

Alternative Resolutions and Restorative Justice: Options and Benefits

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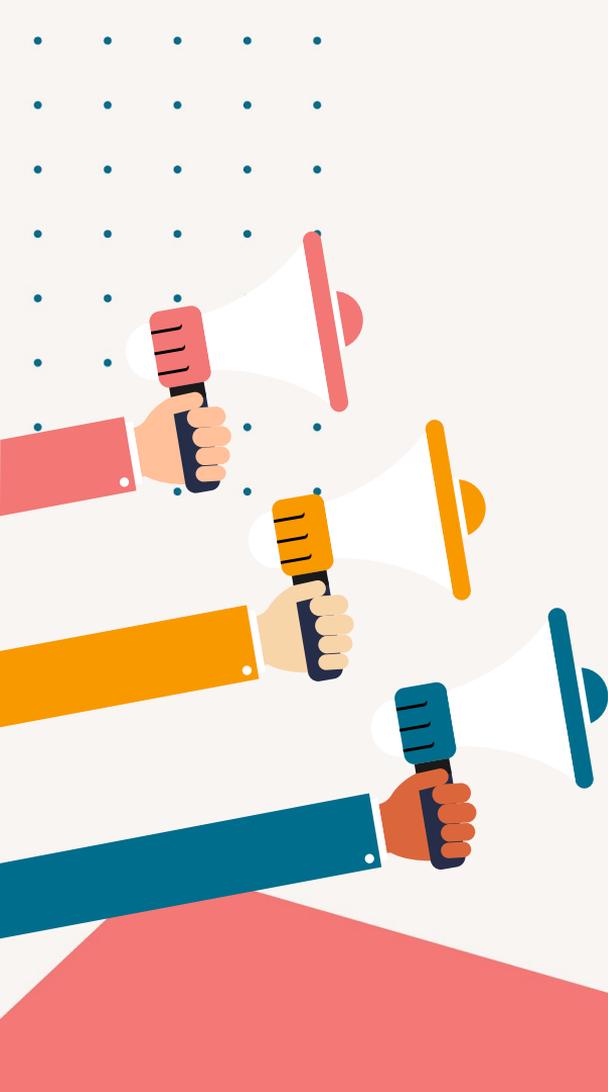
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Important Terms

- Alternative Resolution - non-disciplinary, educational approach that is voluntary; grounded in restorative justice; does not involve a formal investigation or hearing
- Restorative Justice - a collaborative process that typically involves individuals who have caused harm and those who were affected by these behaviors and commentary; centers the needs of the harmed parties and allows for healing and conflict reconciliation
- Title IX - a federal civil rights law passed as part of the Education Amendments of 1972; designed to protect people from sex-based discrimination in educational programs and activities that receive federal financial assistance



Socio-ecological Model



<https://www.cdc.gov/injury/>



Reasons for Not Using Campus Supports

- Accessibility
- Acceptability
 - Negative emotions
 - Consequences
 - Contextual characteristics
 - Minimizing impact
 - Minimizing behaviors
- Appropriateness
- Alternative Coping



Black Lives Matter (BLM)

- Police Brutality
- Violence Against Transgender and Gender Non Conforming Community
- FBI Hate Crime Statistics, 2019
 - 4,784 single-bias hate crime offenses
 - 48.4% involved offenders who were anti-black or African American
- Study
 - Acceptability
 - Appropriateness

Resources

WEBSITES

- CDC Socio Ecological Model
 - [National Center for Injury Prevention and Control, Division of Violence Prevention](#)
- Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2020
 - Human Rights Campaign (2020) Retrieved from <https://www.hrc.org/resources/violence-against-the-trans-and-gender-non-conforming-community-in-2020>
- FBI Hate Crime Statistics 2019
 - <https://ucr.fbi.gov/hate-crime/2019>
- US hate crimes highest in more than a decade - FBI
 - BBC News (2020, Nov. 17) Retrieved from <https://www.bbc.com/news/world-us-canada-54968498>

ARTICLE

- Holland, K. J., & Cortina, L. M. (2017) It happens to girls all the time: Examining sexual assault survivors reasons for not using campus supports. *American Journal of Community Psychology*, 59:50–64 DOI 10.1002/ajcp.12126





Agenda

01

What is restorative justice?

02

Why consider RJ as a possible alternative resolution option? What can it look like?

03

Limits and challenges to RJ

04

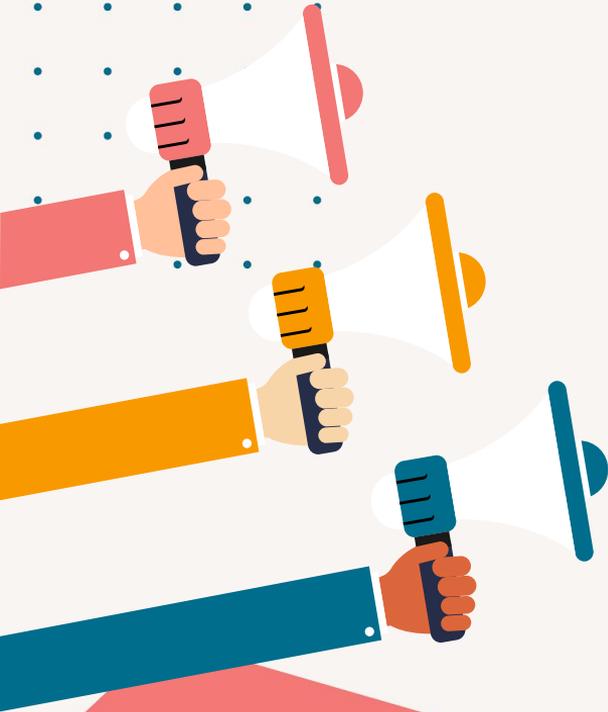
Considerations when creating an RJ program

What is Restorative Justice?

- An approach to addressing wrongdoing that aims to:
 - Repair the harm
 - Heal the trauma
 - Reconcile the interpersonal conflict
 - Reduce the social inequality
 - Reintegrate people who have been outcast



Why consider RJ as an alternative resolution option?



- A variety of socio-cultural variables can affect a student's willingness to utilize a formal complaint process
 - Everything Kristin just covered!
- Able to be tailored to meet harmed parties' needs and community needs
 - "I want [them] to know what [they] did, but I don't want to ruin [their] lives."
- Can work to address the ripple effects of the harm
- An RJ approach would allow for continued work with respondents well beyond the end of a conduct process
- Ability to include broader identity representation

What can RJ look like?

Dialogues

Circles, conferences, facilitated dialogues, shuttle negotiations

"Closure"

Apology letters, impact letters, ability to ask specific questions

Prevention Work

Community building and circle work on bystander intervention, consent, healthy relationships, hook up culture

Education

Consent workshop, healthy relationships education, red flags workshop, AOD education

Restrictions

Contact restrictions, not attending campus events, not participating in certain student orgs





Limits & Challenges to RJ

- Josh will talk about the legal challenges and risks to consider when adopting an RJ approach.
- A LOT OF PRE-WORK REQUIRED
- Not every matter is right for RJ
- Requires intentionality, which can lead to long timeframes
- RJ gives respondents an “easy out”
- How can respondents acknowledge harm?

Considerations When Creating an RJ Program

- Is your campus ready?
 - What does accountability look like to your community?
- Can you introduce RJ practices outside of the conduct arena?
 - Community conversations (circle-work)
- Build the bench first.
 - Internal partners
 - External partners/organizations
- This is not a one-size-fits-all process.
- How will RJ alternative resolutions fit into your existing Title IX process?
 - How do your policies and procedures have to be revised?
- Is there certain conduct that you will not consider an RJ approach?

Resources

WEBSITES

- Campus PRISM:
<https://www.sandiego.edu/soles/restorative-justice/campus-prism.php>
- The College of NJ Alternative Resolution:
<https://titleix.tcnj.edu/alternative-resolution/>
- TransformHarm.org:
<https://transformharm.org/restorative-justice/>

ARTICLES

Restorative Justice Approaches to the Informal Resolution of Student Sexual Misconduct. *Journal of College and University Law*. 2020.

Five Things Student Affairs Administrators Should Know About Restorative Justice and Campus Sexual Harm. *NASPA*. 2020. (This is free, but you will need to go through the "checkout" to download it.)

Campus PRISM Project Briefing Paper: *Comment Submitted to Department of Education on Changes to Title IX*. January 2019.

Campus PRISM Project Briefing Paper: *Next Steps for a Restorative Justice Approach to Campus-Based Sexual and Gender-Based Harassment, Including Sexual Violence*. December 2017.

Campus PRISM Project Briefing Paper: *Distinguishing Campus Restorative Justice from Mediation*. August 2016.

Campus PRISM Report: *Promoting Restorative Initiatives for Sexual Misconduct on College Campuses*. April 2016.

Legal Framework

- Threshold Determinations
- Impact of May 2020 Final(ish) Rule
- Anticipated Changes Under New DOE
- Generally Applicable Risks and Benefits



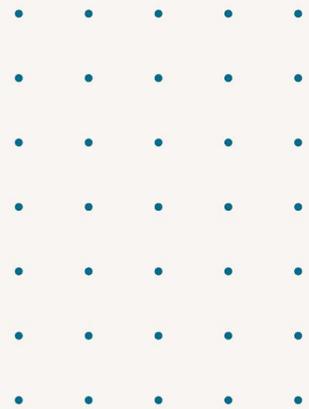
Threshold Determinations

Legal Framework and Threshold Determinations

- Restorative justice efforts necessarily tethered to and shaped by institutional policies and procedures

- Relevant policies and procedures relevant shaped by frequently shifting Title IX regulation

- **Threshold Determination: Subject to Title IX Sexual Harassment Grievance Procedures?**



Impact of May 2020 Final(ish) Rule



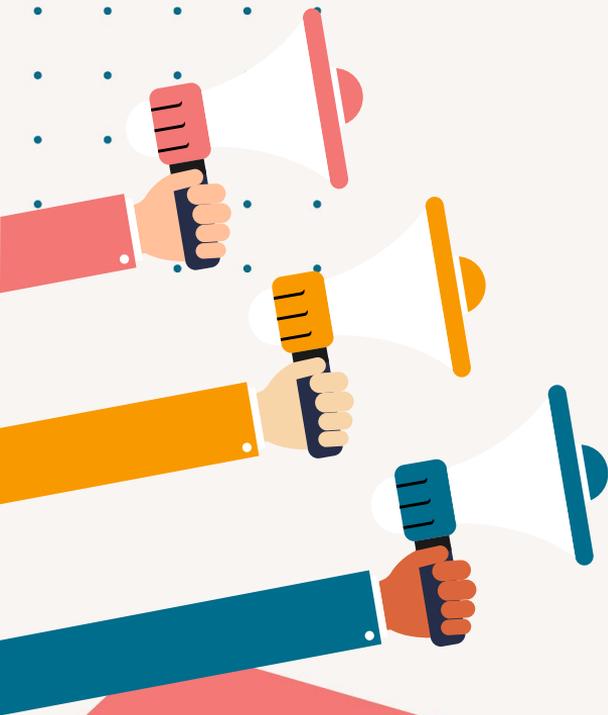
Legal Framework: Impact of May 2020 Final(ish) Rule

- Narrowed scope and formalized procedures within the scope
- DOE/OCR hands-off outside the scope
- Within the scope, specific requirements/limitations around “informal resolution” (*informal only in part*)
 - “Informal resolution” not explicitly defined
 - Broad range of strategies available, including mediation, arbitration, and restorative justice
 - Facilitators must be free from conflicts of interest and bias and trained to serve impartially
 - Can only be offered once a Formal Complaint has been filed and
 - All parties must voluntarily elect to participate and provide written consent
 - Must provide parties with a written disclosure, including the parties' right to withdraw from informal resolution at any time
 - May result in disciplinary/punitive measures agreed to by Respondent
 - NOT available to resolve allegations of sexual misconduct between an employee and student

Restorative Justice

“ With respect to the implications of restorative justice and the recipient reaching a determination regarding responsibility, the Department acknowledges that generally a critical feature of restorative justice is that the respondent admits responsibility at the start of the process. However, this admission of responsibility does not necessarily mean the recipient has also reached that determination, and participation in restorative justice as a type of informal resolution must be a voluntary decision on the part of the respondent. Therefore, the language limiting the availability of an informal resolution process only to a time period before there is a determination of responsibility does not prevent a recipient from using the process of restorative justice under § 106.45(b)(9). . . Similarly, a recipient could use a restorative justice model *after* a determination of responsibility finds a respondent responsible; nothing in the final regulations dictates the form of disciplinary sanction a recipient may or must impose on a respondent. ”

Title IX Preamble, 85 FR 30026, 30

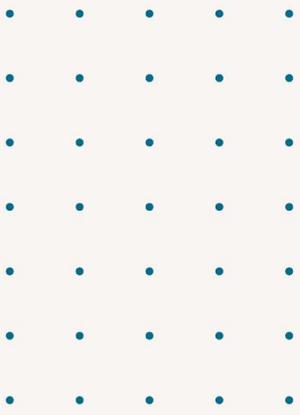




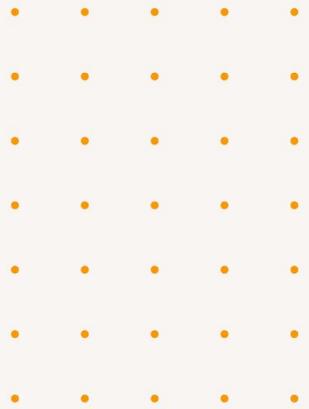
Anticipated Changes Under New DOE

Legal Framework: Anticipated Changes Under New DOE

- Major changes definitely coming--likely in the form of re-expanded Title IX scope, removal of certain procedural requirements, etc.
- Major timing and procedural questions
- Uncertainty around amount and type of structure/guidance with regard to alternative resolution



• **Generally Applicable Risks and Benefits**



Legal Framework: Generally Applicable Risks and Benefits

- Documentation issues and implications (including potentially criminal)

- Buyer's remorse

- Consistency

- Potential litigation-related impact

- Resource savings and implications

- Opportunity to innovate, lead, and transform (The barrier is the gate!)



Thanks!

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