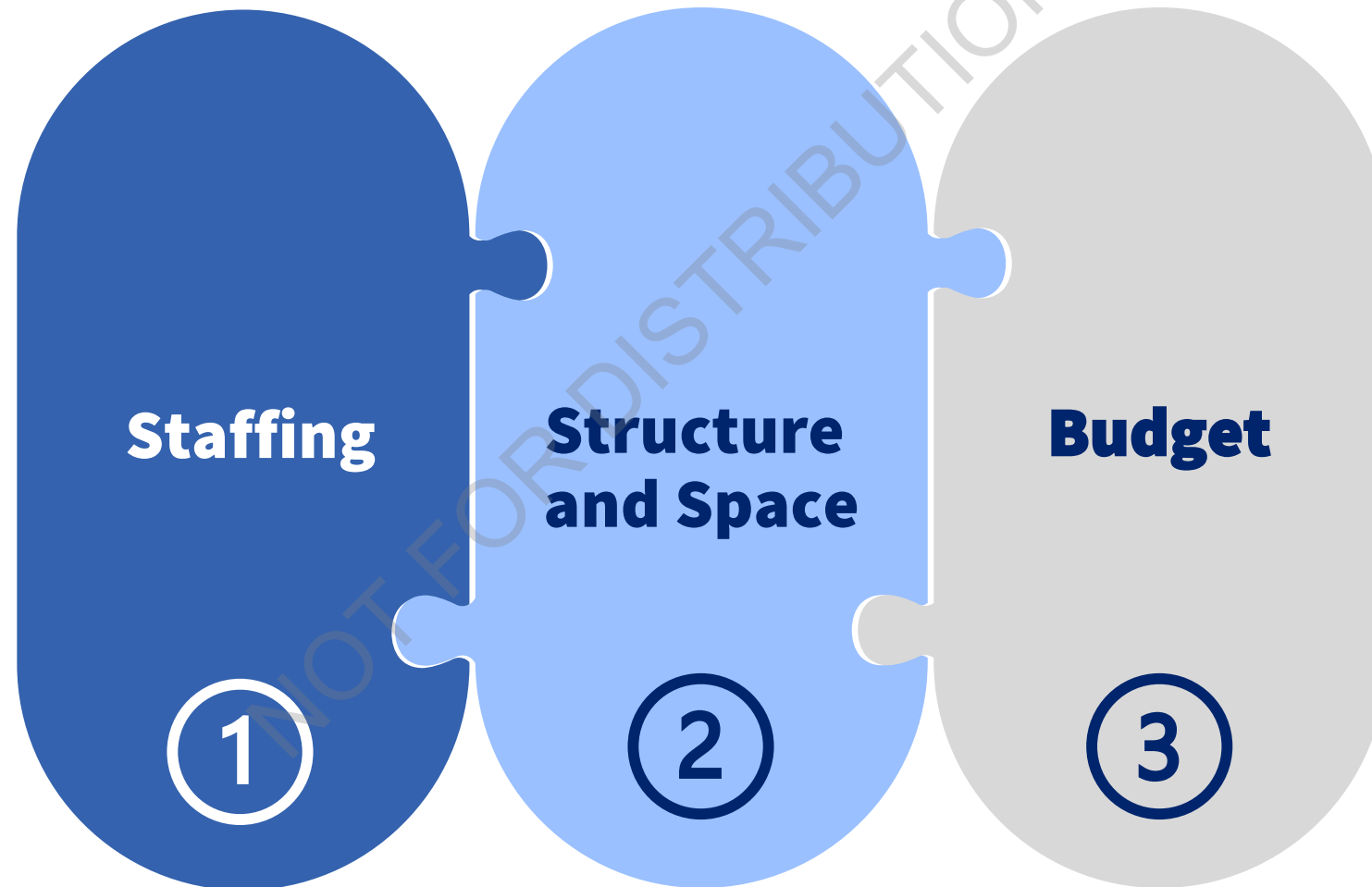
Formal Proposal

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

Informal Proposal

- Find champions
- General information gathering
- Meeting with stakeholders

Resource Considerations



Policy Considerations

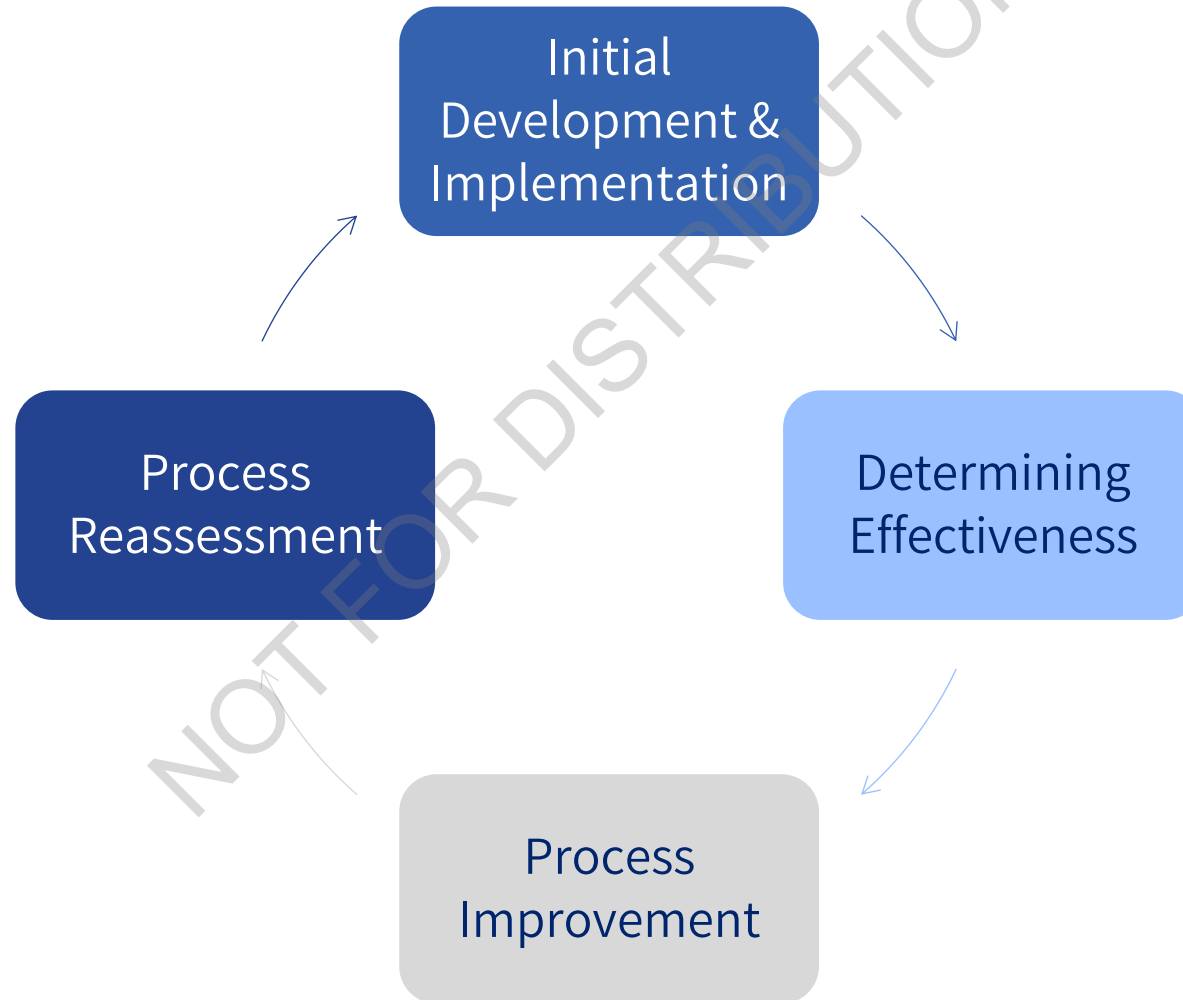
- Determine if institutional policy allows for AR
 - Permissiveness
 - Deal-breakers
- Determine whether institutional support exists for AR and to review/amend policies
- Know institutional processes and timelines for policy revision and approval
 - Submission and review
 - Approval
 - Legal counsel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

Training Considerations



Assessing Effectiveness

Life Cycle of a Program



Determining Effectiveness

- Demonstrate IR effectiveness through qualitative and quantitative data

Qualitative Data Sources

Parties

Facilitators

Stakeholders

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

Determining Effectiveness, Cont.

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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