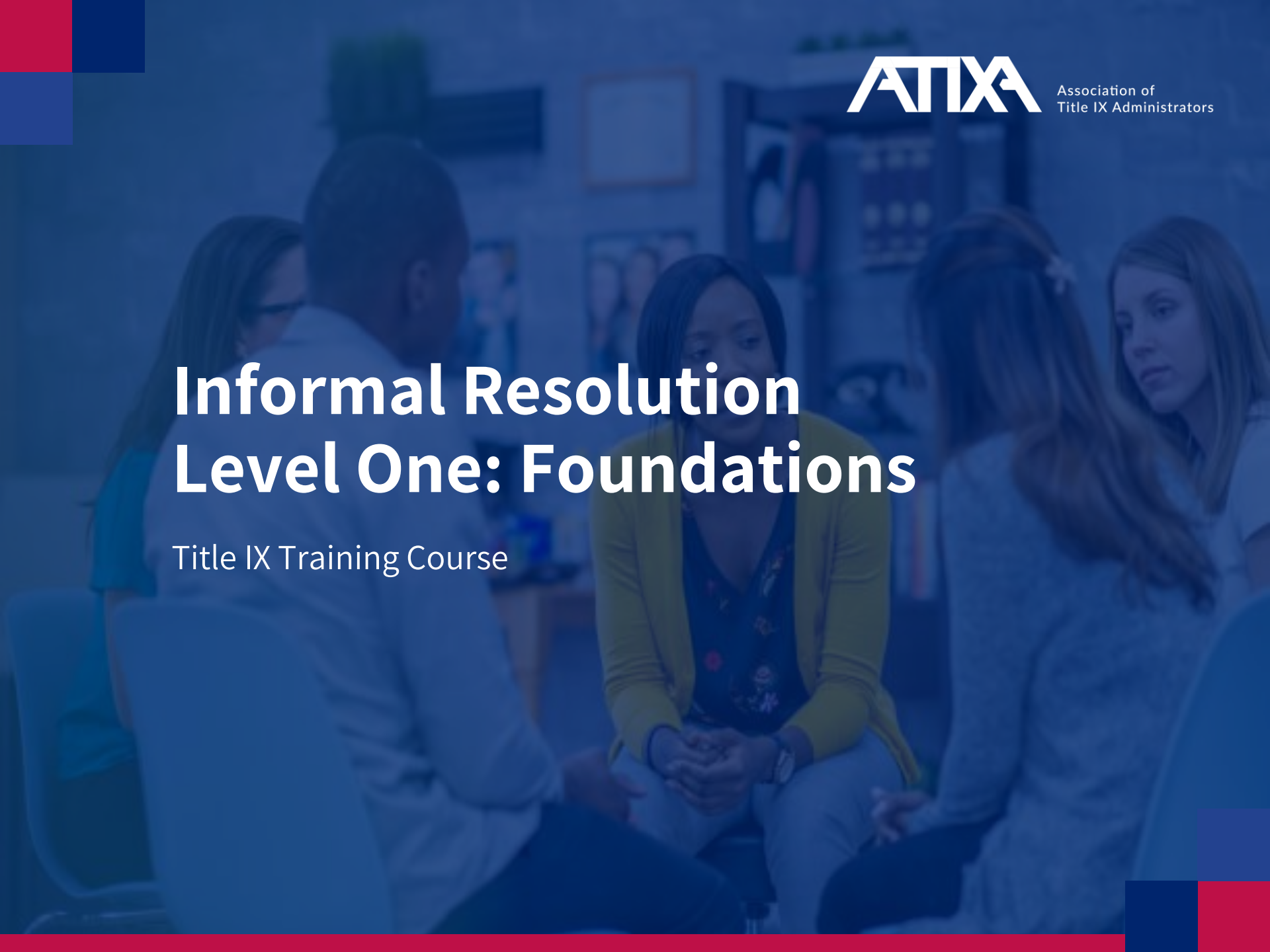

Association of
Title IX Administrators

Informal Resolution Level One: Foundations

Title IX Training Course

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

CONTENT ADVISORY

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

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

AGENDA

1. Course Overview
2. Informal Resolution & Title IX
3. Informal Resolution Overview
4. Informal Resolution Application
5. Determining Availability and Appropriateness
6. ATIXA's Informal Resolution Framework

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AGENDA

7 Alternative Resolution Process

8 Cross-Cultural Considerations for Structure & Implementation

9 Institutional Support for Alternative Resolution

10 Process Considerations

11 Assessing Effectiveness

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LEARNING OBJECTIVES

After completing this training, participants will be able to:

- Distinguish between the different types of Informal Resolution (IR) that could be incorporated within school processes
- Identify questions that need to be answered before proceeding with the design of an Informal Resolution program that will fit the needs of students and employees and be supported by available resources
- Explain the parameters around Informal Resolution as determined by the 2020 Title IX regulations

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LEARNING OBJECTIVES

After completing this training, participants will be able to:

- Connect the major phases of an Informal Resolution process to each other
- Evaluate the appropriateness of Informal Resolution for individual complaints
- Recognize community and culture characteristics which may impact informal resolution process design
- Facilitate a basic negotiated agreement for a relational complaint

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A NOTE REGARDING THE VOCABULARY OF "CONFLICT" AND "DISPUTE"

Title IX resolution processes specifically address sexual harassment in many forms common between or among members of a school community.

Yet, traditional alternative resolution processes, as well as the language that we use to define them, focus on opportunities to reduce "conflict" or resolve a "dispute" between or among parties.

Although the complexity of many Title IX complaints cannot be fully captured as "conflict" or "dispute," these terms are used in this training to make connections with the existing field of alternative resolution methods and are not meant to minimize or diminish the reality of sexually harassing conduct.

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INFORMAL RESOLUTION & TITLE IX

- Title IX Overview
- Historical OCR Guidance
- 2020 Title IX Regulations
- 2021 Title IX Q&A
- Equity

WHAT DOES INFORMAL RESOLUTION MEAN TO YOU?

Group Brainstorm

TITLE IX

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

"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 educational program or activity receiving federal financial assistance."

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THE IX COMMANDMENTS

INVESTIGATION (plus **prompt** & **fair** per VAWA Sec. 304)	**Thorough**	**Reliable**	**Impartial**
PROCESS	**Prompt**	**Effective**	**Equitable**
REMEDIES	Act reasonably to stop discrimination	Act reasonably to prevent recurrence	Act equitably to remedy effects

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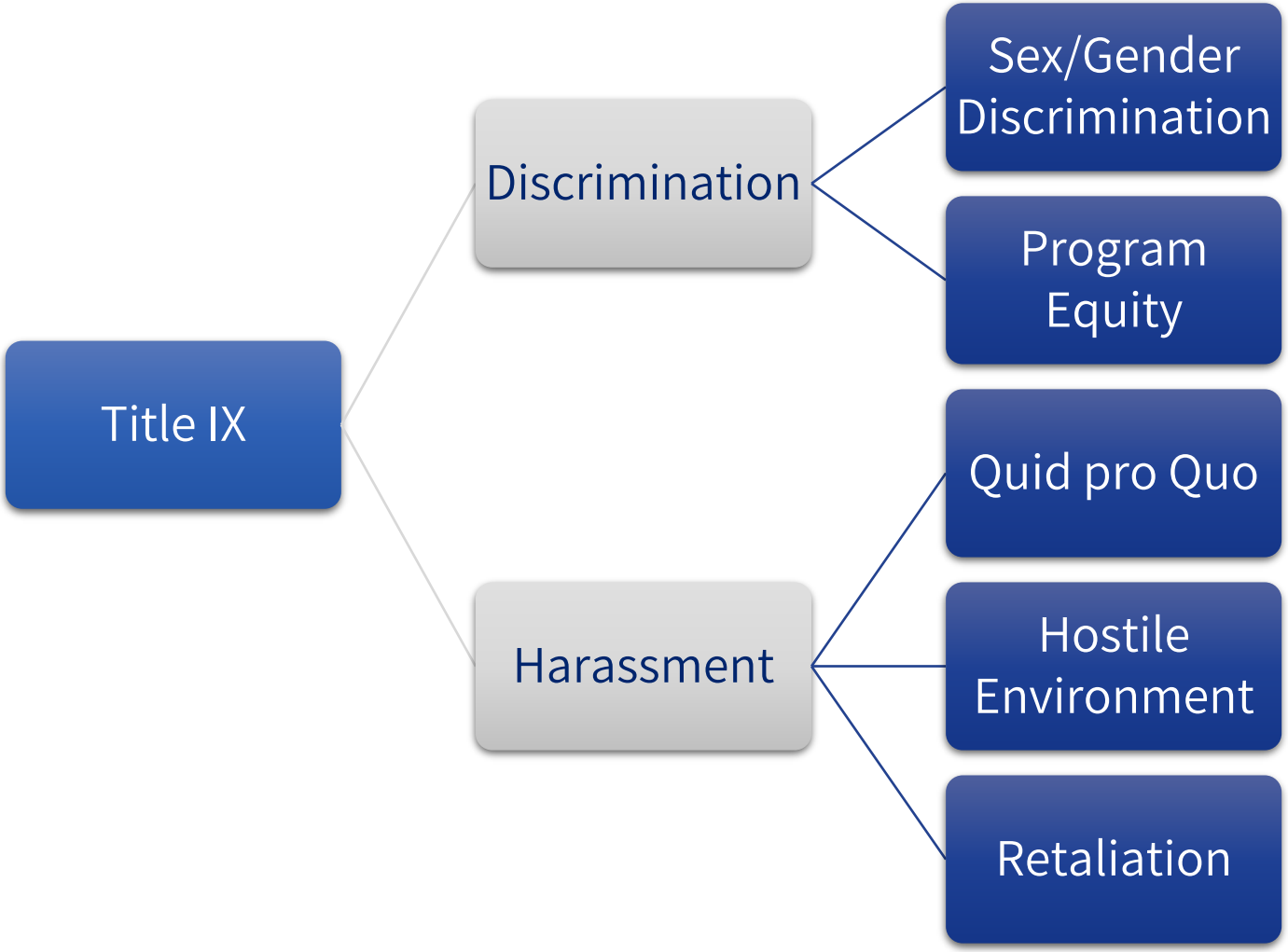
TITLE IX



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PREVIOUS OCR POSITIONS ON THE ROLE OF INFORMAL RESOLUTION

2001 Revised Sexual Harassment Guidance (rescinded)

- "grievance procedures may include informal mechanisms for resolving sexual harassment complaints to be used if the parties agree to do so." https://www2.ed.gov/about/offices/list/ocr/docs/shguide.pdf
- It may often not be appropriate for students who reported harassment to be required to "work out" the problem directly with the peer alleged to be harassing them, and that a high degree of involvement by the school, say by a teacher or administrator, would be required for an alternative resolution mechanism to be appropriate.

2011 Dear Colleague Letter (rescinded)

- "in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis."

https://www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.pdf

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OCR BEGINS TO PROVIDE INSTITUTIONAL DISCRETION FOR INFORMAL RESOLUTION

2017 Q&A on Campus Sexual Misconduct (rescinded)

- "[I]f all parties voluntarily agree to participate in an [alternative] resolution that does not involve a full investigation and adjudication after receiving a full disclosure of the allegations and their options for formal resolution, and if a school determines that the particular Title IX complaint is appropriate for such a process, the school may facilitate an [alternative] resolution, including mediation, to assist the parties in reaching a voluntary resolution."

https://www2.ed.gov/about/offices/list/ocr/docs/qa-title-ix-201709.pdf

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2020 TITLE IX REGULATIONS

- Recipients are permitted to offer Informal Resolution for formal complaints of sexual harassment as defined in 34 C.F.R. § 106.30
- Regulations do not define or prescribe what "Informal Resolution" looks like in practice; institutions will differ in application
- Requirements
  - Submission of a formal complaint
    - Exception: supportive measures only or conduct outside the purview of the 2020 regulations
  - Written notice to the parties:
    - Allegations
    - Requirements of the Informal Resolution process including the circumstances under which it precludes the parties from resuming a formal complaint arising from the same allegations

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2020 TITLE IX REGULATIONS (CONT.)

  - Any party has the right to withdraw from the Informal Resolution process and resume the formal grievance process with respect to the formal complaint at any point prior to agreeing to a resolution
  - Any consequences resulting from participating in the informal resolution process, including the records that will be maintained or could be shared
- Parties' voluntary, written consent to participate (institution may be considered a party, or at least TIXC approval needed for IR to be permissible)

- Not permitted to resolve allegations that an employee sexually harassed a student (that fall within the 2020 regulations)

34 C.F.R. §106.45(b)(9)

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2021 Q&A ON THE TITLE IX REGULATIONS ON SEXUAL HARASSMENT

Question 58

- "The [regulations] do not require that the parties interact directly with each other as part of an informal resolution process; mediations are often conducted with the parties in separate rooms and the mediator conversing with each party separately."
- "Schools may exercise discretion to make fact-specific determinations about whether to offer informal resolution in response to a complaint."

https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf

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2021 Q&A ON THE TITLE IX REGULATIONS ON SEXUAL HARASSMENT (CONT.)

Question 59

- "With the parties' consent, schools have the freedom to allow the parties to choose an informal resolution mechanism that best suits their needs."
  - "[E]ither party may withdraw from the informal resolution process and resume the formal grievance process at any time prior to agreeing to a resolution."
- Schools have an "obligation to ensure that all persons who facilitate informal resolutions are free from conflicts of interest and bias and are trained to serve impartially without prejudging the facts at issue."

https://www2.ed.gov/about/offices/list/ocr/docs/202107-qa-titleix.pdf

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EQUALITY
requires a level playing field that doesn't yet exist

JUSTICE
eliminates systemic barriers

The journey starts by asking those affected how they see and are impacted by the conditions, rules, and resources.

EQUITY
acknowledges systemic impediments with targeted fixes

AGENCY
individuals know that access is their right

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Adapted from Pittman, Karen (2018). *Changing the Odds Together.*

INFORMAL RESOLUTION OVERVIEW

- ATIXA's Informal Resolution Framework
- Terminology
- Informal Resolution Goals
- Informal Resolution Foundations
- Relational vs. Structural Complaints
- Flexibility
- Contextual Limitations

ATIXA'S INFORMAL RESOLUTION FRAMEWORK

Supportive Measures Only

Accepted Responsibility

Alternative Resolution

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TERMINOLOGY

For the purposes of this training, the following definitions apply:

- **Informal Resolution** – a complaint resolution approved by the Parties and the Recipient that occurs prior to a formal Final Determination being reached.
  - Under ATIXA's Informal Resolution Model, this includes:
    - Supportive Measures Only
    - Accepted Responsibility
    - Alternative Resolution
- **Supportive Measures Only** – a type of Informal Resolution in which the Title IX Coordinator resolves the matter by providing supportive measures (only) to remedy the situation

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TERMINOLOGY (CONT.)

- **Accepted Responsibility** – a type of Informal Resolution in which the Respondent accepts responsibility for violating policy and accepts the recommended sanction(s), ending the Resolution Process
- **Alternative Resolution** (AR) – a type of Informal Resolution in which the parties agree to resolve the complaint through an alternative resolution mechanism such as facilitated dialogue, mediation, or restorative practices.
  - Alternative Resolution may allow for, but does not require, the parties to communicate directly about the complaint with the assistance of a third-party facilitator.

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WHAT ARE THE GOALS OF INFORMAL RESOLUTION?

Group Brainstorm

"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?*" (underline emphasis added)

Chanel Miller, *Know My Name*

INFORMAL RESOLUTION GOALS

- Restoring educational access
- Empowering choice and agency over the resolution
- Identifying, and to the extent possible, addressing participants' needs and community needs
- Addressing past harm
- Preventing future harm
- Creating a space for communication and understanding when desired

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INFORMAL RESOLUTION FOUNDATIONS

- Safety (physical and emotional)
- Focus on needs
- Mutually serving
- Intentionality
  - Informal ≠ casual
- Presence
- Meeting parties where they are
- One IR process will not fix or prevent harm; strong pre- and post-process support and resources are needed

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RELATIONAL VS. STRUCTURAL COMPLAINTS

Relational Complaints

- Involve individuals and groups
- Incident- or relationship-based

Structural Complaints

- Involve policies, environments, resources, and structures
- Systemic and longer-term
- Often masquerade as relational complaints

Covert and Overt Conflict

Roots of Conflict

❖ Power & Control ❖

❖ Care & Connection (Violations of Trust) ❖

❖ Violations of Respect & Recognition ❖

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FLEXIBILITY

- There is no one-size-fits-all approach to Informal Resolution
- Structured modes of AR exist and can be drawn upon (e.g., mediation), but their structures may not fit the unique needs of Title IX complaints
  - Center participants rather than the institution or the process
  - AR needs to meet the needs of the parties AND the institution
- Institutions—and by extension their policies—should allow for flexibility in both structure and strategy
- Systems need to reasonably adjust to the participants not vice versa
- Structural complaints require a much different response than relational complaints

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CONTEXTUAL LIMITATIONS

- Informal Resolution offerings within an institutional resolution process are limited by that context
  - Available resources
  - Compliance requirements
  - Liability
  - Fitting into a policy/process
  - Cultural expectations and assumptions
  - Change management
- Institutions should be aware of external resources for resolution (formal and informal) and consider how those entities can interact with the institution

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INTRODUCTION TO DAVID & ANDREA

Case Study

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 after their relationship ended, including leaving notes on his vehicle on campus that stated, “This is not over;” approaching him after classes; appearing at his off-campus residence; and multiple phone calls and text messages demanding that he speak to her. Andrea has also asked his friends where David is and has shown up at off-campus locations where they are hanging out based on Instagram posts.

David explains that he has repeatedly asked Andrea to leave him alone and not 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 could resolution look like based on David’s story?

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INFORMAL RESOLUTION APPLICATION

- IR Within the Regulations
- IR Outside the Regulations
- IR for Relational Complaints
- IR for Structural Complaints
- Timing
- Common Off-Ramps for IR

INFORMAL RESOLUTION APPLICATION

"A [sometimes] elaborate process of getting people to listen to each other."
– Dan DeWalt

- Informal Resolution can take place at any point before a final determination is made
- Informal Resolution could be offered for both incidents which meet the definition of sexual harassment in 34 C.F.R. §106.30 and those which fall under another policy (e.g., conduct code, employee handbook, etc.)
- Each institution should decide if and in what form(s) it will offer Informal Resolution

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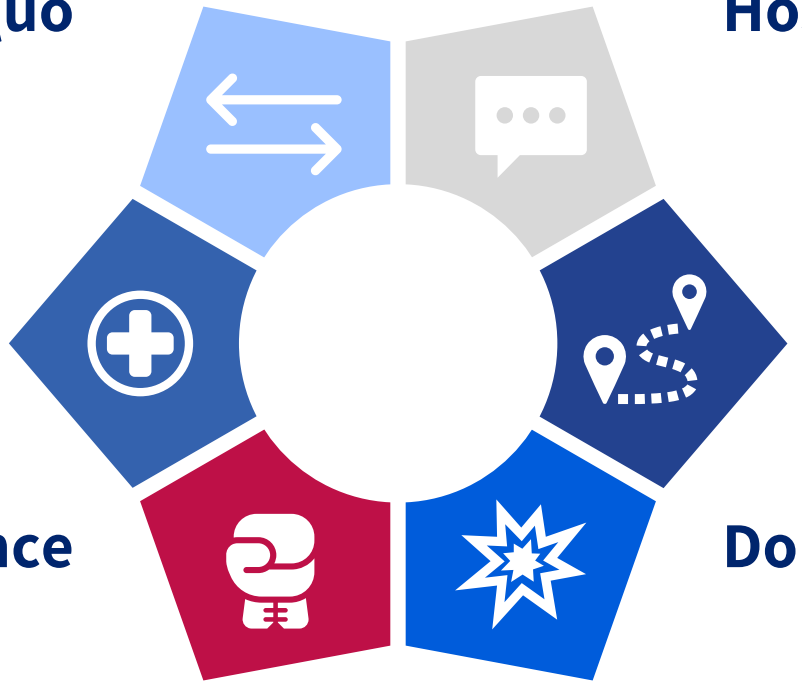
2020 TITLE IX REGULATIONS BEHAVIORS

Quid Pro Quo

Hostile Environment



Sexual Assault

Stalking

Dating Violence

Domestic Violence

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IR WITHIN THE TITLE IX REGULATIONS

- Alleged misconduct must be conduct that could meet the § 106.30 definition of sexual harassment, if proven
- Complainant must be participating or attempting to participate in the institution's education program or activity
- Alleged misconduct must have occurred against a person in the United States
- Respondent must be a student or employee (but no AR for complaints by students against employees)
- Formal complaint required
- Facilitated by an appropriately trained facilitator, avoiding conflicts of interest (we'll discuss bias later)
- Records maintained for a minimum of seven (7) years

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IR OUTSIDE OF THE TITLE IX REGULATIONS

- Can address both alleged policy violations and behaviors that would not violate policy but are impacting others
  - Cannot issue discipline for behaviors that would not violate policy; a party can agree to do or not do a specific action
- Can address non-sexual harassment civil rights complaints or sexual harassment/discrimination outside the Regulations
- Complainant can be affiliated or unaffiliated
- Recommend a written statement or complaint
- Recommend training as required by the Regulations and avoiding conflicts of interest (bias discussion to come)
- Records to be created and maintained per institutional policy

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INFORMAL RESOLUTION FOR RELATIONAL COMPLAINTS – PARTIES

- Centers the Complainant (and Respondent if accepting responsibility or pursuing alternative resolution)
- Empowers choice
- Needs-based
- Honors privacy similar to the formal grievance process
- Focused on ensuring educational access and restoration
  - Not meant as a plea bargain or even compromise, necessarily
  - Parties' Advisors often come to terms before the institution even approves a complaint for IR

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INFORMAL RESOLUTION FOR RELATIONAL COMPLAINTS – FOR THE COMMUNITY

- Addresses gaps that may exist between individual harm and community harm
- Considerations
  - Are the involved parties agreeable?
  - Are the involved parties present?
  - Do the power dynamics allow for voluntary choice?
  - Scale
- Common Settings
  - Departments/Academic Majors
  - Closed Communities (e.g., student organization, athletic team, performance group, etc.)
  - Residential living spaces (e.g., a specific floor)

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INFORMAL RESOLUTION FOR STRUCTURAL COMPLAINTS

- Often no specific Respondent as potential bad actor, though proxy Respondents can represent the structure subject to the complaint
- Typically requires facilitator with positional authority within the institution
- Often results in a two-phase resolution
  1. Remedying the immediate complaint
  2. System/policy/environmental change

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TIMING

- Informal Resolution processes may be implemented prior to, in lieu of, or following a formal grievance process
  - Institutions will need to decide whether an investigation should proceed or be paused while Informal Resolution is attempted (or some hybrid where some actions proceed while others are in abeyance)
    - The Title IX office should not allow the pursuit of Informal Resolution to be used as a tactic to "run out the clock" for a graduating Respondent
- Timing may inform which structure or options are available and applicable

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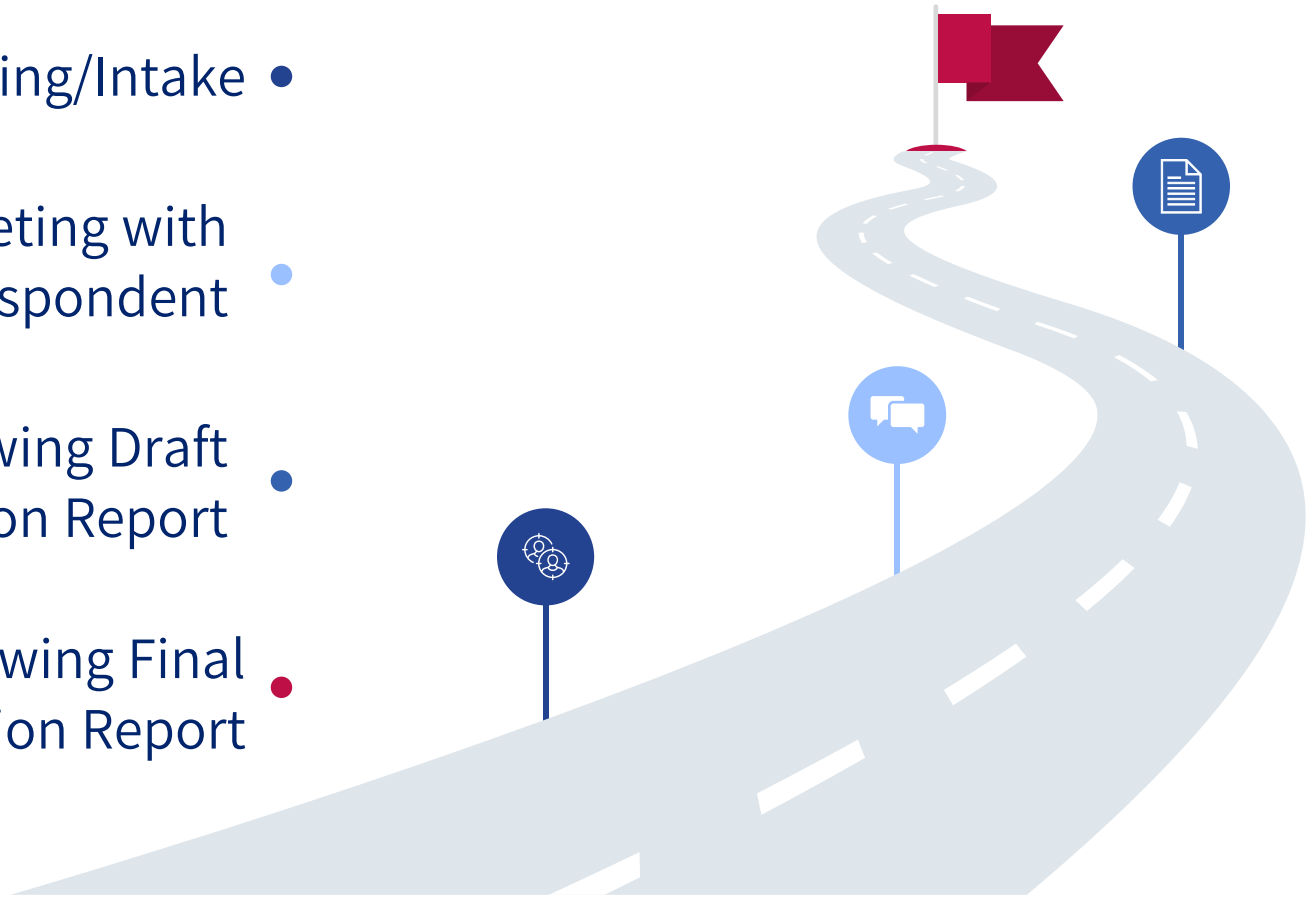
COMMON OFF-RAMPS FROM FORMAL TO INFORMAL RESOLUTION

- Info. Meeting/Intake
- First Meeting with Respondent
- After Reviewing Draft Investigation Report
- After Reviewing Final Investigation Report



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DETERMINING AVAILABILITY AND APPROPRIATENESS

- Making Informal Resolution Available
- Considerations for Appropriateness
- Determining to Proceed with IR

MAKING INFORMAL RESOLUTION AVAILABLE

Can the institution uphold the key values of IR?

- **Safety** – Are there conditions that could create an unsafe environment?
- **Mutually serving** – Can the institution provide a facilitator who can serve all parties and the institution in the resolution process?
- **Quality** – Do the facilitators have sufficient training, expertise, and sensitivity to facilitate a process?
- **Privacy** – Can the institution ensure the privacy of the process?
- **Self-Determination** – Does the institution allow parties to make fully informed decisions for themselves?

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CONSIDERATIONS FOR APPROPRIATENESS

Informal Resolution may not be appropriate if one or more of the following are present:

- History of emotional, physical, or sexual violence between the parties
- Power imbalances between the parties that cannot be offset by appropriate support measures
- Any situations where the parties' engagement in IR could jeopardize the safety or well-being of a party
- Situations involving minors who have been harmed by adults
- Party or parties not sincere or acting in good faith

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ATIXA'S INFORMAL RESOLUTION FRAMEWORK

- Supportive Measures Only
- Accepted Responsibility
- Alternative Resolution

SUPPORTIVE MEASURES ONLY

- Complainant declines to pursue formal grievance process
- Title IX Coordinator works with Complainant to determine reasonable and appropriate supportive measures
  - May not adversely impact the Respondent
  - No cost to Complainant
- Examples
  - Housing reassignment
  - Academic adjustment
  - Counseling
  - No Contact Directive*
  - Modified work schedule

*Requires Respondent notification

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SUPPORTIVE MEASURES ONLY (CONT.)

- Facilitation Foundations
  - What does TIX Coordinator/intake staff need to know?
  - Discuss Complainant needs and goals
  - Work collaboratively to identify reasonable and appropriate supports
  - Empower choice
  - Be cautious about incomplete stories
- Appropriate Documentation
  - Decision to decline formal complaint and/or other resolution options
  - Option to pursue formal complaint in the future
  - What was offered, declined, and implemented
    - How to request additional support or modifications

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SUPPORTIVE MEASURES ONLY OUTCOME

- "Agreement" between Title IX Coordinator 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 Student regarding academic adjustments appropriate to their courses. Student 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 policy violation(s) prior to a final determination being made
- Title IX Coordinator (or an institutional representative), Complainant, and Respondent agree to sanction(s)/corrective action(s) and/or remedies
- If the institution uses a progressive sanctioning model, the Title IX Coordinator will need access to the Respondent's prior disciplinary history
- No appeal process if all parties agree on terms of IR

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ACCEPTED RESPONSIBILITY (CONT.)

- Facilitation Foundations
  - What does TIX Coordinator/intake staff need to know?
  - Discuss Complainant and Respondent needs and goals
  - Ensure all parties are voluntarily participating
    - Will include parent/guardian in K-12 setting
  - All parties must assent to findings/sanctions
  - Outcome enforcement procedures
- Appropriate Documentation
  - Decision to decline formal grievance process and/or other resolution options
  - Signed agreement

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ACCEPTED RESPONSIBILITY OUTCOME

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

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ALTERNATIVE RESOLUTION

- Mutually serving facilitator assists parties with reaching a complaint resolution
- May or may not result in a formalized agreement
- Can follow a common structure or be more fluid
- Involves intake, preparation, facilitation, and closure
  - Conflict Coaching
  - Facilitated Dialogue
  - Shuttle Diplomacy
  - Mediation
  - Restorative Practices
  - Circles of Support and Accountability

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CONFLICT COACHING

- A party works one-on-one with a trained facilitator to discuss an incident or conflict and explore strategies for addressing it with the other party
- May include role playing practice
- **Strengths**
  - Can prevent low-level concerns from escalating to potential policy violations
  - Empowering individual to address misconduct directly
- **Challenges**
  - Relies upon one individual's account of the information and context
  - Highly dependent upon initiating party's willingness and readiness to implement any of the discussed strategies

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FACILITATED DIALOGUE

- All parties engage in a direct conversation about the incident/conflict with the assistance of a mutually serving facilitator
- Focus is on providing a space and framework for communication rather than on finding an agreement
- **Strengths**
  - Allows parties to discuss their individual experiences and listen to the experiences of others without pressure to reach an agreement
- **Challenges**
  - May leave parties feeling the situation is unresolved
  - Can easily turn to debate vs. dialogue

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SHUTTLE DIPLOMACY

- Third-party facilitator acts as a go-between for the parties to negotiate a resolution
- Often takes several conversations with each party before a resolution is reached
- **Strengths**
  - Allows parties to reach resolution without direct interaction
  - More process-focused than mediation, which is more outcome-focused
- **Challenges**
  - Reliant upon the facilitator's accuracy and skill in communicating between the parties
  - Typically does not effectively address underlying feelings and needs

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MEDIATION

- Structured process where a trained mutually serving facilitator fosters an environment for open communication between the parties
- Goals may include improving relationships, resolving issues, and/or achieving specific outcomes
- **Strengths**
  - Seeks to address both short-term and long-term issues
  - Process is often structured to facilitate the parties coming to some sort of tangible agreement about how to move forward
- **Challenges**
  - Incidents involving abusive behavior, violence, and sexual violence are poor candidates for mediation
  - Often results in compromise with which no party is fully satisfied

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RESTORATIVE PRACTICES

- Based on restorative principles
- Commonly designed as a circle process with a mutually serving facilitator and the parties; impacted community members and/or supporters for the parties are optional
- May also take the form of conferencing or an exchange of statements
- A proxy may participate in the place of an impacted party
- Focus on identifying harm, taking accountability for the harm, and determining how to best repair the harm; **Respondent must take accountability for causing harm**

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RESTORATIVE PRACTICES (CONT.)

- **Strengths**
  - Allows the parties to work collaboratively to determine how harm and relationships can be repaired
  - Process itself can be cathartic
- **Challenges**
  - Most institutions do not have internal staff with the skill and experience to facilitate
  - It is a cultural shift for most Respondents to accept responsibility for their behavior
  - Can feel minimizing, and care must be taken not to pressure the participants toward a “feel good” outcome

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CIRCLES OF SUPPORT AND ACCOUNTABILITY

- Longer-term process focused on successful community reintegration after a Respondent has committed a violation
- Circle supports the Respondent to provide emotional support, develop constructive and pro-social strategies to address everyday problems, and to challenge the behaviors and attitudes that may be associated with the harmful behavior
- **Strengths**
  - Acknowledges humanity of Respondent
  - Significantly reduces likelihood of recidivism
- **Challenges**
  - Limited application in educational settings at present; requires significant volunteer commitment

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TRANSFORMATIVE PRACTICES

- Historically seen in communities of color within the U.S.
- Rooted in communities rather than within systems
- Focus on addressing issues of injustice and oppression which lead to inequity and power abuses within communities and create the conditions under which harm is done
- **Strengths**
  - Provides means to address community impact beyond the parties involved
  - Often addresses harmful behaviors which fall outside the scope of policy
  - Useful for addressing structural complaints holistically
- **Challenges**
  - Intentionally takes place outside of a system/policy

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ALTERNATIVE RESOLUTION PROCESS

- Intake
- Iterative Process
- Process Closure

INTAKE MEETINGS FOR ALTERNATIVE RESOLUTION

- Who Should Facilitate?
- Intake from Referral vs. Intake without Referral
- Intake with Complainant
- Intake with Respondent
- Intake with Others
- Example Evaluation Frameworks

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WHO SHOULD FACILITATE?

- Mutually serving, culturally competent facilitators are impartial to the content of the complaint and connect to the participants in order to build rapport and trust for the resolution process
- Consider the identities and lived experiences of the parties and the facilitators
- Title IX Coordinator?
- Investigator?
- Title IX Team Member?
- External?

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INTAKE FOR ALTERNATIVE RESOLUTION

- May be first contact with process or result from a referral
- May be initiated by one party, but all parties need to participate in individual intake sessions
  - Involve parent/guardian in K-12 setting
  - May involve Advisor
- Evaluate safety (emotional and physical)
- Ascertain motivation and goals, and manage expectations
  - Where is there openness?
  - Where are there impediments or barriers?
  - How can other options be brought to the parties' attention?

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INTAKE FOR ALTERNATIVE RESOLUTION (CONT.)

- Determine what would prevent continuation/progress from parties' perspectives
- Identify support resources
- Provide print or web-based materials for reference
- Anticipate the need for follow-up conversation/meetings
- Establish reasonable expectations for what outcomes can be achieved, if successful
- Establish reasonable expectations for what happens if AR unsuccessful

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FACILITATOR REMINDERS

- For most parties, this will all be new
- The facilitator's job is to make an action or process easier
- The parties' choices are not about the facilitator
- Don't come with assumptions
- Do more listening than telling
- Be comfortable with silence
- Use a representative of the institution as an additional party where the possible outcomes by the parties may tend to minimize harm or do not adequately redress institutional needs

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INTAKE FROM REFERRAL VS. INTAKE WITHOUT REFERRAL

Intake from Referral

- Foundation for conversation has been established
- Party may be cautious, curious, or committed
- Begin to build rapport

Intake without Referral

- Foundation for conversation has **not** been established
- Start from the beginning
- Begin to build rapport

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POSITIONS, INTERESTS, AND NEEDS

- Based on the theory that there are limited universal needs (see supplemental materials for a list)
- **Positions** – specific demands; a chosen stance; a solution a party has decided upon
  - Based on understanding of the options and context
  - Example: "I want the Respondent suspended."
- **Interests** – the underlying motivations, hopes, concerns, desires, 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."
- **Needs** – what a party actually must have
  - Example: safety

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WHAT ABOUT FEELINGS?

- Feelings are our reactions to events and experiences
- Emotions are outward expressions of feelings
- We are not responsible for what we feel; we are responsible for what we do in response
- Feeling ≠ something someone can do to another person
- Judgments often masquerade as feelings
  - If it is assigned to someone else's behavior, it is not a feeling
  - Examples: neglected, violated, mistreated, pressured
- Feelings lead individuals to identify their met and unmet needs

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INTAKE WITH COMPLAINANT

- Share what occurred from their perspective
  - What does it feel like to talk about this?
- Positions, interests, needs, feelings
  - Most parties will start with positions; it is the facilitator's job to get to the needs and feelings
- Goals
  - Which resolution method is most likely to meet their goals?
- Motivation for pursuing Alternative Resolution
- Next Steps:
  - Confirmation of assent to participate
  - Contact with Respondent
  - Informal Resolution Consent Form

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INTAKE WITH RESPONDENT

- May be the first time they are hearing about the allegations (outside of the NOIA)
- Share what occurred from their perspective
  - What does it feel like to talk about this?
- Positions, interests, needs, feelings
- Goals
  - Which resolution method is most likely to meet their goals?
- Motivation for pursuing Alternative Resolution
- Next Steps:
  - Confirmation of assent to participate
  - Informal Resolution Consent Form

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EXAMPLE EVALUATION FRAMEWORKS

Nonviolent Communication - Four Chairs

10 Ds of Opposition

Four Levels of Accountability

ATIXA's 1P2P Framework

LISTEN SLOWLY

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“The way we frame an issue in a large way says who we believe is responsible for fixing it.”
– Gretchen Casey

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NONVIOLENT COMMUNICATION – FOUR CHAIRS

Chair 1: Blame Others

Chair 2: Blame Self

Chair 4: Curiosity toward Others

Chair 3: Compassion toward Self

Adapted from training by https://www.thebigbiemethod.com/

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10 D'S OF OPPOSITION

- Deflect
- Delay
- Deny
- Discount
- Deceive
- Divide
- Dulcify
- Discredit
- Destroy
- Deal

Adapted from https://sdc.ahslabs.uic.edu/wp-content/uploads/sites/5/2014/04/Public_Health_web_4.pdf

FOUR LEVELS OF ACCOUNTABILITY

1. Ability to acknowledge that someone was harmed
2. Ability to acknowledge that someone was harmed by something you did
3. Desire to understand the harm's impact on the other person
4. Desire to do something that might help to repair the harm / restore the relationship

Attributed to Judah Oudshoorn, M.A.

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ATIXA'S 1P2P FRAMEWORK

- The parties' amenability to Alternative Resolution
- Likelihood of potential resolution, taking into account any power dynamics between the parties
- The parties' motivation to participate
- Civility of the parties
- Results of a violence risk assessment/ongoing risk analysis
- Disciplinary history
- Whether an emergency removal is needed
- Whether the TIXC initiated the complaint

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ATIXA'S 1P2P FRAMEWORK

- Skill of the Alternative Resolution facilitator with this type of allegation
- Complaint complexity
- Emotional investment/capability of the parties
- Rationality of the parties
- Goals of the parties
- Adequate resources to invest in Alternative Resolution (time, staff, etc.)

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DAVID AND ANDREA PART II

DAVID & ANDREA

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 that she should be continuing to contact him (i.e., no shared children, pets, property, etc.). He requests a No Contact Order and is considering whether to file a formal complaint.

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DAVID & ANDREA

Next Steps

- Based on the information David has provided, what would your next steps be?
- Is it your practice to speak to the other party before deciding to issue a No Contact Order?
- Consider: Is the Complainant the first one who was believed, the first one who came forward, or the first one to complain?

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DAVID & ANDREA

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 at multiple times. Andrea has heard a rumor that David still has the photos and has commented 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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ITERATIVE PROCESS FOR ALTERNATIVE RESOLUTION

- Preparation Meetings
- Facilitation
- Process Closure

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PREPARATION MEETINGS

- Some parties may require multiple preparation meetings before being ready to engage in an alternative resolution process
- Preparation meetings will vary depending upon the type of alternative resolution being pursued
  - Stay focused on the present rather than planning for the outcome, as the outcome could take unanticipated direction(s)
- Consider what the facilitator wants to ask, do, or achieve for each meeting
- Possibility that parties won't get to a place where they are ready to interact

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FACILITATION

- Opening
  - Ground rules/guidelines
- Connection and Communication
- Developing Agreements (if any)
- Closing

Note: Facilitation will be covered more in-depth in Informal Resolution II

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DAVID AND ANDREA PART III

POSITIONS, INTERESTS, AND NEEDS

David

P – I want Andrea to leave me alone

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

N – space, independence

Andrea

P – David needs to delete the photos

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

N – integrity, cooperation, respect

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DAVID & ANDREA

- How could a facilitator approach resolving the situation between David and Andrea?

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REFLECTION, FOLLOW-UP, AND CLOSING PROCESS

- **Agreements (if any)**
  - Are agreements clear, including what will happen if agreements are not upheld?
  - Does agreement resolve the complaint?
  - Title IX Coordinator approval
- **Follow-up with the parties**
  - Satisfaction survey/questionnaire
  - Enforcement of the agreement (if applicable)
  - Continued supportive measures
  - Longer term follow-up (6-12 months)
  - Connections to other resources (BIT, counseling, etc.)
- **Debrief** – are there opportunities for facilitator(s) to debrief and discuss what went well and what can improve?

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DOCUMENTATION

- Communication to the parties upon TIXC approval
  - Be clear what is required of the parties, if anything
- Complaint File Documentation
  - Formal Complaint
  - Communication with the parties
  - Signed participation agreements
  - Rationale for not being deliberately indifferent
  - Verification of any to-do's being completed
  - Memorializing any confidential/non-confidentiality understandings established
- Is there enough information included to evaluate if a pattern may exist in the event of a future complaint?

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CROSS-CULTURAL CONSIDERATIONS FOR INFORMAL RESOLUTION STRUCTURES AND IMPLEMENTATION

- Culture
- Intersectionality
- Implicit and Explicit Bias
- Power and Privilege
- Trauma and Culture

CULTURALLY SPECIFIC APPROACHES AND TRAUMA INFORMED PRINCIPLES

- Establish relationships based upon mutuality and respect
  - Understand what it means to have a fluid process
  - Be humble
- Seek a deep understanding of the communities with which you work
  - Understand intersectionality
  - Challenge your assumptions
- Understand the origins of trauma including cultural, historical, and intergenerational
- Identify culturally appropriate ways to describe distress
- Adjust to literacy and language issues

Source: Serrata, J., & Notario, H. Trauma informed principles through a culturally specific lens.

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CULTURE

- Cultural Competence
- Approaches to Conflict Resolution
- Dynamics of Gender-based Violence and Culture

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CULTURE

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

(Adler and Jelinick, 1986)

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WHAT IS CULTURAL COMPETENCE?

- The ability to understand, communicate with, and effectively interact with people across cultures
- Encompasses:
  - Being aware of one's own worldview
  - Developing positive attitudes towards cultural differences
  - A willingness to accept and respect cultural differences
  - Gaining knowledge of different cultural practices and worldviews
  - Incorporating these competencies into institutional practices, polices, procedures, and programming

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CULTURAL COMPETENCY STAGES

The process of achieving cultural competency occurs along a continuum.

1. Cultural Destructiveness
2. Cultural Incapacity
3. Cultural Blindness
4. Cultural Pre-competence
5. Cultural Competence
6. Cultural Proficiency

Source: Goode, T.D. (2004). *Cultural competence continuum.* National Center for Cultural Competence.

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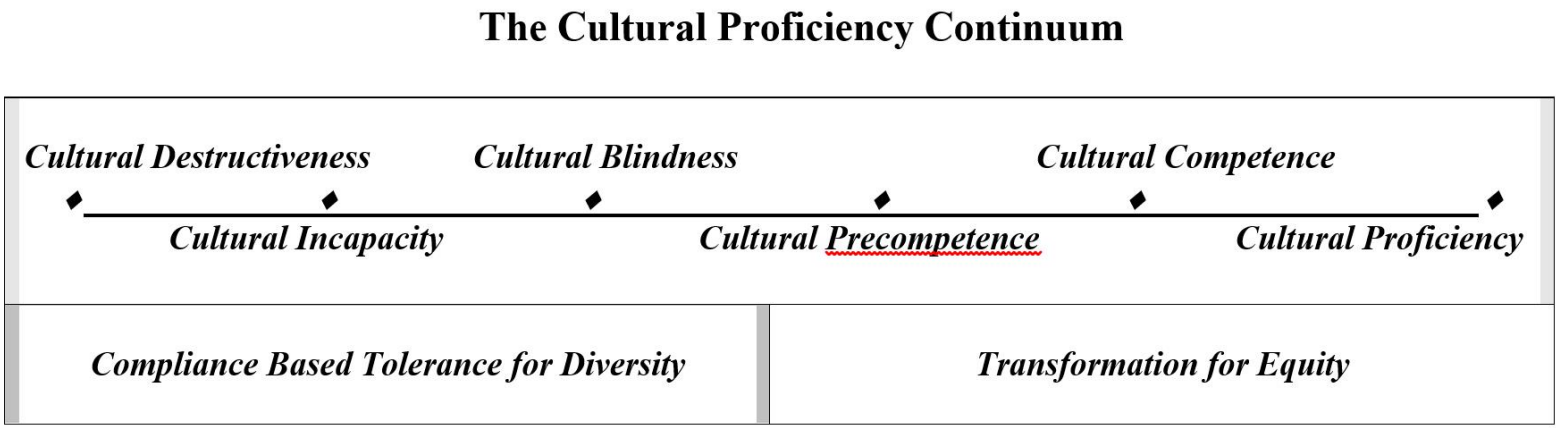
CULTURAL COMPETENCY CONTINUUM



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STAGE ONE:
CULTURAL DESTRUCTIVENESS

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

- Using one's power to eliminate the culture of another
- Examples:
  - Genocide or ethnocide
  - Exclusion laws
  - Avoidance of certain curriculum topics
  - Intentional exclusion of certain curriculum topics
  - Comments such as, "If we didn't have special needs students, our scores would improve"
  - Comments such as, "Every student needs to be able to speak English in order to be admitted"

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STAGE TWO: CULTURAL INCAPACITY

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

- Includes institutional and/or systemic bias
- Can incorporate practices that may result in discrimination
- Encompasses disproportionate allocation of resources that may benefit one cultural group over another
- Involves subtle messages that some cultural groups are neither valued nor welcomed
- Manifest into lower expectations for some cultural, ethnic, or racial groups
- Expecting “others” to change

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STAGE THREE: CULTURAL BLINDNESS

Expressed philosophy of viewing and treating all people the same

- Examples include:
  - Policies and personnel that encourage assimilation
  - Support and services that ignore cultural differences
  - Limited-to-no resources allocated for training and development that educate on cultural and linguistic competence
  - Workforce that lacks diverse representation
  - Student body that lacks diverse representation

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STAGE FOUR:
CULTURAL PRE-COMPETENCE

A level of awareness within institutions or organizations of their strengths and weaknesses in order to respond effectively to culturally and linguistically diverse populations

- Institutions or organizations expressly value the delivery of high-quality services and support mechanisms for culturally and linguistically diverse populations
- A commitment to human and civil rights
- Hiring and recruitment practices reflect diverse representation and a commitment toward maintaining diverse representation
- The capacity to conduct a needs assessment within diverse communities

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STAGE FIVE:
CULTURAL COMPETENCY

A demonstration of acceptance and respect for cultural differences

- Establishment of a mission statement that articulates principles and values that include cultural and linguistic competence in all aspects of the institution
- Policies and procedures that integrate cultural and linguistic competence into each function of the institution
- Provide fiscal support, professional development, and incentives for the improvement of cultural competence at the board, program, faculty, student, and staff levels
- Practice principles of community engagement that result in the reciprocal transfer of knowledge and skills between all campus and community members

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STAGE SIX: CULTURAL PROFICIENCY

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

- A continuous practice of adding knowledge to the field of cultural competence
- Employs faculty and/or staff with expertise in cultural competence
- Supports and mentors other institutions/organizations as they progress along the cultural competence continuum
- Actively pursues resource development to continually enhance and expand the organization's capacities in cultural competence
- Advocates with, and on behalf, of populations who are traditionally underserved and underrepresented

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DYNAMICS OF GENDER-BASED VIOLENCE AND CULTURE

GENDER-BASED VIOLENCE

- **Gender-Based Violence** encompasses the many forms of gender-based misconduct that occur in different contexts, including negative behaviors directed at an individual based on their gender, gender expression, or sex as well as behaviors that are sexual in nature
- Power is integral to individuals' ability to make their own decisions and navigate society at every level in a way that makes sense for them.
- GBV occurs across many different types of relationships, from the most intimate and personal ones, to those that are professional and work-based, to more informal or one-time interactions.
- The type of relationship can have an enormous impact on not only how power is used or abused to inflict harm but also on what strategies will provide the most effective responses.

Source: https://www.americanprogress.org/issues/women/reports/2019/10/31/476588/transforming-culture-power/

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GBV AND CULTURE

- Culture influences *how* gender-based violence is viewed
  - Spoken or unspoken rules about behavior
  - Bodily autonomy
  - Fear, shame, devaluation
  - Laws
  - Religious beliefs
- Use of respondents' achievements to exonerate, excuse, and/or deny the impact of their behavior
- GBV is often experienced in the context of additional oppressions based on race, ethnicity, age, sexual orientation, gender identity, type of labor performed, level of education, class position, disability, and immigration or refugee status.

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APPROACHES TO CONFLICT RESOLUTION

APPROACHES TO CONFLICT RESOLUTION

Open Attitude

- Effective conflict resolution requires understanding of one's knowledge gaps
- Seeks to close those gaps through education, training, and experiences
- Recognizes how culture impacts ideas and alternative viewpoints
- Seeks to understand the role culture has in deference to authority
- Considers differing viewpoints as part of conflict resolution process
- Intentionality with engaging with others who differ in cultural identities

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APPROACHES TO CONFLICT RESOLUTION

Self Awareness

- A clear understanding of your personal background and culture and how it can impact the process
- Awareness of your assumptions, biases, and judgments
- Full awareness of how others might perceive you and your role
- Knowledge of your strengths and limitations
- Ability to recognize your cultural incompetence, or exclusive behaviors toward certain groups
- Full capacity to self-reflect

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APPROACHES TO CONFLICT RESOLUTION

Awareness of Others

- Recognition that all individuals are unique with respect to their background, worldview, beliefs, and values
- An understanding that all individual differences are equally valuable
- Requires the use of active listening skills
- Recognizes when words or actions have a negative impact on others
- Understands how individual's background may impact their ability to manage conflict
- Seeks to understand linguistical differences and how language may impact the process
- Extremely important when engaging in conflict resolution

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APPROACHES TO CONFLICT RESOLUTION

Cultural Knowledge

- The acquisition of information about others' values, norms, and beliefs
- Can be obtained through research, trainings, direct experience with others, etc.
- Requires action
- Occurs over time
- Can vary by individual and/or group
- Study the cultures represented within your institution
- Cultural knowledge is power
  - One's potential and ability to succeed in establishing trust with you increases greatly

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APPROACHES TO CONFLICT RESOLUTION

Cultural Skills

- With practice, cultural knowledge can turn into cultural skills
- Ability to adapt your communication style to different individuals, groups, and cultures
- Requires extremely effective active listening skills
- Establishes relationships based on mutual trust
- Ability to identify any areas of concern within and have full recognition of their impact
- Understand how to make clear, respectful, requests of others

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POWER AND PRIVILEGE

PRIVILEGE AND POWER

- Unearned benefits given to members of one social group as a result of the systemic targeting or marginalization of another social group
- Sensitive topic
- Not fully understood
- Contextually is about groups not individuals
  - Majority groups: large representation, historically held advantage in terms of power and resources
  - Minority group: fewer representation, limited to no power or resources historically
  - Example: Pay inequities

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PRIVILEGE AND POWER

Privilege

Rights, benefits, and advantages enjoyed by a person or group of people that is not afforded to others or afforded at unequal levels based on a characteristic or identity

- Socioeconomic status
- Ability status
- Age
- Marital status
- Parental status
- Citizenship

Power

- Interconnected with privilege
- The ability or authority to decide what's best for others and who will have access to resources
- The capacity to exercise control over others

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PRIVILEGE AND POWER IN CONFLICT RESOLUTION

Influences the dynamics of the conflict

- Overtly
- Indirectly

Requires addressing social dimensions of identity directly

- Identity and cultural competence should be fundamental to intervention techniques and conflict resolution processes

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PRIVILEGE AND POWER
IMPACT OF FACILITATORS' IDENTITIES

- May impact parties' perceptions/assumptions of ability to be successful with their resolution
- Less privileged facilitators might create suspicion or lack of trust from parties from more privileged backgrounds
  - Question of credentials/abilities
  - Ability to *lead* the process may be diminished
- More privileged facilitators are often viewed as more successful and more qualified, generally
  - Less likely to find cultural competence relevant and important

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FINAL THOUGHT

"Becoming aware of privilege should not be viewed as a burden or source of guilt, but rather an opportunity to learn and be responsible so that we may work toward a more just and inclusive world."

- Author Unknown

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INTERSECTIONALITY

WHAT IS INTERSECTIONALITY?

- An analytical framework for understanding how aspects of a person's identities combine to create various types of discrimination and privilege
- Recognizes that identity markers (e.g., woman and Latina) do not exist independently of each other **and** that each informs the others
- Often creates a complex convergence of oppression

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INTERSECTIONALITY AND RACE

Critical Race Theory

- Research suggests that race itself is a socially constructed concept that is used by white people to further their economic and political interests and power at the expense of people from other racial identities
- One's race might become the dominant identity when navigating or attempting to navigate a system
  - Out of the individual's control
  - Involves existing systemic cultures
  - Requires strong commitments, actions, and changes to policies, procedures, and laws to change such systems

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INTERSECTIONALITY AND GENDER/GENDER IDENTITY/EXPRESSION

- Intersectionality as a construct focused primarily on feminism and how gender as an identity experiences bias in society
- Historically, women are more likely to experience sex-based violence
- Gender identity becomes more salient for individuals who identify along the gender spectrum when societal lack of knowledge and understanding is demonstrated
  - Increases the risk of discrimination and bias toward identities and expressions society doesn't see as *conforming*

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INTERSECTIONALITY AND ABILITY

- People with disabilities often experience challenges when seeking inclusion
- Visible disabilities receive more recognition than invisible disabilities
- Invisible disabilities are often viewed as inconsequential or as a privilege in comparison to visible disabilities
- Ability status in connection with other identities, such as race, can become diminished
- Some identities create barriers to accessing disability services
  - Example: Undocumented immigrants with disabilities may not be eligible for certain services

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INTERSECTIONALITY AND SEXUALITY

- Sexuality is a broad term that includes one's sexual orientation and one's beliefs and values relating to sex
- Important to recognize because it allows experiences across the sexual spectrum to be shared and valued
- Often a less dominant identity trait for females
- Can be the most dominant identity trait for males
- Sexuality as an identity impact:
  - Body image
  - Thoughts and feelings
  - Gender identity
  - Relationships
  - Values and beliefs
  - Employment

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INTERSECTIONALITY AND ETHNICITY

- Recognizes people mostly based on language and shared culture
- Distinctively different than race although frequently intertwined with race
- Draws on different aspects of one's ascribed racial identity, culture, ancestry, and religion
- Can create a feeling where individuals feel siloed into one group or another
  - Example: African immigrants come to the U.S., and they're labeled as "black" where in their home country they are labeled as "Senegalese" or "Kenyan" or "Nigerian"

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THE IMPORTANCE OF INTERSECTIONALITY WITH CONFLICT RESOLUTION

- Individual's unique experiences impacts how they deal with conflict
  - Accommodation
  - Compromise
  - Avoidance
- Without an intersectional lens, efforts to resolve conflict will fail and are likely to perpetuate existing inequalities
- Establishing effective conflict resolution processes require addressing how interpersonal violence differs between groups
- Provides an avenue for marginalized groups to be heard

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IMPLICIT AND EXPLICIT BIAS

WHAT IS BIAS?

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

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WHAT IS BIAS (CONT.)?

- Formed from stereotypes, societal norms, cultural experiences, expectations of the people around you
- Can affect our perceptions of Complainants *and* Respondents
- What are some common pre-conceptions you can think of about Complainants? Respondents?
- Can affect our perceptions of others within the process or associated with the process
  - Example: parents/guardians
  - Example: witnesses, advisors

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BIAS ORIGINATION

Past Experiences

Family

Societal & Institutional Norms

Stereotypes

Politics, Religion

Self Identity, Affinity Groups

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COMMON BASIS FOR POTENTIAL BIAS

- Ability
- Age
- Citizenship status
- Ethnicity
- Gender
- Gender Identity/Expression
- Health status
- Marital status
- Mental health status
- National origin
- Parental status
- Physical attributes
- Race
- Religion
- Sexual orientation
- Socioeconomic status (can include finances, education, housing, etc.)

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TWO TYPES OF BIAS

Explicit

- Conscious bias
- Clear feelings and attitudes
- Behaviors are conducted with intent
- In its extreme, it is characterized by overt negative behaviors that can be expressed through physical and verbal harassment or through exclusion

Implicit

- Unconscious bias
- Operates outside of the person's awareness
- Can be in direct contradiction to a person's espoused beliefs and values
- Can be pervasive

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TRAUMA AND CULTURE

WHAT IS TRAUMA

The response to a deeply distressing or disturbing event that overwhelms an individual's ability to cope, causes feelings of helplessness, diminishes their sense of self and their ability to feel a full range of emotions and experiences.

- Does not discriminate
- Is pervasive
- Typically involves loss of control, abuse of power, pain, confusion
- Varies from person to person
- Defined more by response than trigger

Source: https/www.integratedlistening.com

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TRAUMA

- Three reactionary brain processes:
  - **Dissociation**: disconnection from body and experience; a reflex when escape is not a perceived possibility
  - **Tonic immobility**: inability to move or talk; often after a struggle or failed attempt to flee
    - ("I tried to fight, but I couldn't")
  - **Collapsed mobility**: inability to move or talk; decrease in heart rate, of muscle tone
    - Some may describe as "pretending to sleep" but it is not actually a conscious decision
    - May result in fainting
    - Offset is more gradual than with tonic

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HISTORICAL TRAUMA

- Cumulative emotional and psychological wounding over the lifespan and across generations, emanating from massive group trauma
- Impacts individuals by what has happened to “their people” as opposed to them individually
- Creates an added layer for those who also experience trauma individually
- Groups most devasted by this trauma are often women and children

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TRAUMA AND CULTURE
SAMHSA'S PRINCIPLES

- Culture influences how an individual interprets and assigns meaning to the trauma
- Culture significantly influences how people convey traumatic stress through behavior, emotions, and thinking
- Culture affects what qualifies as a legitimate health concern and which symptoms warrant help
- Culture can provide a source of strength, unique coping strategies, and specific resources

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CULTURAL TRIGGERS EXAMPLES

- Cultural Memories
- Immigration Experiences
- Race-Related Stressors
- Socio-Economic Status
- Ceremonial Practices
- Religious Persecution

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COMMON TYPES OF AND PREVALENCE FOR EXPOSURE TO TRAUMA

- Any trauma: Lifetime prevalence of exposure to any trauma for racial/ethnic minorities varied by ethnic groups:
  - Black: 76.4%
  - Asian/Hawaiian/Pacific Islander: 66.4%
  - Hispanic: 68.2%
- PTSD: The lifetime prevalence of PTSD is highest among:
  - Black: 8.7%
  - Hispanic: 7.0%
- Intimate Partner Violence (IPV): Lifetime prevalence of being a victim of IPV:
  - Multiracial: 53.8%
  - American Indian/Alaska Natives: 46%

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INSTITUTIONAL SUPPORT FOR ALTERNATIVE RESOLUTION

- Interest and Openness
- Involving Stakeholders
- Program Proposal
- Resource Considerations
- Financial Considerations
- Policy Considerations
- Training Considerations

INTEREST AND OPENNESS

- Are there any existing conflict/alternative resolution processes at the institution (e.g., ombudsperson, mediation, conflict coaching, etc.)?
- Are there community-based alternative resolution programs in the surrounding area?
- Is there a law school that has a mediation program?
- Have individuals expressed the desire to have an alternative to no action or an investigation and hearing process?
- Does the institutional mission or culture center justice, personal accountability, etc.?
  - Consider values or aspirational statements, creeds, and ethical principles

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STAKEHOLDER IDENTIFICATION

- President/Superintendent
- Executive Team/Cabinet-level Administrators
- School Board
- Legal Counsel
- Title IX Coordinator
- Clery Act Compliance Coordinator
- Prevention/Sexual Health Educators
- Human Resources
- Faculty/Teachers
- Student Conduct
- Residence Life
- Student Activities
- Student Government/Student Council
- Parents/Guardians
- Police/Safety/School Resource Officers
- Guidance Counselors
- Faculty/Staff Senate
- Unions

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CHANGE PROCESS

How does change take place within the institution?

- Timing
- Approval authorities
- Adding/removing programs or services
- Policy development/revision
- Resource allocations
  - Budget
  - Space
- Institutional politics
- Organic change

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SUBMITTING A PROGRAM PROPOSAL

- What is a program proposal?
- What is the proposal process like at the institution?
  - Formal memo routed for approval?
    - Cost, resource, human resource analysis
    - Space allocation
    - Benchmarking data of like institutions
  - Informal proposal
    - Information gathering
    - Meetings with interested/involved parties
    - Find the champions
    - Pilot

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RESOURCE CONSIDERATIONS

Staffing Considerations

- Full-time employees
- Adjunct facilitators
- Are any existing administrators, faculty, or staff trained in alternative resolution?
- Student facilitators
  - Sustainability of student facilitators
  - Appropriateness of student facilitators
- External facilitators

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RESOURCE CONSIDERATIONS

Structure & Space Allocation

- Where does alternative resolution process "live"?
  - Centralized – stand-alone office
  - Decentralized – managed by different offices depending upon complaint type
- Enough space for intake and process facilitation
- Safety of space
- Privacy

Note: Facilitation structure logistics will be covered more in-depth in Informal Resolution II

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RESOURCE CONSIDERATIONS

Budget & Fiscal Resources

- Salary or compensation and benefits
- Materials and Printing
- Supplies (pencils, pens, note paper, flip chart, easel, markers, etc.)
- Room rental/lease fees
- Telecom and internet fees
- Training expenses – annual, semi-annual
- Periodic external refresher training
- Technology
- Legal fees

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POLICY CONSIDERATIONS

- Do current institutional policies (i.e., Code of Conduct, Employee Handbook, etc.) allow for alternative resolution?
  - If so, how permissive (Title IX included, violence, incidents involving minors, etc.)?
  - What are the deal breakers at the institution?
- If not, is there institutional support to review and amend existing policies?
- How long does it take to review/amend policies?
  - Is there a committee process?
  - Require President/Superintendent or Board approval?
  - Legal Counsel review?

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TRAINING CONSIDERATIONS

- Scope
  - What is most resonant with the community?
  - What is the most reasonable to offer as a starting point?
- Initial cost of training and program set-up
  - Recommend external facilitation for initial training
  - External facilitators who will advise on program set-up (i.e., ongoing support)
  - Cost of training materials
  - Cost of training location
- Training location
  - Large enough space to accommodate large and small group training settings for breakout and role plays

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TRAINING CONSIDERATIONS (CONT.)

- Time as a factor
  - Timeline
  - Time commitment
  - Plan for rollout and marketing
- Ongoing Training
  - Annual or Semi-Annual
  - Recommend repetition to enhance facilitators skills
    - Table-top exercises
- External vs. Train the Trainer

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PROCESS CONSIDERATIONS

- Facilitation Models
- Setting the Tone
- Process Structure
- Privacy
- Advisors
- Documentation
- Admissibility
- Record Retention
- Unsuccessful Resolution

FACILITATION MODELS

- Who should facilitate?
  - Title IX Coordinator?
  - Investigator?
  - Title IX Team members?
- Recruit and train institutional facilitators
  - Sustainability
- Bring in external facilitators on an as-needed basis
- Hybrid of Institutional and External
  - What will the institution resolve internally?
  - What will the institution outsource?
    - Complex
    - High Profile

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SETTING THE TONE AND PROCESS FLOW

- Consider the tone you hope to set in your process
  - What will be the experience of participants from start to finish?
    - Policy language
    - Print and web materials
- Tone setting begins upon receipt and review of a complaint
  - Is the complaint a possible fit for informal resolution?
  - How to obtain voluntary (non-coerced) willingness of parties to participate
- Where are the on and off ramps?
- Is there a mechanism for resolving structural complaints?

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PROCESS STRUCTURE

- Default three party model
  - Complainant voice
  - Respondent voice
  - Institutional voice
- Co-constructed narrative or mutually serving facilitation
  - Does the institution contribute to the narrative?
- Can the Title IX Coordinator (or designee) disapprove of a proposed resolution?
  - Institutional deal breakers
  - Institutional support and comfort for applying alternative resolution
  - Responsibility to stop, remedy, and prevent

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PRIVACY PROTOCOL

- Private vs. Confidential
- Two vs. multiple participants
  - Circle or community processes
  - Institutional-Affiliated only?
- Non-Disclosure Agreement
  - All parties sign?
  - How to address a violation of the agreement?
    - Violation by non-affiliated parties?
- Required reporting
  - Abuse of minor/elder/person with a disability
  - Threats of harm to self
  - Threats of harm to others

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ADVISORS

- Does current policy allow for participants to have an Advisor in institutional processes?
  - Full Participant vs. Limited Role
  - Can institution's representative have an Advisor (i.e., General Counsel)?
- Circle and Community Processes
  - Advisors for primary parties only
- Clearly articulate role and expectations of Advisors in published policy documents

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PROCESS DOCUMENTATION

- Are process notes maintained following facilitation?
  - If so, by who and where?
  - Can participants request copies?
    - Freedom of Information Act Requests
  - If using a flip chart, is the flip chart paper retained?
  - If using a marker board, is a photo captured of the board prior to erasing?
- Resolution Agreements
  - Facilitator documents resolution from process notes
  - Copies of resolution are provided to parties for review
  - Final copy maintained centrally and provided to parties
  - Do parties sign an acknowledgment of acceptance?

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ADMISSIBILITY OF INFORMAL RESOLUTION RECORDS/INFORMATION

- Can information from the alternative resolution be used in the formal grievance process if the alternative resolution is not successful?
  - From ATIXA's 1P2P Model Policy: "The parties may agree, as a condition of engaging in Informal Resolution, that statements made, or evidence shared, during the Informal Resolution process will not be considered in the Formal Grievance Process unless all parties consent."
- Unless there is an agreement with the local prosecutor, the institution will likely have to produce IR records by subpoena
- "The Department expects informal resolution agreements to be treated as contracts; the parties remain free to negotiate the terms of the agreement and, once entered into, it may become binding according to its terms." (Preamble to the 2020 Regulations pg. 30405)

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RECORD RETENTION

- Retain records for a minimum of seven (7) years if under Title IX
  - Check for other institutional records retention policies
- How are records retained?
- By whom are records retained?
- Are alternative resolution meetings recorded?
  - Are recordings maintained by the institution?
- Can parties request to review or amend records?
  - FERPA
  - Employment record laws

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PROTOCOL IF ALTERNATIVE RESOLUTION IS UNSUCCESSFUL

- Meet with parties individually to discuss why resolution was unsuccessful
  - Share rationale if TIX Coordinator did not approve resolution
- Gauge ability and willingness to revisit outcome and return to the conversation
- Refer complaint back to the formal grievance process to restart at the point at which it was paused, or to start from the beginning (if applicable)

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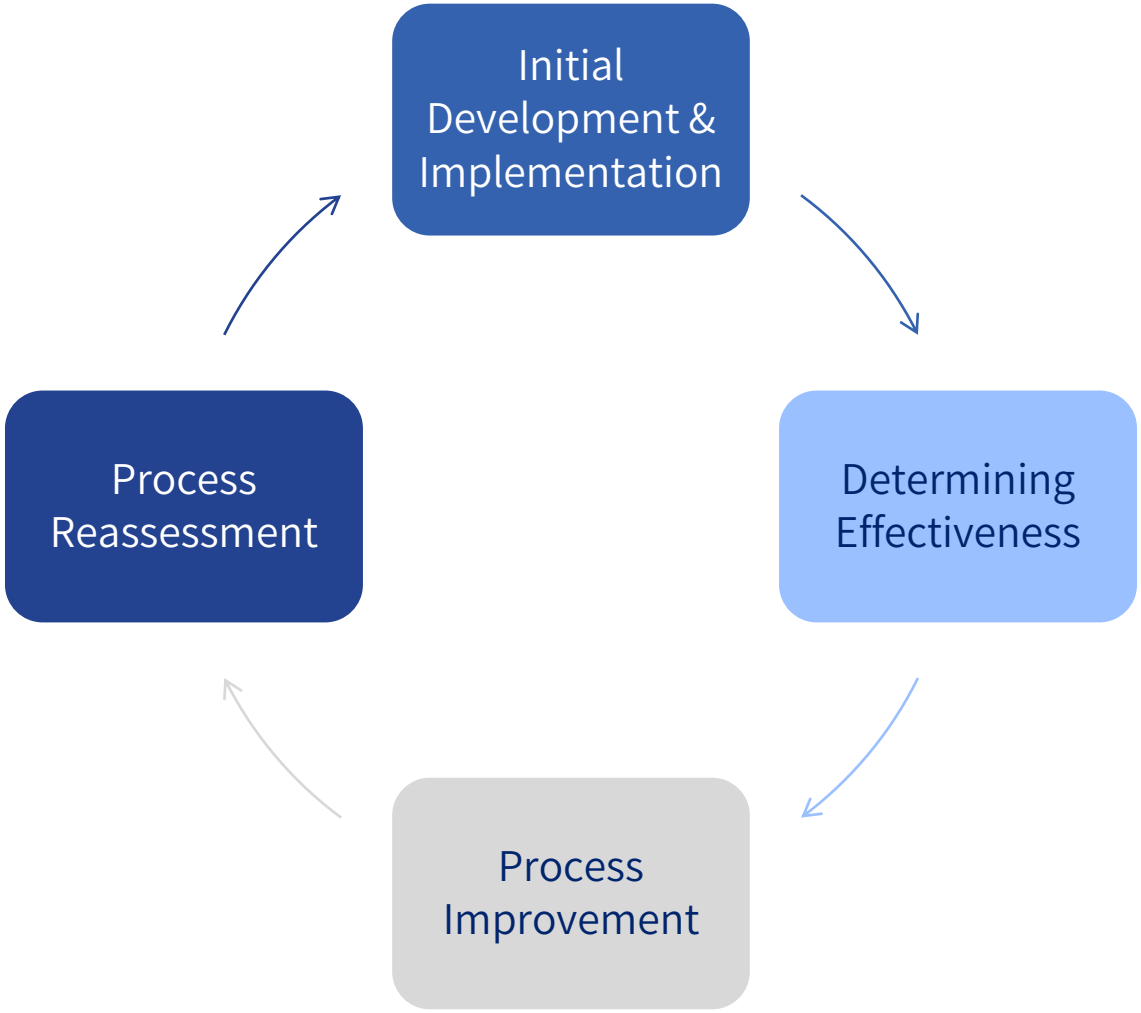
ASSESSING EFFECTIVENESS

LIFE CYCLE OF A PROGRAM/PRACTICE



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DETERMINING EFFECTIVENESS

- User perspectives
- Facilitator perspectives
- Stakeholder perspectives
- Data on recidivism
- Focus on retention

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PROCESS IMPROVEMENT

- Training and education
- Benchmarking best practices
- Process/policy updates

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PROCESS REASSESSMENT

- Self-Assessment
- Benchmarking other programs
- External Review
- Internal Review/Audit
- Case stats and program data

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Questions?

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Learning Outcomes Assessment

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