



Association of
Title IX Administrators

Making Supportive Measures Count

An ATIXA Best Practices Workshop

WELCOME!

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





Strategic Risk
Management Solutions



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

Introduction



The primary focus of this workshop is to prepare practitioners to effectively implement supportive measures in alignment with federal and state requirements.



Supportive measures are an invaluable tool for restoring and maintaining equitable access when implemented effectively.



Our goal is to provide a holistic overview of ATIXA's recommended best practices for determining and implementing supportive measures under Title IX.

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 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.

Title IX and Equity

- Title IX is a gender equity law
- Equity refers to the understanding that not all individuals have access to the same resources and opportunities
 - Equity focuses on providing support and resources to reduce disparities in access to the education program
 - Title IX seeks to remedy the inequities sexual harassment and sex discrimination create
- Supportive measures are a critical component of the Recipient's ability to ensure equity

Defining Supportive Measures

Supportive Measures

- Individualized measures designed to:
 - Restore or preserve access
 - Protect safety of parties or educational environment
 - Provide support during Resolution Process
- May **not unreasonably** burden a party
- May **not** be for **punitive** or **disciplinary** reasons
- Must be **without** fee or charge



Supportive Measures

- Institution may deem which supportive measures are **reasonably available**
- Publish the range of available supportive measures
- Disclosure about supportive measures is need-to-know
- Consult with disability services or IEP/504 administrators when appropriate
- Ensure state requirements are also met (where applicable)
- If not provided, document the rationale for refusal
 - Be able to demonstrate that response is not deliberately indifferent
- Measures may be continued, modified, or ended at conclusion of the Title IX Resolution Process

Supportive Measures vs. Remedies

	SUPPORTIVE MEASURES	REMEDIES
Designed to restore or preserve access	✓	✓
Requires a complaint	✗	✓
Available to Complainants and Respondents	✓	✗
Available on an interim basis	✓	✗
Implemented after a final determination	✗	✓
Provided to individuals and/or the community	✓	✓

Guiding Principles

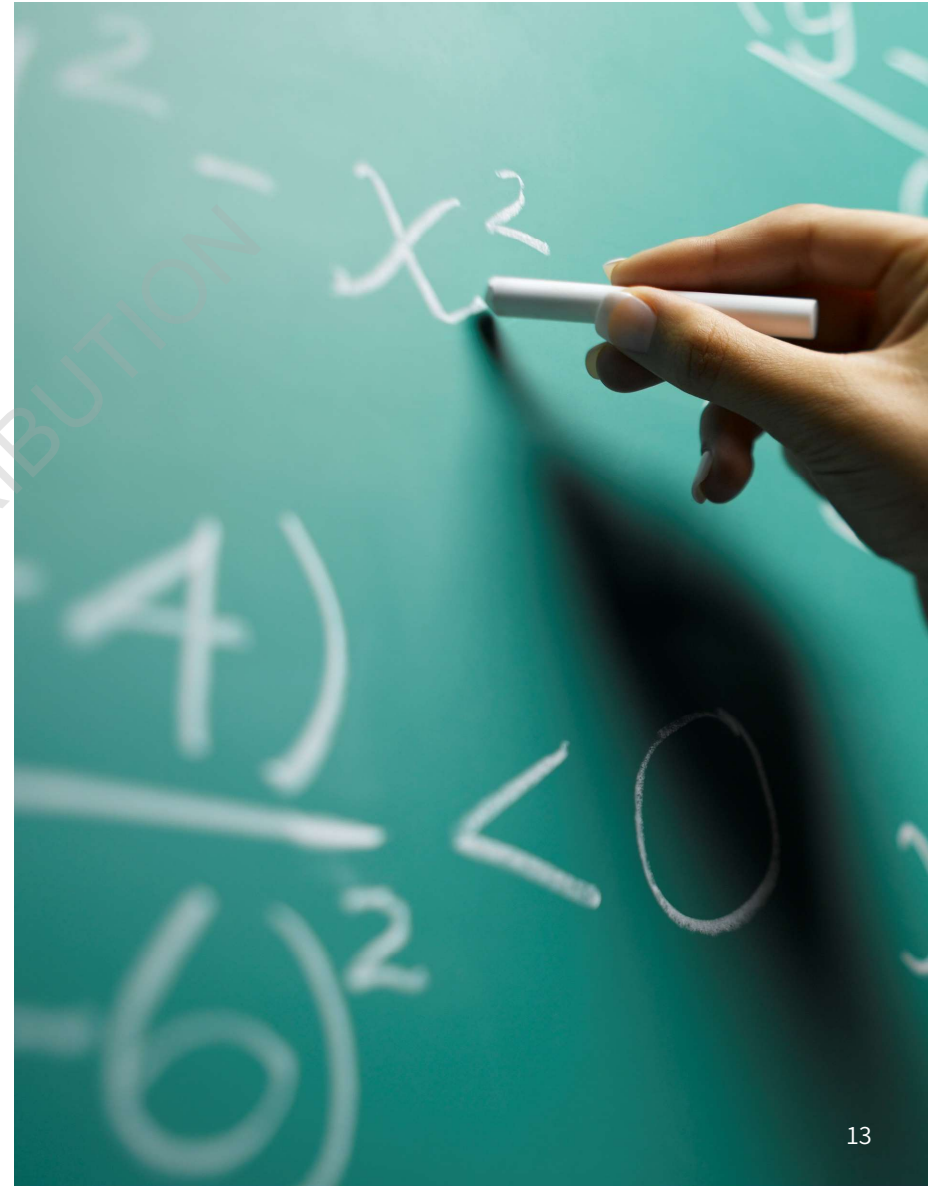
NOT FOR DISTRIBUTION

Overview

- Supportive measures must be offered for all reports of sex-based discrimination regardless of whether a complaint is initiated
- Parties may:
 - Request supportive measures at any time
 - Decline the offer of supportive measures
 - Ask for supportive measures after initially declining them
 - Seek modifications to supportive measures at any time
- Complainant(s) and Respondent(s) have the right to supportive measures

Supportive Measures and Equity

- Title IX Coordinator (TIXC) is responsible for ensuring equitable access to and implementation of supportive measures within their scope of authority
 - Established interactive process
 - Be mindful of equity within a complaint and across complaints
 - Reasonable considering the reported circumstances
 - Refer to other resources as appropriate



Supportive Measures and Agency

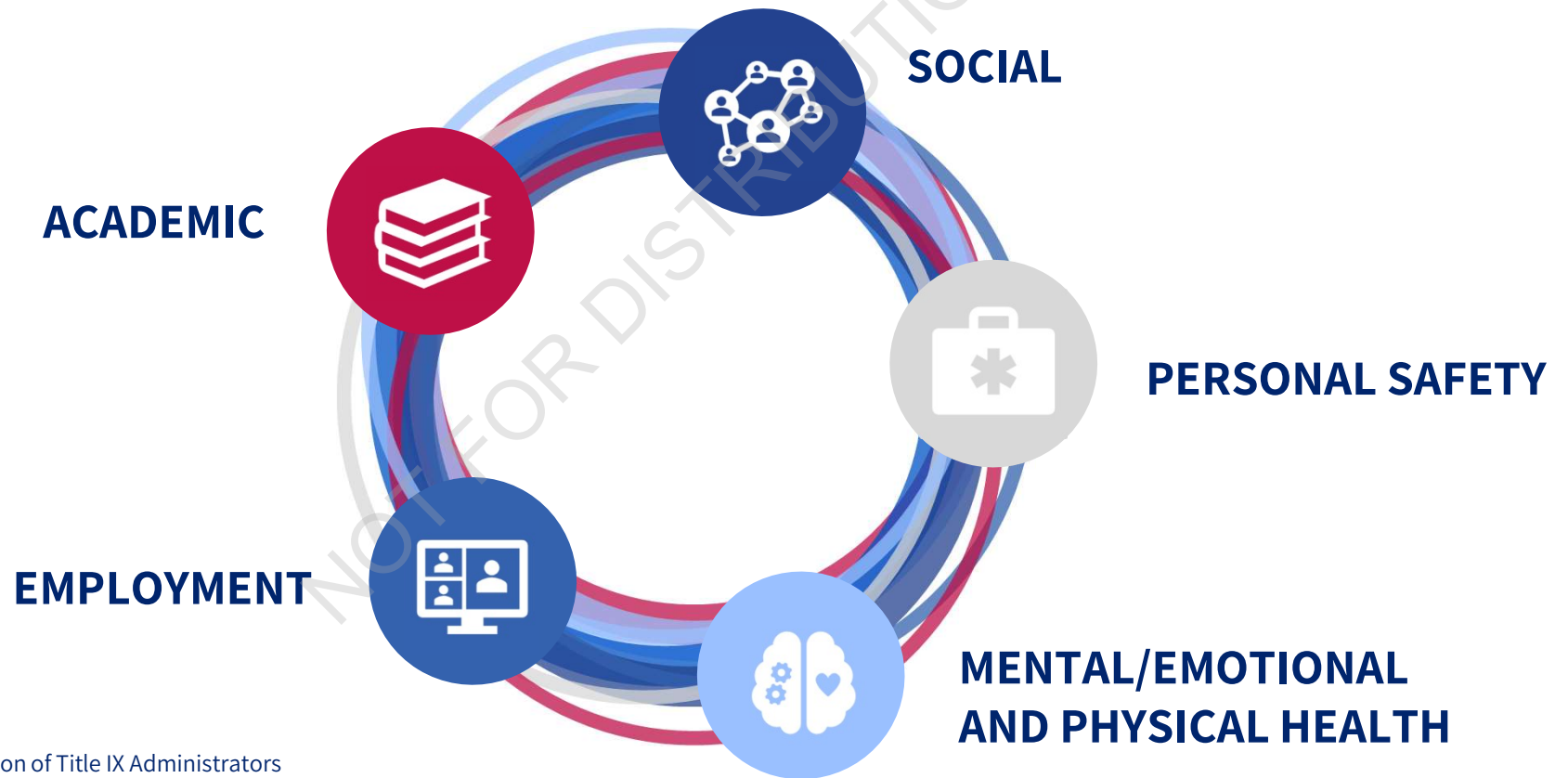
- Supportive measures are key in those circumstances when TIXC must move forward with a process despite Complainant's wishes
- Supportive measures offer an opportunity for parties to exercise agency, express their needs, and participate in creating a support plan
 - At the K-12 level, this will also involve a student's parent/guardian



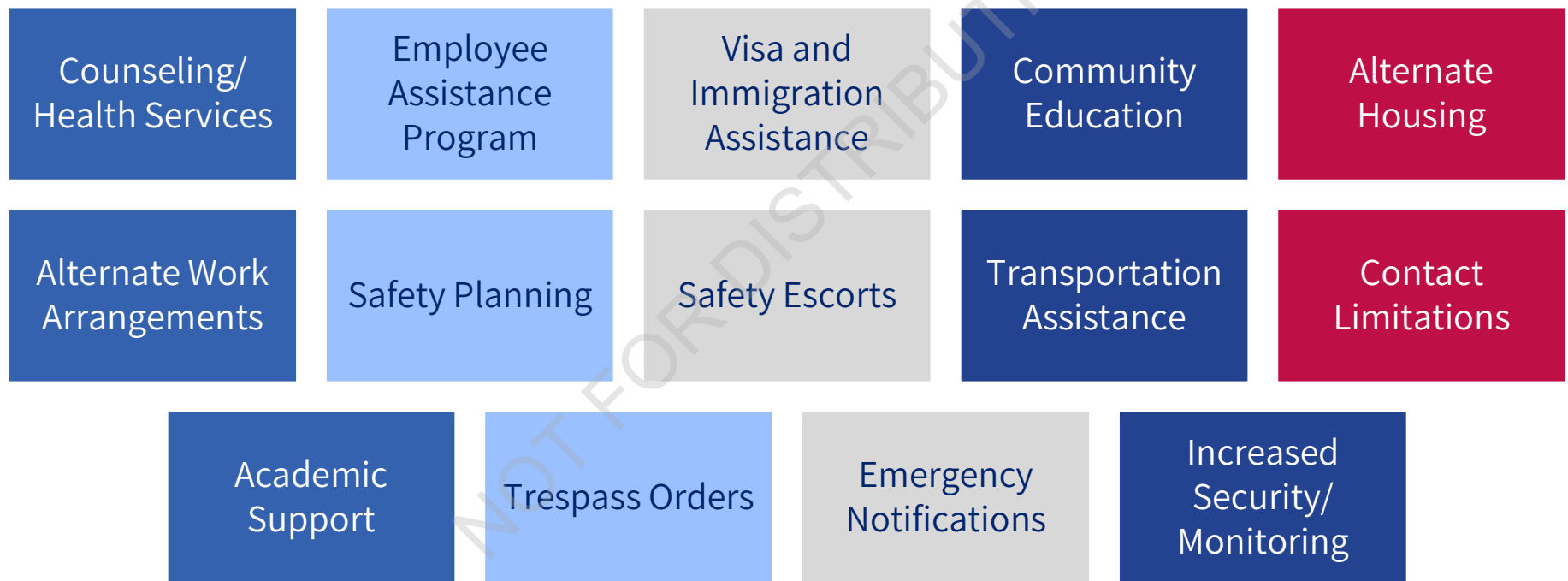
Implementation

- Supportive measures can be implemented to restore or maintain access to the education program or activity when one or more of the following are met:
 - Alleged conduct meets all Title IX jurisdiction requirements
 - Alleged conduct does not meet Title IX jurisdiction requirements, but the conduct has in-program effects
 - A Complainant does not wish to initiate a complaint
- Parties will often not know what supportive measures are available
 - Standard intake questions
 - Interactive Process
 - When evaluating reasonableness, may review but not require documentation

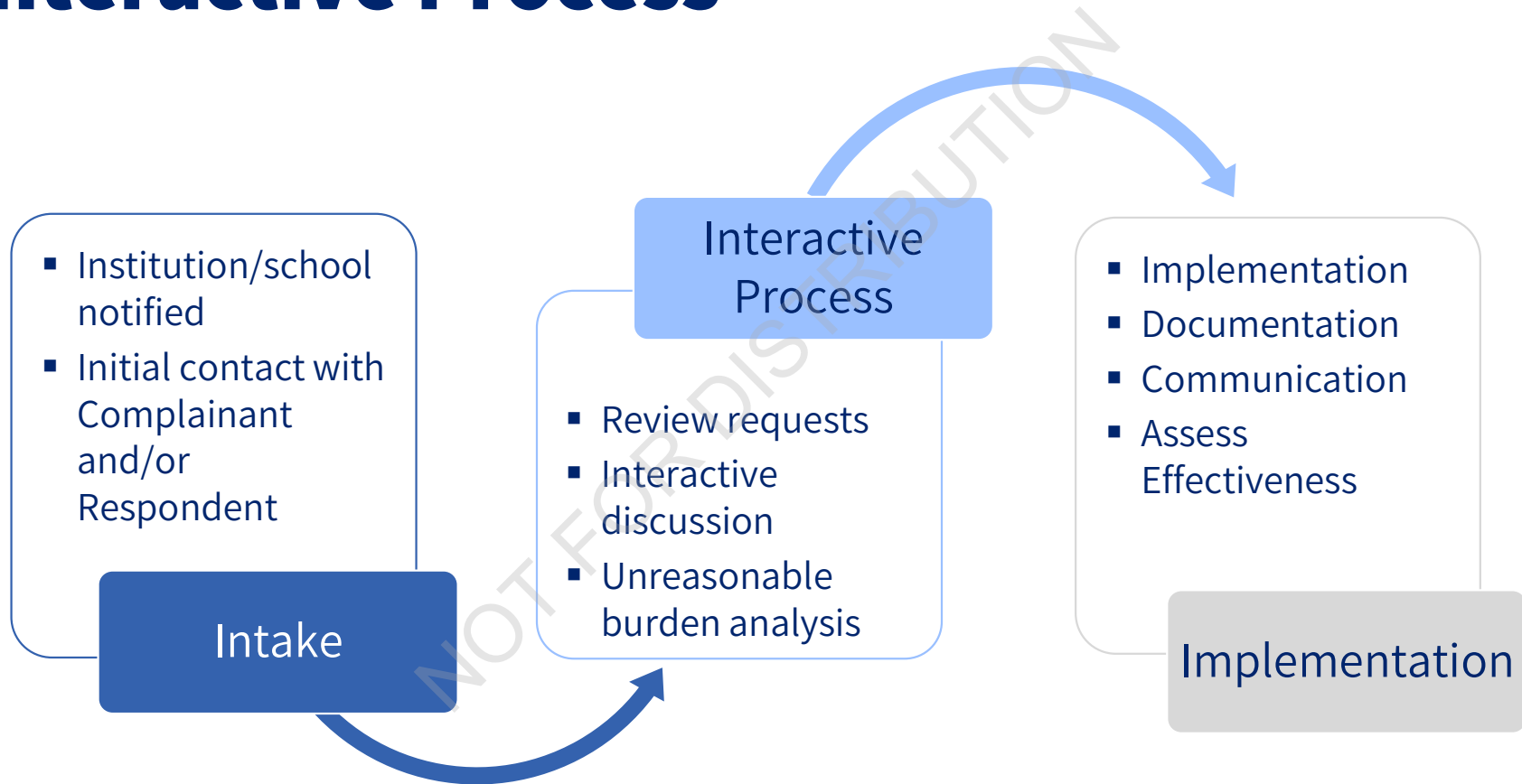
Supportive Measure Categories



Example Supportive Measures



Interactive Process



Unreasonable Burden

- Supportive measures cannot unreasonably burden a party
 - May not deny due process
 - May not deny a cognizable right
- A party can voluntarily agree to something that may otherwise be considered an unreasonable burden
 - Dropping a course
 - Not attending student organization meetings/events
 - Resigning from a committee

Assessing Unreasonableness

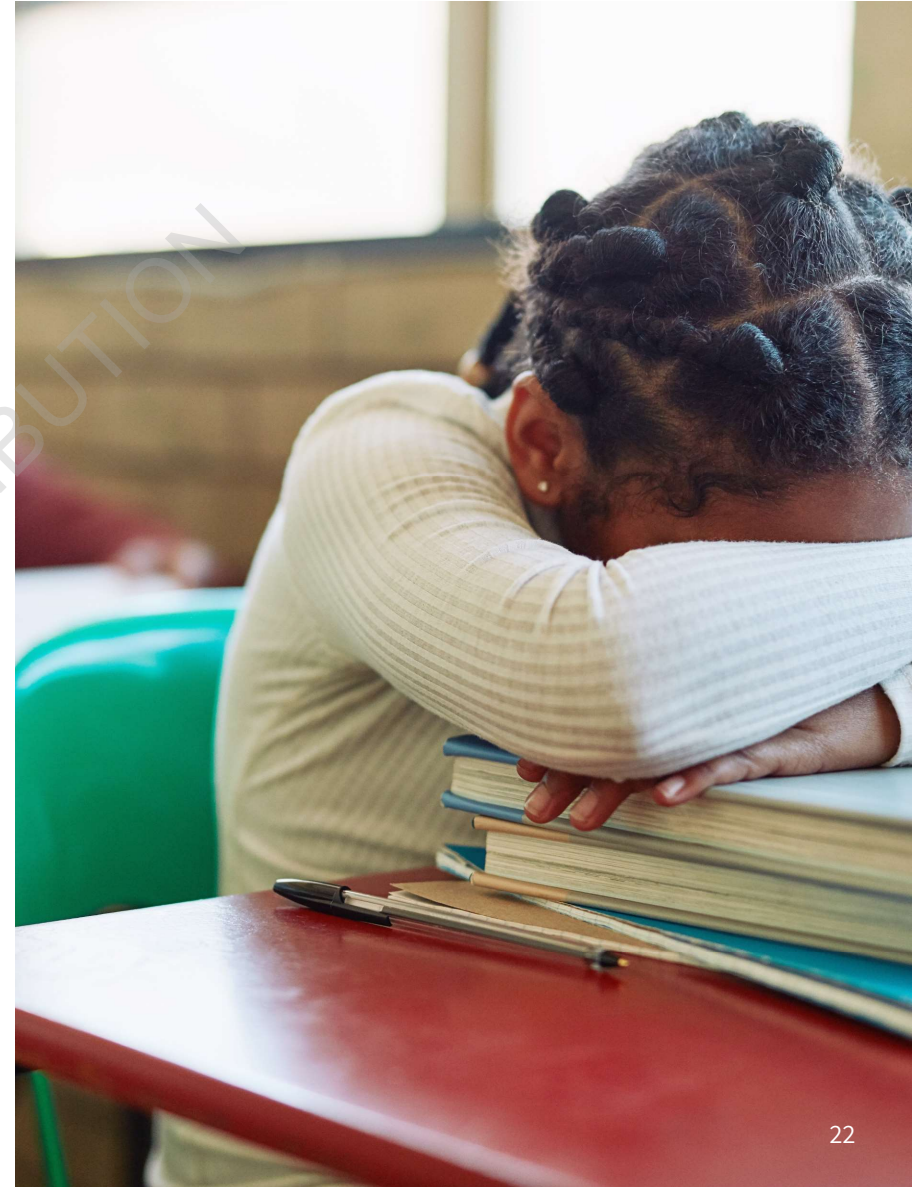
- Requires an individualized consideration of the facts and circumstances surrounding the particular situation
- Must take into account the nature of the educational programs, activities, opportunities, and benefits in which the party is participating, not solely those educational programs that are “academic” in nature
- Consider holistic impact of a supportive measure and whether there are supports the institution could provide
- Assess which factors are relevant to the party’s access to the education program or activity
 - Give weight to relevant factors

Assessing Unreasonableness Example

- Complainant has requested that Respondent be moved to another residence hall as a supportive measure
- Potential Considerations:
 - Whether Respondent will be separated from a living learning community, student-athlete housing, scholarship housing, or other similar type of grouped housing
 - Whether a comparable facility has space
 - Whether Respondent will have an increased distance to travel to their classes, campus employment, or other services that may have impacted their housing selection
 - Whether Respondent will lose access to any other facilities (e.g., study space, dining options) by moving
 - Whether the institution can provide any resources or supports to offset anything that might make the move unreasonable (e.g., assistance packing/moving, shuttle service)

Supportive Measures Challenges

- Must provide a **timely opportunity** to seek modification, reversal, or denial
 - An impartial employee, uninvolved in initial decision, must have authority to modify or reverse
 - Review considers whether the original decision was **inconsistent** with the definition of supportive measures
- Permit additional opportunity to contest if circumstances materially change
- Provide outcome with a rationale



Barriers

NOT FOR DISTRIBUTION

Barriers

- Critical to understand common reporting barriers for students and employees
- Barriers to reporting inhibit access to supportive measures
- Barriers may also be present for specific supportive measures
- Barriers may be:
 - Systemic
 - Cultural
 - Individual



Common Barriers

- Lack of information
- Misunderstanding of process
- Mistrust of authority
- Doubt about information remaining private
- Restrictive policies
- Academic progress concerns
- Employment concerns
- Financial limitations
- Pride, independence
- Shame, guilt, family, and/or religious reactions
- Not wanting to share or retell their experience
- Process concerns
- Specific personnel concerns
- Institutional/school climate
- Lack of social network support

Identity-Based Barriers

People of Color

- Community response
- Submissiveness to authority figures
- Reporting someone in the same community
- Cultural norms

Male Complainants

- Hypermasculinity
- Gender norms
- Physiology

People with Disabilities

- Absence of disability-related supports
- Non-inclusive prevention and education programs
- Overlooked accommodation needs

Identity-Based Barriers

International Individuals

- Language differences
- Cultural variation
- Lack of familiarity with or trust in counseling
- Immigration/visa concerns

Hourly Employees

- Time away from work
- Access to reporting options
- Lack of awareness
- Scheduling conflicts

LGBTQIA+ Individuals

- Being “outed”
- Unique health concerns
- Community betrayal
- Hypersexuality stereotype

ATIXA Recommendations

- Provide education and easily accessible full policies and procedures
 - Publish handout of supportive measures and how to access them
 - Annual training for employees and students
 - Include culturally responsive examples
- Train all mandated reporters and employees on responding to disclosures and providing critical information regarding next steps
- Publish materials in multiple languages or that are easy to translate
 - Consider captioned videos or audio recordings to increase accessibility

Developing Culturally Responsive Supportive Measures

Overview

- Institutional/School climate and the intersection of identity may impact if, how, and when individuals request and access supportive measures
- Power and privilege dynamics may exist between:
 - Parties
 - Parties and those supporting/advising them (e.g., parents/guardians, lawyers)
 - TIXC or designee assisting with implementation and others involved
 - Parties and others that may need to be involved (e.g., human resources, supervisors, faculty etc.)
- Consider individuals' customs, experiences, and perspectives as tools to inform appropriate supportive measures

Culturally Responsive Supportive Measures

1

TRAUMA-INFORMED

Adhere to trauma-informed principles

CLEAR AND ACCESSIBLE

Provide clear and accessible information that is inclusive of individual differences

2

3

INDIVIDUALIZED

Account for individual needs and differences

BIAS-FREE

Ensure bias does not impact supportive measure determinations or implementation

4

Supportive Measure Considerations

Individual

- Cultural expectations
- Cultural perceptions of resources
- Individual preferences
- Time commitment
- Cost/value proposition

Resources

- Shared identities
- Cultural awareness
- Resource modality
- Language(s) spoken
- Accessibility and usability

Determining Appropriate Supportive Measures

NOT FOR DISTRIBUTION

Key Questions



WHAT NEEDS AND BARRIERS EXIST?



WHAT IS REASONABLE?




HOW CAN ACCESS BE MAINTAINED OR RESTORED?



IS THERE A COST?



WHAT OPTIONS EXIST?



WHAT IS EQUITABLE IN CONSIDERATION OF THE CIRCUMSTANCES?

Overlap Considerations



Funding for Supportive Measures

- Some reasonable and appropriate supportive measures will have an associated cost
 - Cannot ask the party to pay
 - May take a loss on tuition, scholarship repayment, etc.
 - Institution can absorb costs

Potential Funding Sources

- Dedicated Title IX budget
- Emergency Funds
- Fundraising/Donation campaigns
- Grants
- Student fees/Student government
- One-time use funds

Safety Considerations

- Share agreed upon, written supportive measures with SRO/campus police/public safety for immediate safety concerns
- Institution/School-issued no contact orders can be unilateral or mutual, depending on situation
- Understand institution/school's responsibility to honor court-issued protective orders
- Examine the difference between feeling unsafe and being unsafe or having a credible threat to personal safety
- Jurisdiction over the Respondent will dictate some of the available supportive measures

Safety Considerations

- TIXC can work with the parties to create a comprehensive safety plan
 - Predict and provide coaching regarding contact between parties, witnesses, and third parties (e.g., shared friends, common areas, parents/guardians)
 - Monitoring and supervision
- Special consideration should be given to situations involving dating or domestic violence
- Be aware of institutional or community safe housing and how to access such facilities

Academic Considerations

- Academic adjustments can be made based on reports to the TIXC
- TIXC should not dictate what specific adjustments should be made but can consult with teachers/faculty on potential options based on the individual course requirements and the needs of the individual
- Academic adjustments may include:
 - Extensions or alternative assignments
 - Alternative course sections
 - Reassignment of academic advisor
 - Incompletes
 - Remote instruction



Mental/Emotional and Physical Health Considerations

- Impacts of sex discrimination may require acute or long-term medical or mental health support, including medication
- Consider whether counselors have a limit on the number of sessions an individual may attend in a specific period of time
- Some individuals may not want to engage with on-campus/school-based mental health or health services
- On-campus/School-based mental health or health services may not be equipped to support certain needs
- Be mindful of conflicts between hours of operation and academic, employment, or other requirements

Employment Considerations

- Consider means of access to employees and re-routing phone calls, emails, etc.
- Provide flexibility around non-essential or collateral assignments (e.g., committee participation, event staffing)
- Workspace may be triggering if the sex discrimination happened in that location
- Adjusting work hours may reduce the likelihood of parties coming into contact in shared spaces (e.g., elevators, parking lots)
- Supervisory structure changes should be discussed with human resources
- Exceptions may need to be made for uniform policies
 - Example: A Complainant was assaulted while wearing their school polo that is required to be worn every Friday

Social Considerations

- Distinguish between required, impliedly required, and optional events
- Consider what would be the least restrictive means to address overlap/contact in shared settings
- Ask about social media interactions and posting for shared groups
- Develop consistent practices for notifying event leadership/organizers of access or contact restrictions as needed
- Understand the different types of living arrangements and contracts students have for organization-based housing
- Be cautious of group restrictions for individual actions

Coordinating with Local Agencies

- Supportive measures may extend beyond the resources or scope of what the school/institution may provide directly
- Consider external resources that may be needed for the purposes of supportive measures
- The external resources may include:
 - Local law enforcement
 - Hospital
 - Shelters
 - Counseling
 - Victim advocacy services, including legal aid
 - Children and family services

Title IX Coordinator Scope

- Some institutional/district decisions are outside the TIXC's scope
- TIXC may submit documentation supporting a party's request vs. directing another administrator/committee to make a specific decision
 - Examples: grade appeals, missed deadlines, policy exceptions
- Impact from sex discrimination may not be the only factor contributing to not meeting academic, employment, or other expectations



Title IX Coordinator Scope Example

- Complainant is a second-year student and was a C-average student prior to an incident of sex-based harassment
- The study abroad program requires students to have a minimum 3.0 GPA to participate
- The Complainant does not have the required GPA and asks for the TIXC to make it so they can study abroad since the sex-based harassment impacted their grades during the last semester

Is this a reasonable and appropriate supportive measure?

Is this within the Title IX Coordinator's scope?

Denying Specific Supportive Measures

- Institution/District is not required to provide a specific supportive measure
 - Engage in interactive process with party to determine **reasonable** and **appropriate** supportive measures
- Some supportive measure requests are not reasonable or appropriate, but mere inconvenience not a good reason to deny
- TIXC should document any denial of supportive measures, including a written rationale



Policy Considerations

Schools/institutions should consider whether they will provide supportive measures:

- In circumstances when the alleged conduct does not meet Title IX jurisdiction requirements
- To guests, such as alumni or former students
- Retroactively



Activity: Determining Appropriate Supportive Measures

Employee: Stephan

- Stephan works for buildings and grounds as a maintenance technician
- He recently broke up with his long-term, live-in girlfriend, Yvette, after discovering that she had been filming him in their bathroom without his knowledge or consent
- Yvette moved out of the shared residence but remains employed by buildings and grounds as a custodial supervisor
- Yvette and Stephan park in the same parking lot and clock in/out and get their work supplies from the same building
- Stephan has returned to his vehicle at the end of his shift to find damage to his car on at least three occasions
- Last week, he started parking in a different lot and returned to find his car damaged again
- A coworker also informed Stephan that Yvette showed them a video of Stephan in the shower

Employee: Evelyn

- Fifth-grade teacher
- Initiated complaint against an assigned “1-1” student support paraprofessional for engaging in sexual innuendo during one-on-one conversations with Evelyn
- Request to remove the paraprofessional from her classroom

NOT FOR DISTRIBUTION

Student: Vivi

- Vivi is an undergraduate student residing in an on-campus residence hall
- She disclosed being sexually assaulted at an off-campus party by Weston, a student from another local institution
- Vivi reported that Weston is a friend of her roommate Gina's boyfriend, and Vivi is very uncomfortable that Gina continues to invite Weston over to their shared room to hang out even after Vivi told Gina about the assault
- Vivi wants to be moved to another residence hall room, but there are currently no vacancies for a woman on campus

Student: Axel

- Axel is a non-binary student in eleventh grade and a member of the boys' soccer team
- Axel reported that on a recent overnight trip for the state tournament, several of the other members of the soccer team “tea bagged” Axel while Axel was sleeping and recorded it on a cell phone
- The video has been shared with many other students, resulting in name-calling and other bullying behaviors
- Axel isn't sure if they wants to initiate a complaint

Community Education

Training and Building Awareness

- All students and employees should receive annual training and ongoing reminders about accessing available supportive measures
- Teachers/faculty should receive training about their responsibility to implement supportive measures when requested by the TIXC or designee

Directed Training May Benefit:

- Confidential resources
- Security/SROs
- First responders
- Diverse populations
- Parents/guardians
- External partners
- Student leaders/organizations
- Local attorneys
- Advisors
- Unions

Activity: Coaching the Resistant Employee

Coaching the Resistant Employee

- Sealy submitted a complaint for fondling against their Russian History professor, Dr. McGuire, just before midterms
- Initially, Sealy considered withdrawing from the course, but decided they wanted to finish the course
- Sealy is seeking supportive measures to allow them to complete Russian History without encountering Dr. McGuire for the remainder of the term
- As TIXC, you consult with the AVP for Academic Affairs and Deputy TIXC for Faculty to determine what options might exist for Sealy
- You then provide Sealy with their options, and they determine they would like to complete the remainder of the course via independent study with a separate faculty member

Coaching the Resistant Employee

- You then contact Dr. Mitchell, History Department Chair, to arrange the independent study
- Dr. Mitchell responds by stating that he cannot possibly ask another faculty member to oversee an independent study because that would put the faculty into overload status, which is a faculty rights contract violation
- Dr. Mitchell states that Sealy will receive an incomplete for the semester and they can take the course again next semester and asks that you tell Sealy to be sure to enroll in a course taught by someone other than Dr. McGuire because there is no section switching after Add/Drop

How would you respond to Dr. Mitchell?

Evaluating Supportive Measures

Regular Check-Ins

- TIXC or designee should check in with parties on a regular basis to ensure supportive measures are:
 - Meeting the desired outcomes
 - Necessary to keep in place
 - In need of modification or adjustment
- Regularity will vary depending upon whether a formal complaint is submitted
 - In-process check-ins
 - Post-process check-ins

Recommendations

- TIXC should conduct annual audits including:
 - Internal and external community resources
 - Usage trend analysis
 - Most accessed and least accessed supportive measures
 - Recurring barriers
- Easily accessible pathway for party and teacher/faculty/staff feedback





Association of
Title IX Administrators

Questions?

NOT FOR DISTRIBUTION



Association of
Title IX Administrators

**ALL ATIXA PROPRIETARY TRAINING MATERIALS ARE COVERED BY
THE FOLLOWING LIMITED LICENSE AND COPYRIGHT.**

By purchasing, receiving, and/or using ATIXA materials, you agree to accept this limited license and become a licensee of proprietary and copyrighted ATIXA-owned materials. The licensee accepts all terms and conditions of this license and agrees to abide by all provisions. No other rights are provided, and all other rights are reserved. These materials are proprietary and are licensed to the licensee only, for their use. This license permits the licensee to use the materials personally and/or internally to the licensee's organization for training purposes, only. If these materials are used to train Title IX personnel, they are subject to 34 C.F.R. Part 106.8(f)(3), requiring all training materials to be available for inspection upon request. ATIXA does not permit any licensee/purchaser to publicly display, share, or publish these materials. If you have lawfully obtained ATIXA materials by registering for an ATIXA training, you are licensed to use the materials provided for that training. Licensees may download and save a PDF version of training materials for their completed training to provide them to a third-party for inspection upon request in compliance with federal regulations. No right to disseminate, post, or provide a copy of the materials publicly or to any third-party is permitted.

You are not authorized to copy or adapt these materials without ATIXA's explicit written permission. No one may remove this license language from any version of ATIXA materials. Should any non-licensee post these materials to a public website, ATIXA will send a letter instructing the licensee to immediately remove the content from the public website upon penalty of copyright violation. These materials may not be used for any commercial purpose except by ATIXA.