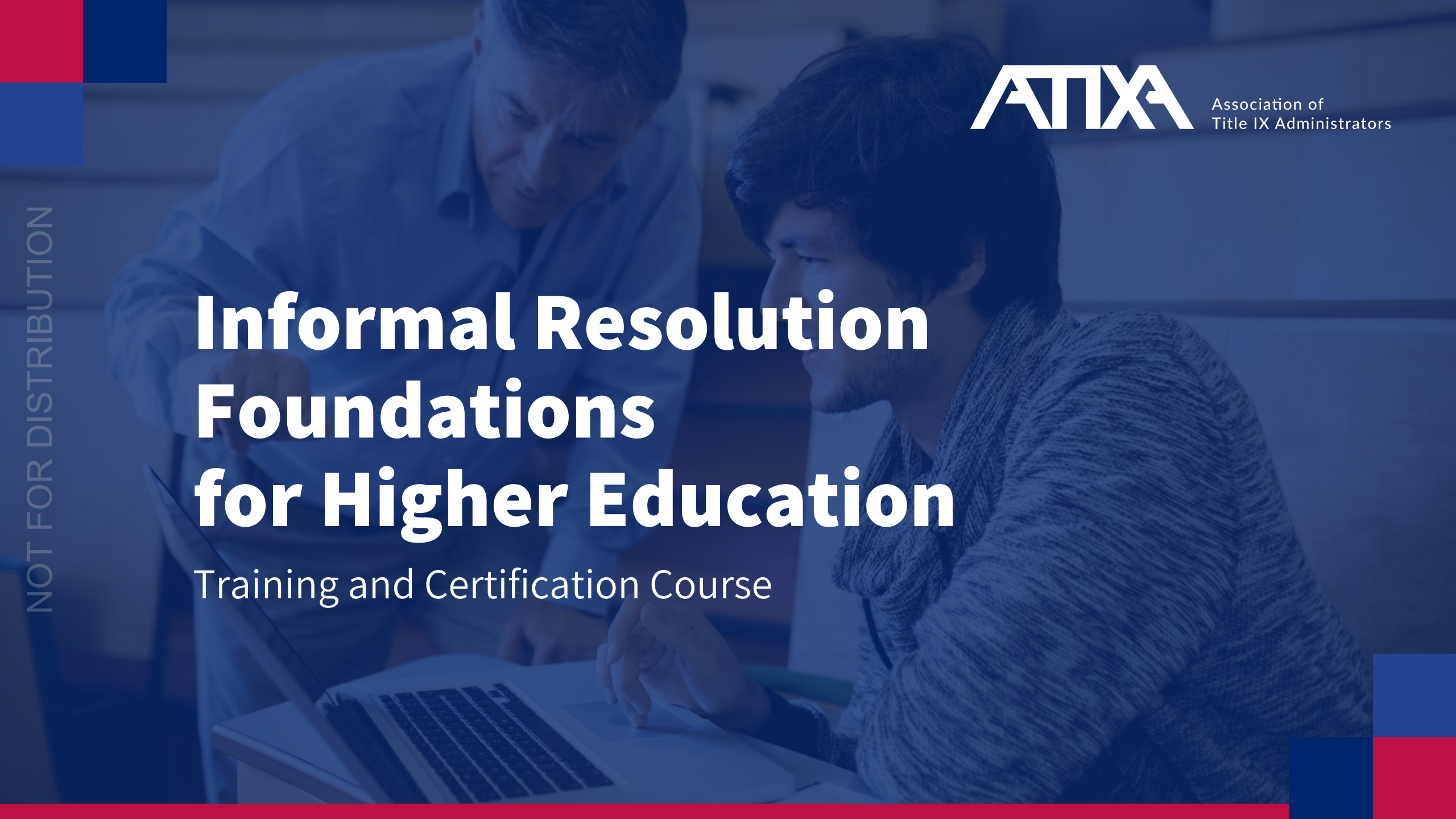


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Informal Resolution Foundations for Higher Education

Training and Certification Course

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- Please log in to your ATIXA Event Lobby to access the training slides, supplemental materials, and to log your attendance.
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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 course 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.

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Introduction

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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.

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Notes on Vocabulary

- The Title IX resolution processes discussed in this training 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 Title IX regulations and this training use the term "informal resolution," but that term may not be the best fit for your institution

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Informal Resolution Overview

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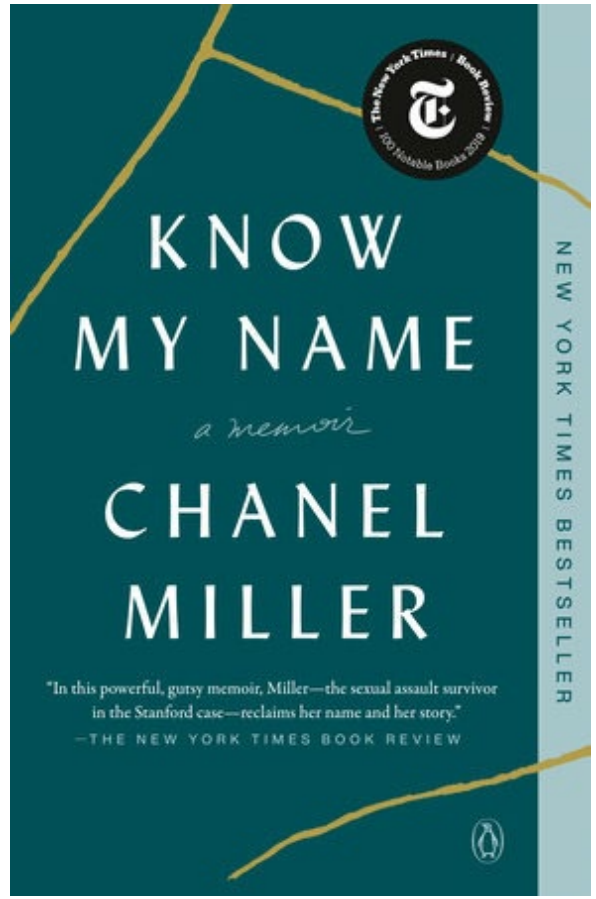
Discussion: Informal Resolution Benefits and Foundations

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A Survivor's Words

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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]



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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

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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)



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Complaint Types

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STRUCTURAL

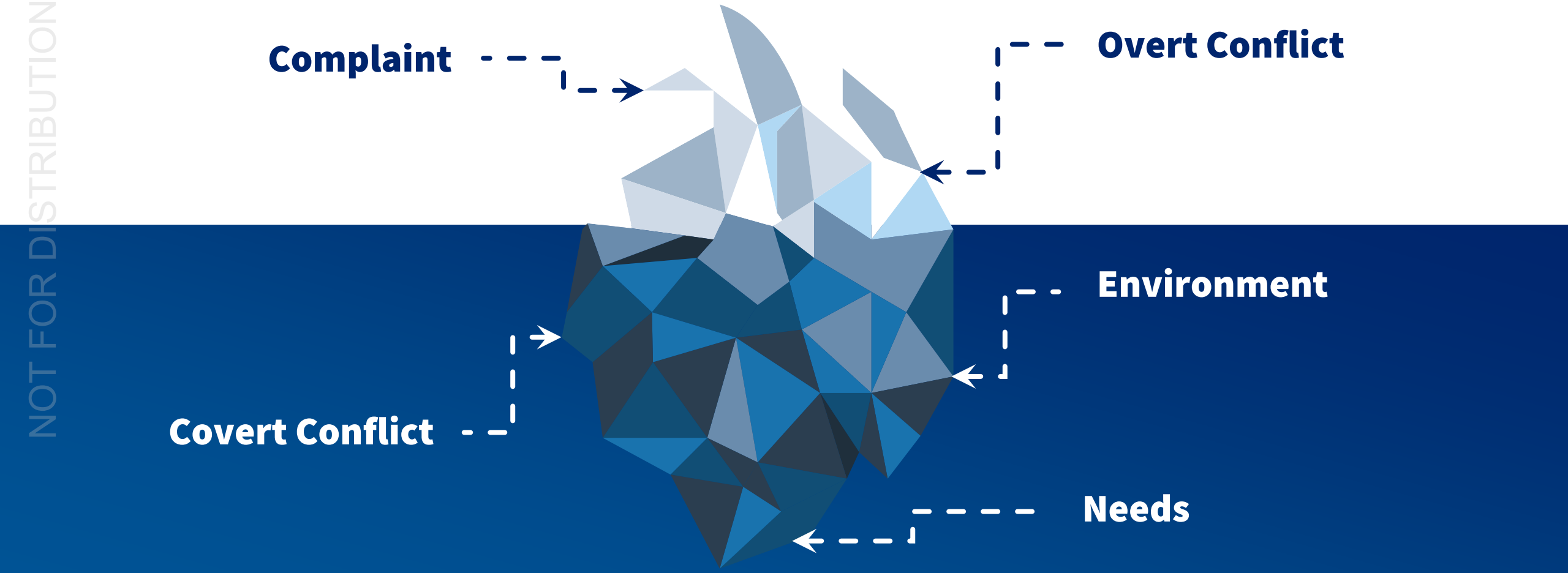
- Policies, environments, resources, and structures
- Systemic and long-term
- May masquerade as relational complaints
- Often no identifiable Respondent

RELATIONAL

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

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Complaints and Conflicts



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Sources of Conflict

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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

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Contextual Considerations

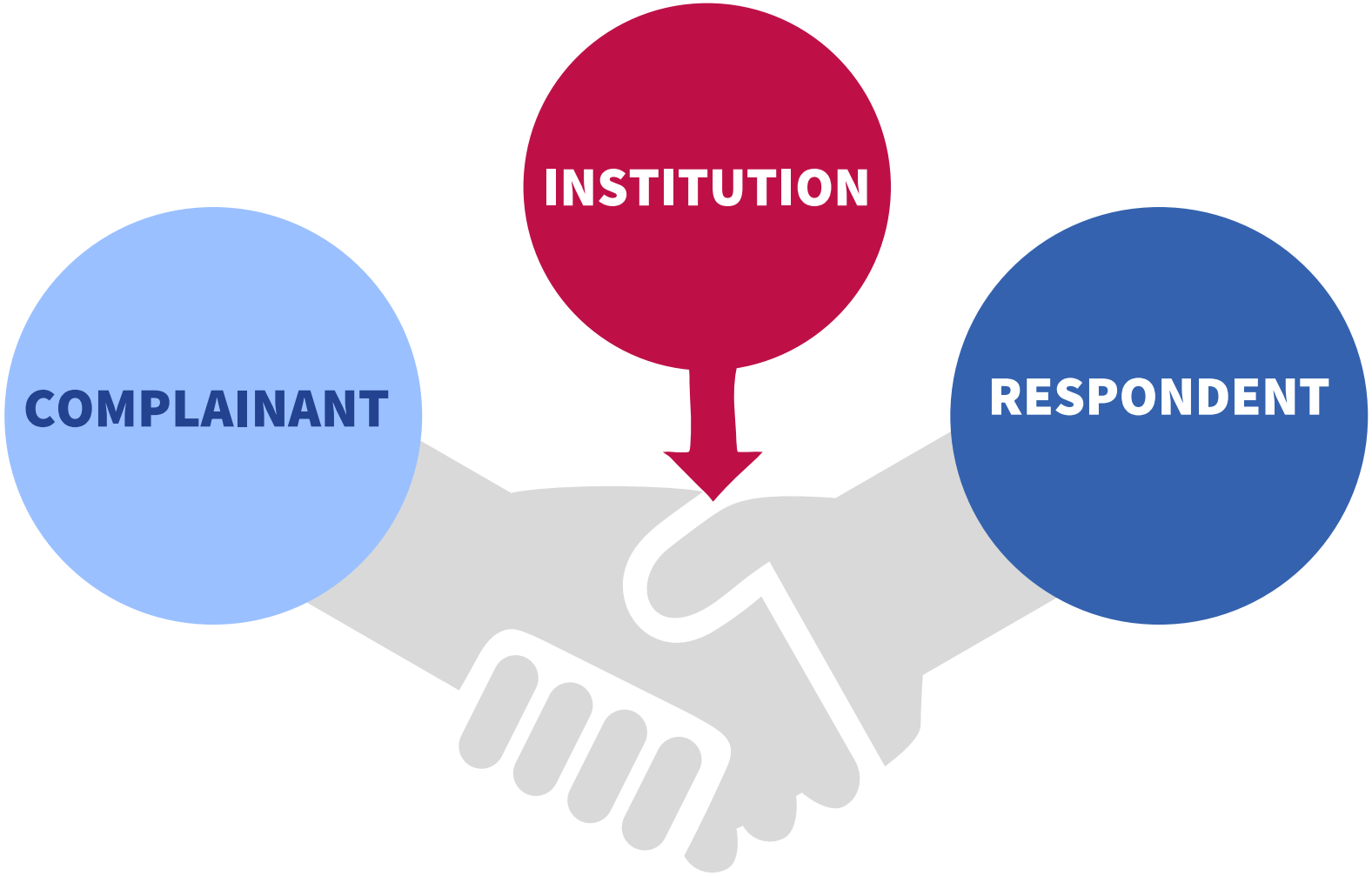
- No one-size-fits-all approach to Informal Resolution (IR)
- Not all structures will fit the unique circumstances of the allegations
- Policies and processes should be designed with a variety of allegations and parties in mind
- IR within an educational institution is inherently different than community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



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Three-Party Model



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Informal Resolution and Title IX

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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 and 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



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Scope

Title IX

Sex Discrimination

- Disparate Treatment
- Program Access and Equity

Retaliation

Sexual Harassment

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

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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

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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)

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The IX Commandments

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

(+ **fair** and **impartial** per VAWA Sec. 304)

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Informal Resolution Application

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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

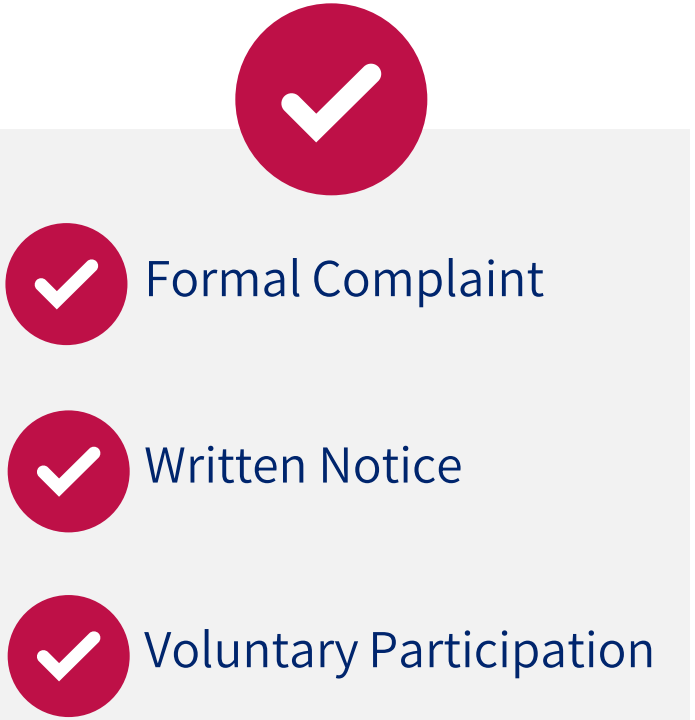


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Procedural Requirements and Recommendations

- 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



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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

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IR Outside the Title IX Regulations

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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

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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?

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IR for Structural Complaints

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

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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



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Title IX Grievance Process Overview

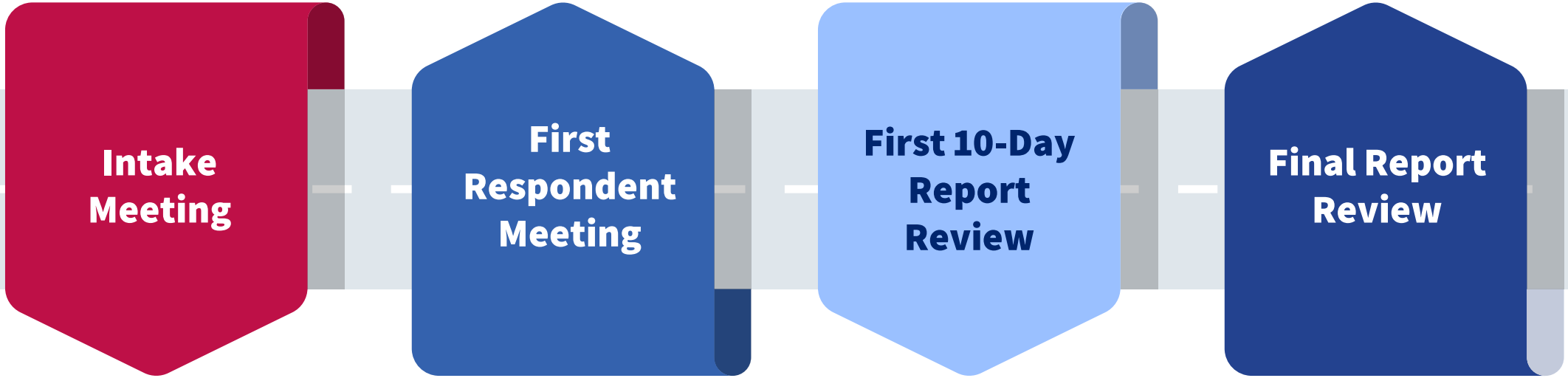
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INCIDENT	INITIAL ASSESSMENT	FORMAL INVESTIGATION	HEARING	APPEAL
▪ Formal Complaint/ Notice to Title IX Coordinator (TIXC)	▪ Jurisdiction ▪ Dismissal ▪ Supportive Measures ▪ Emergency Removal ▪ Referral to Another Process ▪ Informal/ Formal Resolution	▪ Notice of Investigation and Allegations ▪ Interviews ▪ Evidence Collection ▪ Draft Report ▪ Party Review/ Comment ▪ Follow Up ▪ Final Report	▪ Questioning ▪ Credibility Assessment ▪ Determination and Rationale ▪ Sanctions ▪ Remedies	▪ Appeal Grounds ▪ Determination and Rationale

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Common Off-Ramps for IR

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



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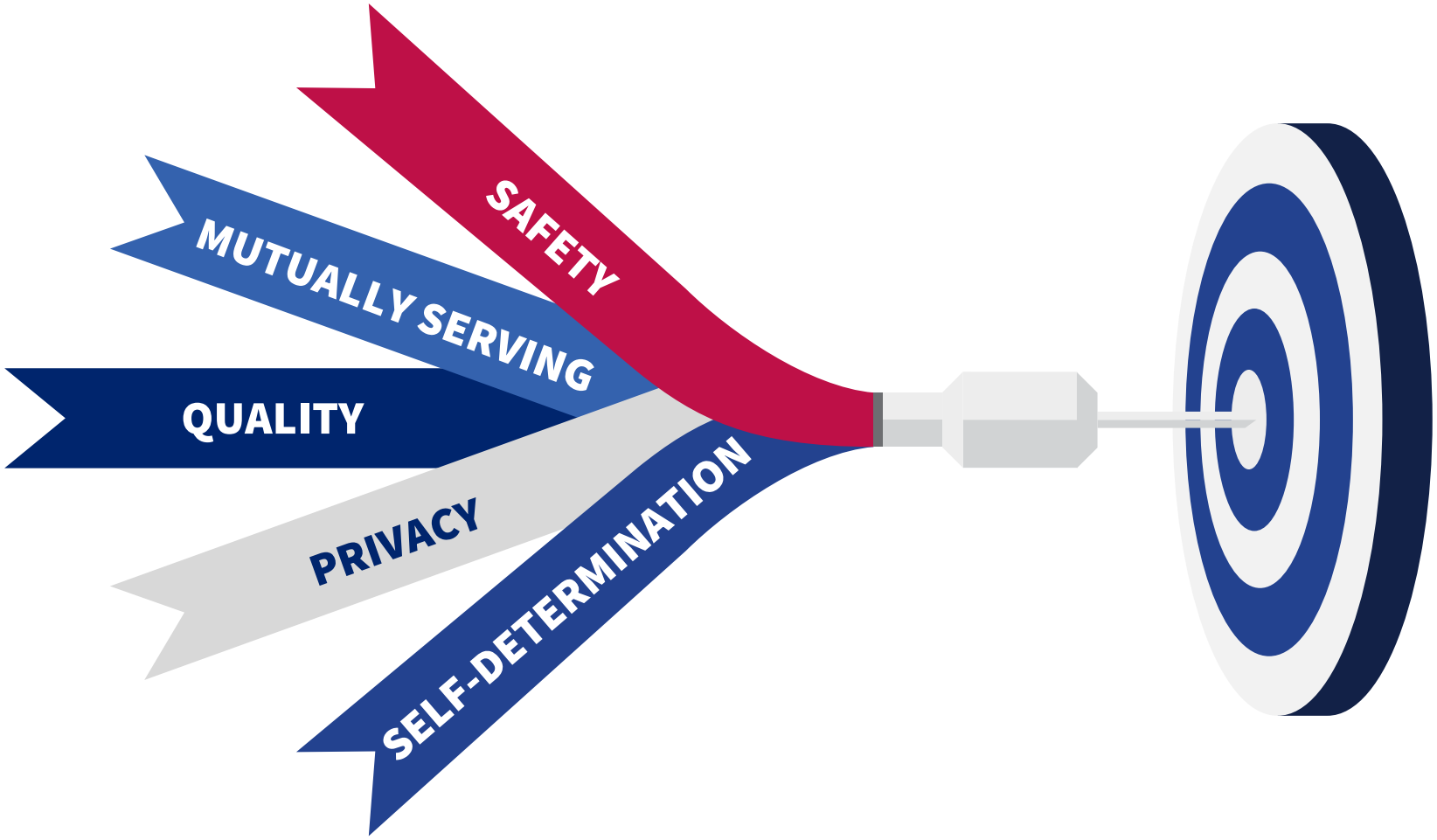
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Determining Availability and Appropriateness

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Key Values



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Considerations for Appropriateness

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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

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ATIXA's Informal Resolution Framework

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ATIXA's IR Framework

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ATIXA's Framework contemplates three categories of IR:

1

Supportive Resolution

2

Accepted Responsibility

3

Alternative Resolution (AR)

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Supportive Resolution

- TIXC resolves the 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)



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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

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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 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

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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



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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

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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



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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



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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

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Signed Resolution Agreement Example

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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

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Alternative Resolution (AR)

- Parties agree to resolve the allegations 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



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Alternative Resolution Mechanisms

- 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

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Conflict Coaching

- Occurs **prior** to a Formal Complaint
- Does **not** require an NOIA
- 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



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Conflict Coaching (Cont.)

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

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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



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Facilitated Dialogue (Cont.)

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

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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 (Cont.)

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

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Mediation

- Structured process where a 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



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Mediation (Cont.)

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 issue 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

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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



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Restorative Practices (Cont.)

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
- Requires highly skilled and experienced Facilitator
- Often time-intensive for preparation and facilitation

CONTEXT CUES

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

BEHAVIORS

- Sexual exploitation
- Hazing

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Activity:
Introduction to David and Andrea

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Initial Contact

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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 hang 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?

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Informal Resolution Structures and Implementations

Cross-Cultural Considerations

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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.



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Cross-Cultural Considerations

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> 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

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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

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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 judgment
  - Laws
  - Religious beliefs

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Culture and Conflict Resolution

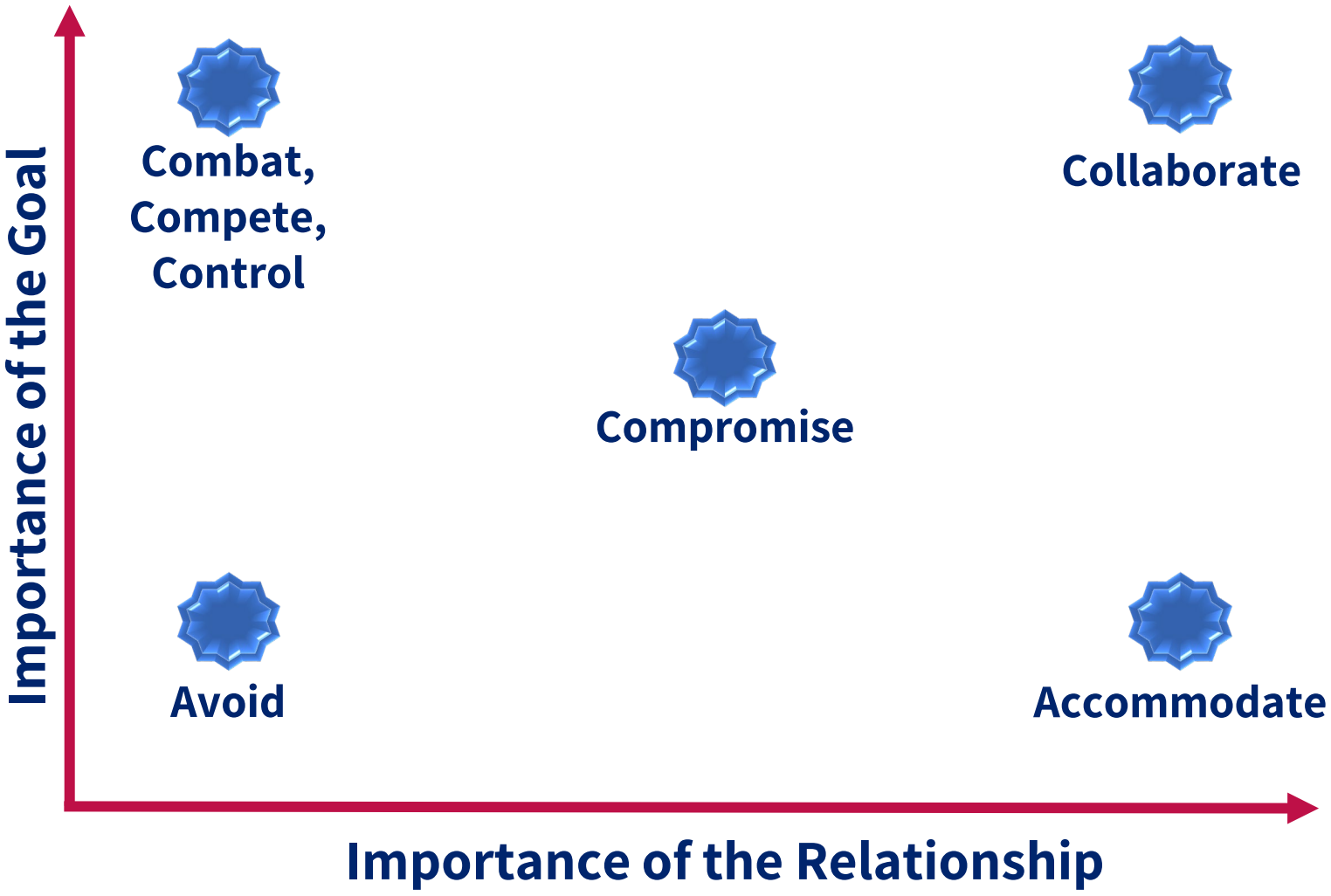
- Cultures are embedded in every conflict because every conflict arises within human relationships
- Affects the ways we name, frame, blame, and attempt to tame conflict
- Influences how individuals engage in conflict resolution



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Thomas-Kilmann Conflict Modes

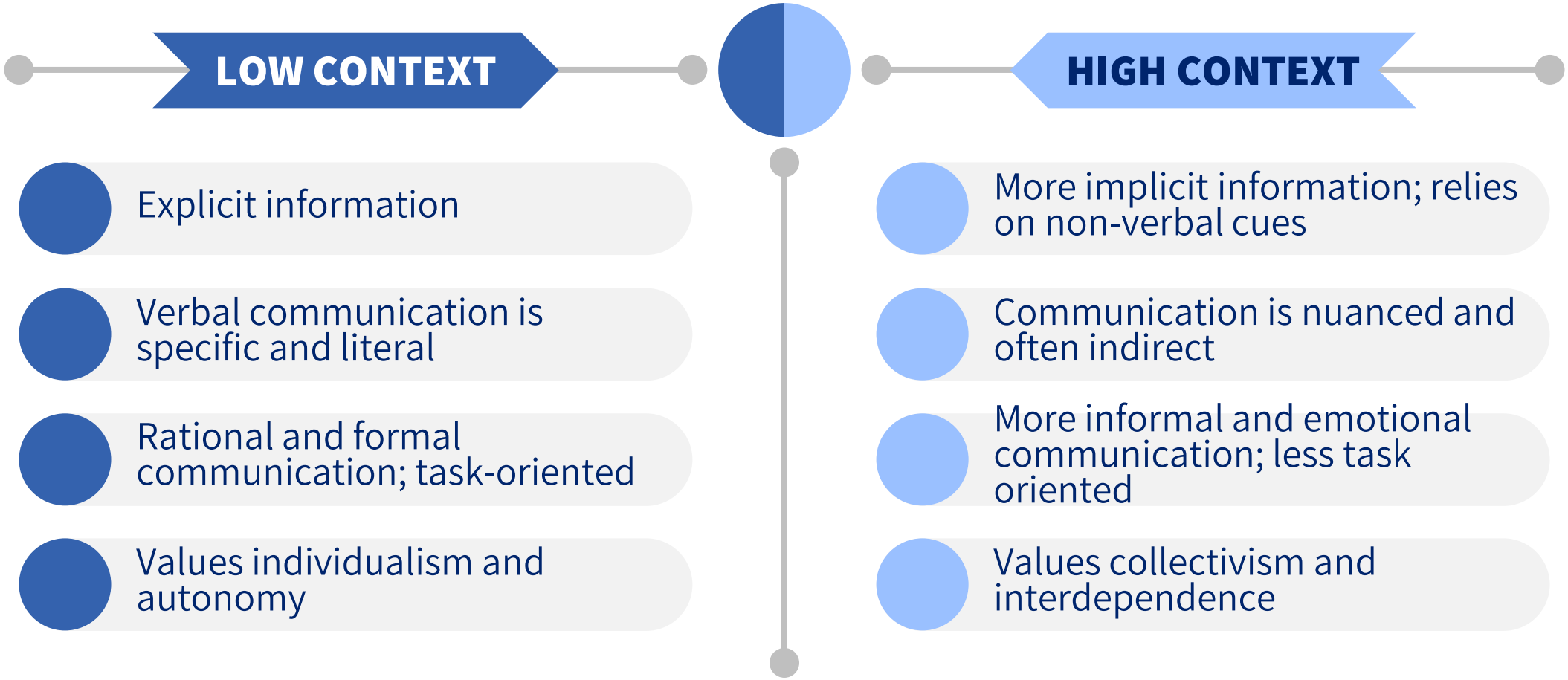


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Context and Communication

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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



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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

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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

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Bias and Informal Resolution

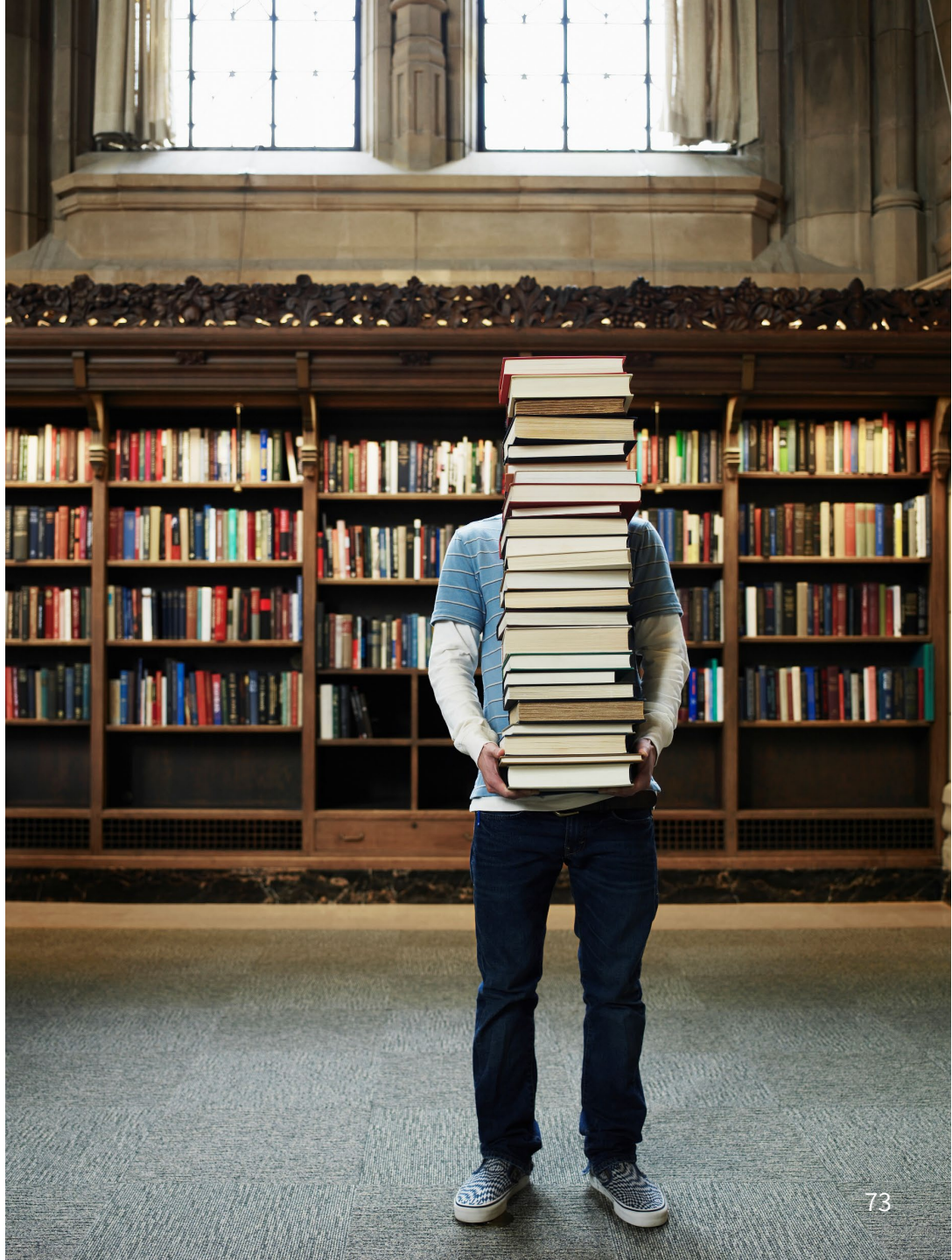
- Bias is defined as a preference or tendency to like or dislike
  - A cognitive process developed over time through repeated personal experience
    - Implicit or explicit
    - Can be intentional, but generally unintentional
  - Can be a systematic error in our thinking process
- Title IX Regulations 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)

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What is Bias?

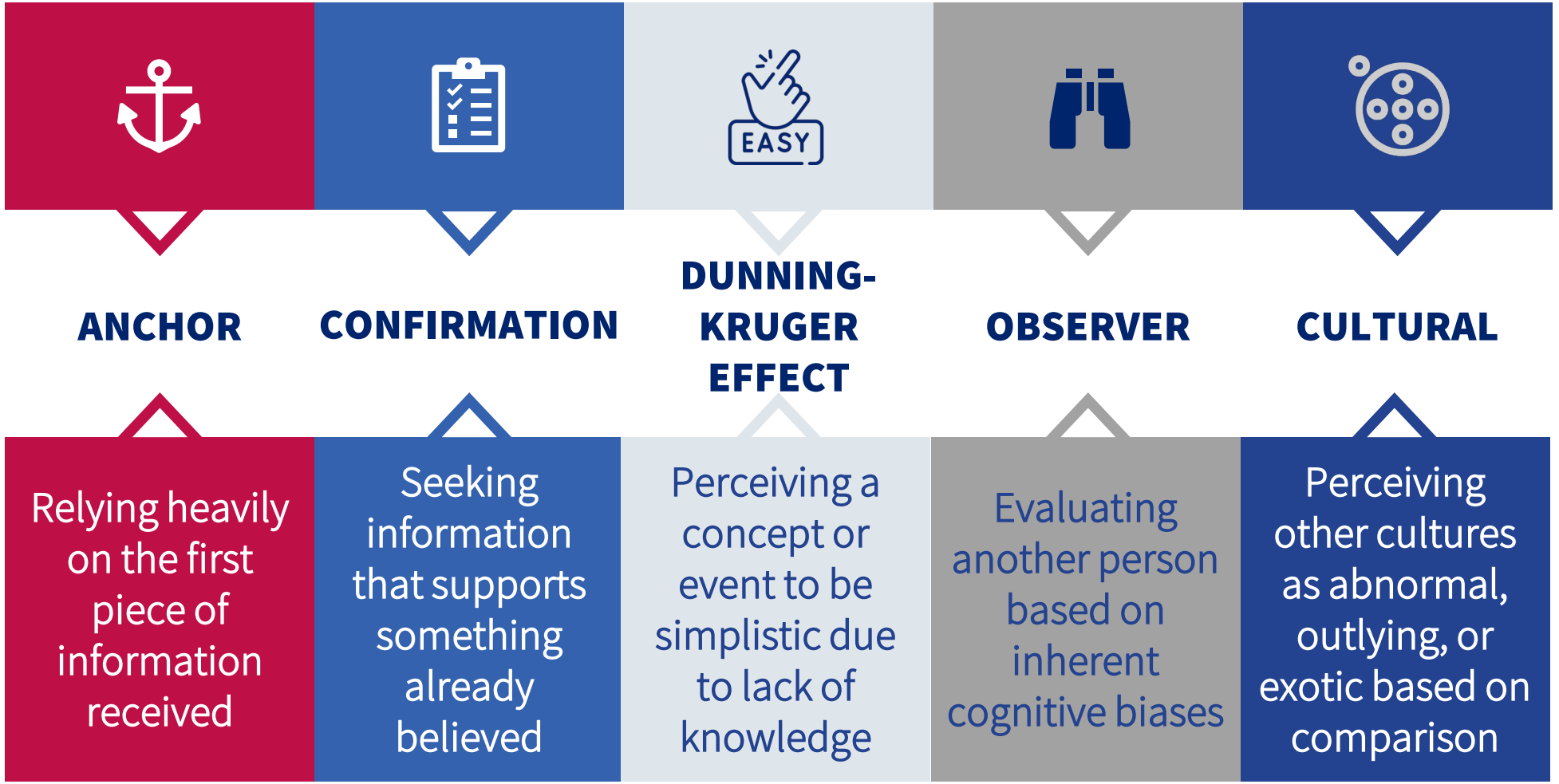
- Formed from stereotypes, societal norms, life experiences, expectations of the people around you
- Can affect our perceptions of Complainants **and** Respondents
- Common pre-conceptions about Complainants **and** Respondents
- Can affect our perceptions of others within the process or associated with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



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Types of Bias



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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

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Alternative Resolution Process

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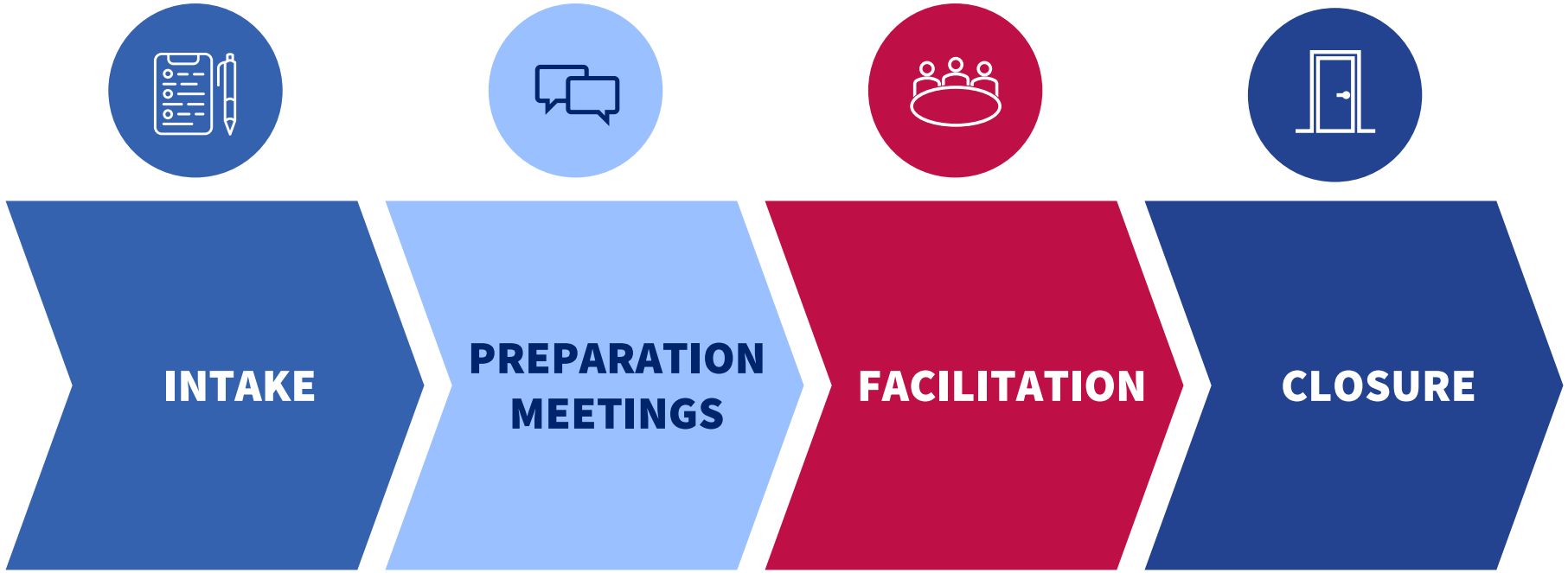
Who Should Facilitate?

- 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

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AR Process



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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

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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

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Positions, Interests, and Needs (PIN)

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P	**Positions:** specific demands; a chosen stance; a solution 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

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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

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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

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10 D's of Opposition



DEFLECT



DELAY



DENY

DISCOUNT



DECEIVE



DIVIDE

DULCIFY



DISCREDIT



DESTROY



DEAL

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Four Levels of Accountability



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ATIXA's IR Framework Considerations

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

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Activity:
David and Andrea, Part Two

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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, by the end of their junior year, their relationship had become strained, and they began arguing regularly. 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 continue 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.

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David and Andrea

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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?

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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.

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Preparation Meetings

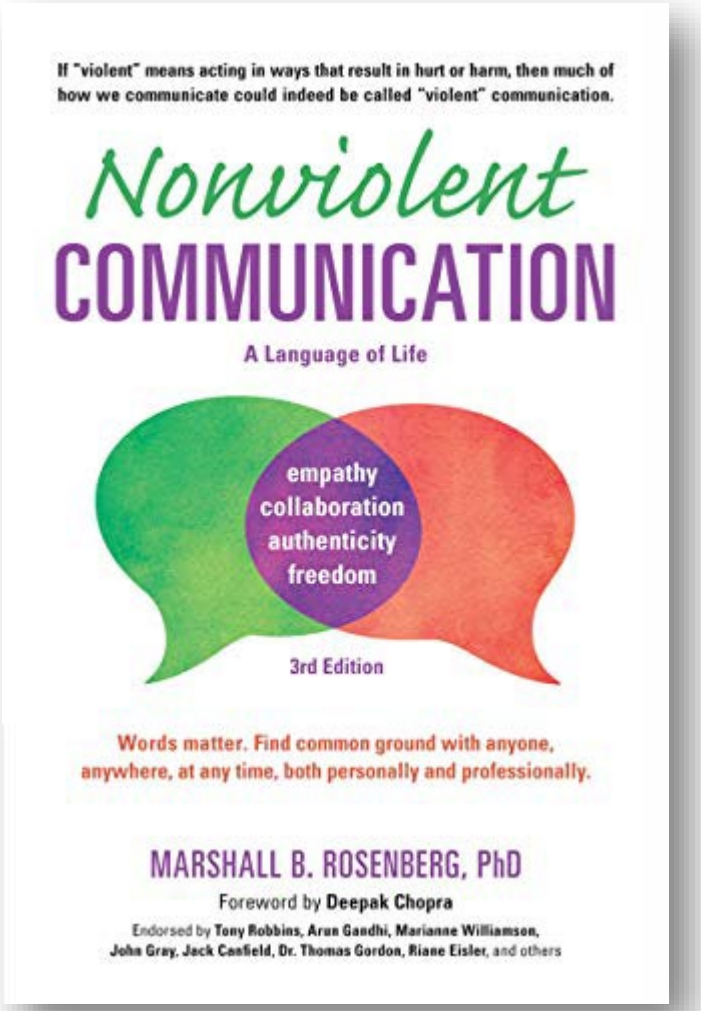
- Number and structure of preparation meetings depends on AR mechanism and parties
- Facilitator should go into each meeting prepared with what they want to achieve during the meeting
  - AR can take unexpected turns and Facilitators should not plan for a particular outcome
- Parties may not get to a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

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Nonviolent Communication (NVC)

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



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Preparation Questions

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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

- Is there anything 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 could be addressed?
- What would help you feel confident that this behavior will not happen again?

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Facilitation

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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

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Agreement Terms

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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)

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Tips for Keeping the Process Moving

- Set reasonable response expectations and shared deadlines
- Anticipate scheduling challenges
- Pre-schedule meetings
- Establish manageable goals for each process step
- Address delays early
- Keep agreements focused
- Use shared documents when feasible
- Discuss implementation feasibility along the way
- Recognize when IR is no longer practical

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Activity:
David and Andrea, Part Three

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PIN Model – David and Andrea

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David

P I want Andrea to leave me alone

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

N Space, independence

Andrea

P David needs to delete the photos

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

N Integrity, cooperation, respect

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David and 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?

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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

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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

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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

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Example Enforcement Terms

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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.

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Process Closure

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



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Policy and Process Considerations

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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

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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



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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



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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

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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

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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



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Information Admissibility in Formal Grievance Process

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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

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ATIXA's Recommended Policy Language

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"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."

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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”

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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 mission speaks to support for AR processes



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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

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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

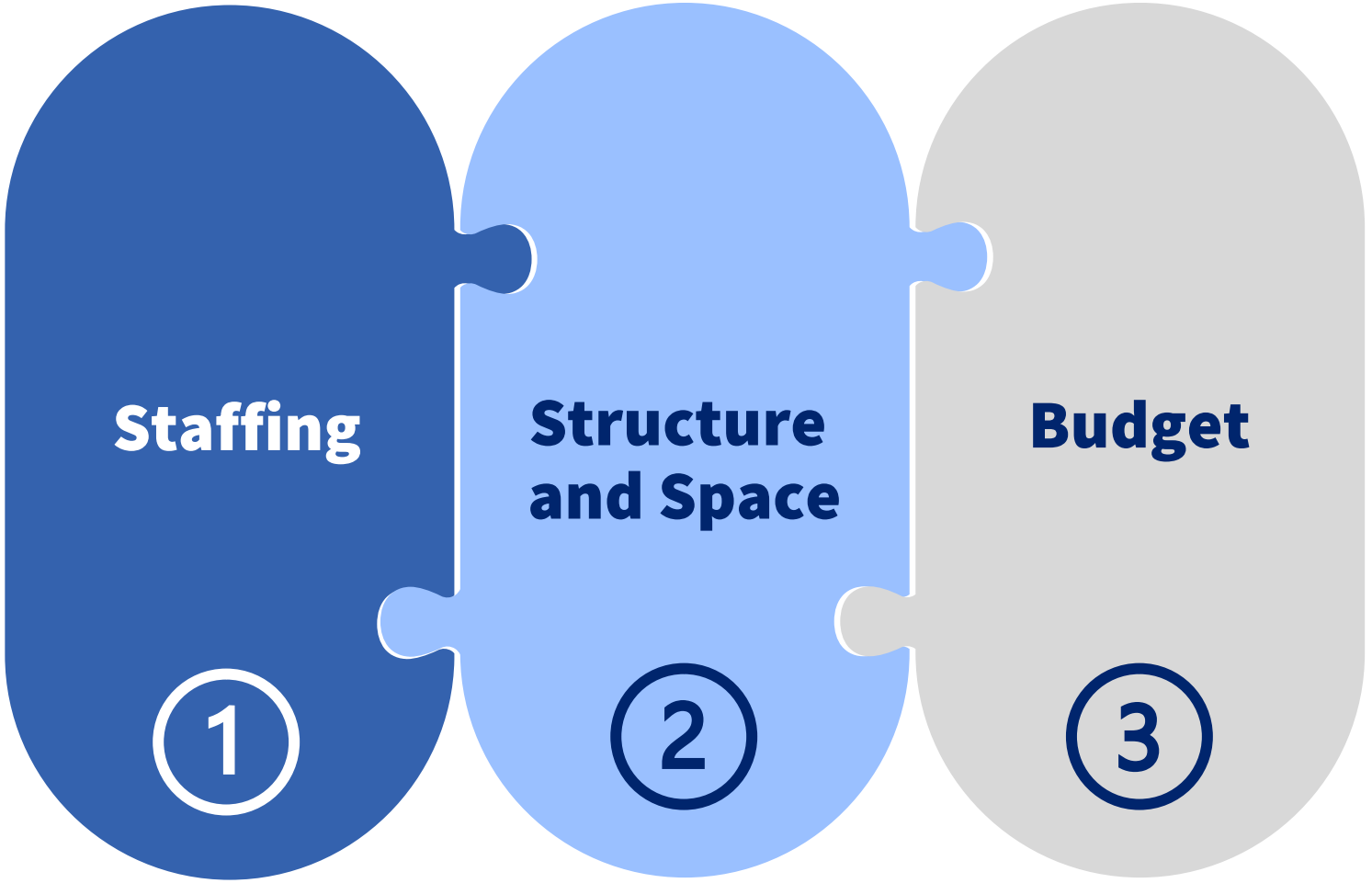
Informal Proposal

- Find champions
- General information gathering
- Meeting with stakeholders

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Resource Considerations



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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

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Training Considerations

Scope

Training Costs

Time

Ongoing Training

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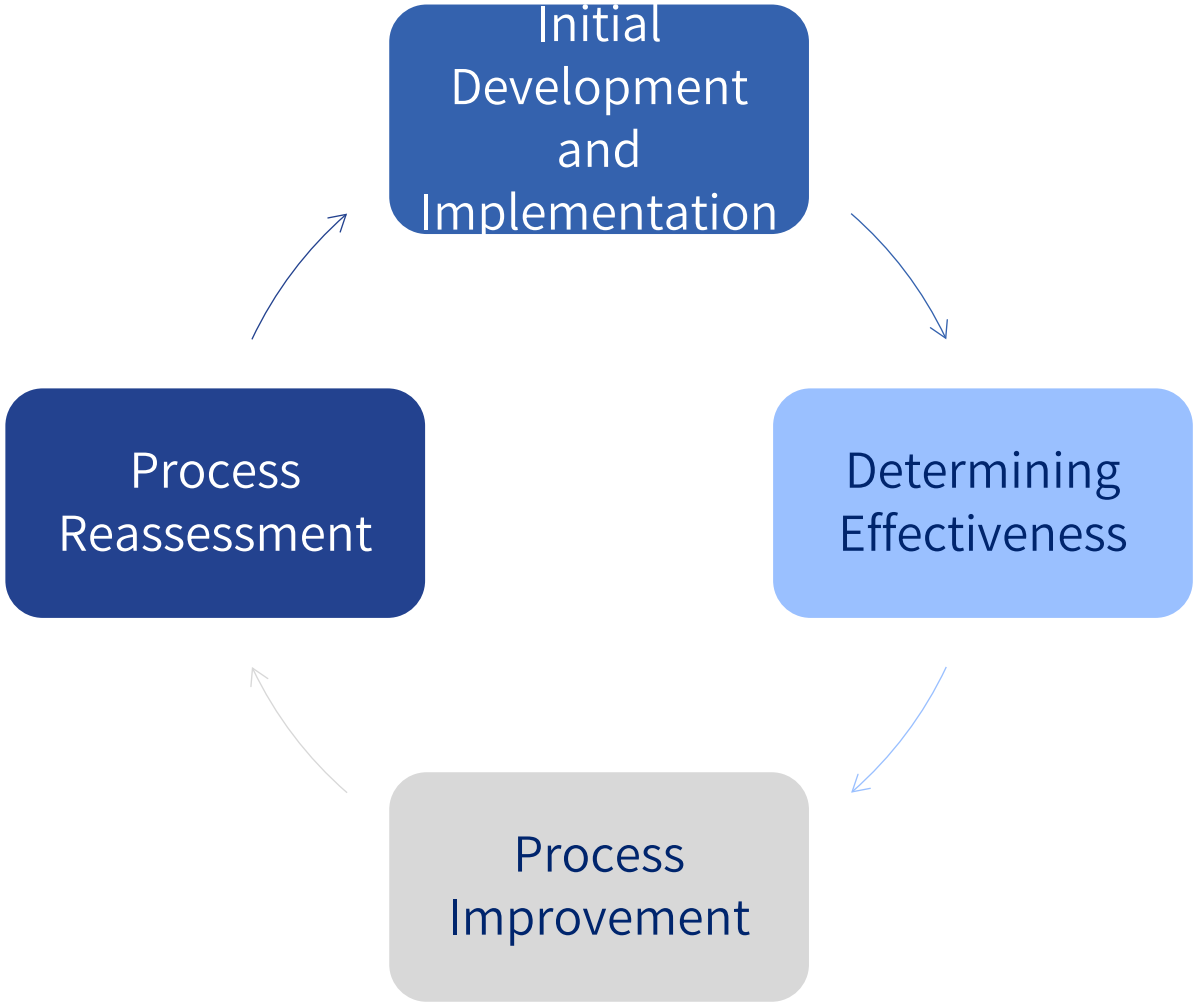
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Assessing Effectiveness

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Life Cycle of a Program



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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

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Determining Effectiveness (Cont.)

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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

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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



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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

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Questions?

Stay Connected to ATIXA's Community

- Exchange ideas through the **ATIXA Listserv**
- Build skills with **20-Minutes-to…Trained** videos
- Get practical guidance at **Time with IX**
- Streamline your work with **TIXKit** templates
- Schedule a **Training and Certification course**
- Expand your network with **Mentor Match** and **Community Connections**
- Explore **Thought Leadership** from ATIXA experts
- Stay informed with **ATIXA's "More Likely Than Not" Podcast**
- Refer Members. Earn **Rewards**.

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