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Restorative Practices and Title IX: Perfect Together

13th Annual ATIXA Conference



MEET THE PRESENTERS



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Over 25 years in Higher Education,
including as Title IX Coordinator,
Dean of Students & Director of
Residence Life

SESSION GOALS

- Understand Restorative Justice Practice
- Describe key concepts for restorative practices and application to Title IX
- Reflect on how these practices can impact Title IX processes and parties

SESSION GOALS

Apply these practices to your community, both proactively and reactively

- Proactively
 - Build community between students, faculty, and staff
 - Importance of language in Title IX policies and procedures
 - Restorative reintegration after Title IX findings
- Reactively
 - Restorative justice conferencing
 - Informal Resolution

TAKE CARE OF YOU

Our work is challenging so if you need to step out, we understand.



WHAT IS RESTORATIVE JUSTICE?

A process using the principles of participation, empathy, problem solving and respectful dialogue to build healthy and equitable relationships between people and to repair relationships when conflict occurs.

- Long history of family circles in indigenous communities
- Aim to develop community and manage conflict by repairing harm and restoring relationships
- Working with those involved to reach a resolution, rather than coming to a resolution that happens to those involved
- Accountability and support



LISTENING DEEPLY ENOUGH TO BE CHANGED BY WHAT YOU LEARN

Sustained dialogue (SD)

- A deliberate, patented, and repeatable peace process employed to transform difficult relationships and move toward resolution in conflicts between groups. Famously used in various political processes in South Africa, Ireland, Middle East and various other international conflicts achieved success in over **400,000 dialogues**.
- In 1999, a set of students at Princeton University began using the process to solve deep-seated issues around race relations and continue to employ SD on-campus today.
- Recently, SD was used in a corporate setting to address employee engagement. After 10 weeks of dialogue, the number of employees who felt they could bring their full selves to the workplace doubled from 40% to 80%.

WHAT IS RESTORATIVE JUSTICE?

“Justice cannot be for one side alone, but must be for both.”

– Eleanor Roosevelt

“A child who is not embraced by the village will burn it down to feel its warmth.”

– African Proverb

“You never really understand a person until you consider things from his point of view, until you climb inside of his skin and walk around in it.”

– Harper Lee

OTHER CONSIDERATIONS

- Must create community first
- Students must connect with and trust you
 - What is your community like?
 - Is it safe?
 - Are staff safe?
 - Is it a brave space?
 - Will students want to be restored if there is a separation?

IS RJ REALLY PERFECT FOR TITLE IX?

“Some argue that [RJ] may trivialize violence against women, revictimize the vulnerable, and endanger the safety of victim-survivors. On the other hand, ... it may enable us to hear their stories more holistically, offering greater control and validation, and reduce victim-blaming ... [and] may also provide an additional opportunity to secure some form of justice.”

‘I Just Wanted Him to Hear Me’: Sexual Violence and the Possibilities of Restorative Justice. Clare McGlynn, Nicole Westmarland and Nikki Gooden. *Journal of Law and Society*, vol. 39, no. 2 (June 2012).

SIDE BY SIDE

Restorative Resolution

- Focus on harms and needs
- Storytelling and listening
- Finding collaborative solutions
- Supportive

Investigative Resolution

- Focus on fact-finding and sanctions
- Determination of responsibility
- Assessing creditability
- Adversarial

PROACTIVE RESTORATIVE PRACTICES

Importance of language in Title IX Policy & Informal Agreements

- Is it restorative? Collaborative? Connected?
- Is there language that does not support that?
- Are protocols/systems punitive?

Restorative Reintegration

- What are ways we reintegrate after a Title IX finding?
- Reintegration meeting
- How do we not cause shame when you return to community?
- Lack of community among staff will translate to students!

Restorative Justice Conferencing



HOW DOES IT WORK IN SCHOOLS?

- Alternative to investigation/adjudication model
 - Also includes Informal Resolution
- Resolve conflicts
- Create solutions that have input from those affected, the school, and the person at fault
- Make some proactive suggestions on how to implement

STEPS TO A RESTORATIVE JUSTICE CONFERENCE

1. Pre-conference
2. Conference
3. Agreement

Steps to a Restorative Justice Conference

1. Pre-Conference



PRE-CONFERENCE

- Each party + support person
- Begin with check-in question
 - Based on the weather, how are you feeling?
 - What is your best memory with [other person]?
 - What is something you enjoyed about [class or teacher]?
- “What happened?”
- Focus on root causes
 - Be present without trying to problem solve
 - Acknowledge feelings
 - Check-out question

PRE-CONFERENCE

Importance of pre-conference

- Explain the conference
 - No surprises
 - Discuss everything, including questions to be asked
- Multiple pre-conference meetings, if needed

Learn one party does not want to do the conference

- Result? **No conference.**
- May never get to a conference

IS A CONFERENCE APPROPRIATE?

- Has the person who caused harm admitted to the offense?
- Has the incident adversely affected or harmed anyone?
- Is there a need to repair the harm?
- Do those involved want to participate?
- Is there a disability that needs to be considered?
- Has this issue already been addressed restoratively?
- Is it inappropriate to address longstanding abuse?

Steps to a Restorative Justice Conference

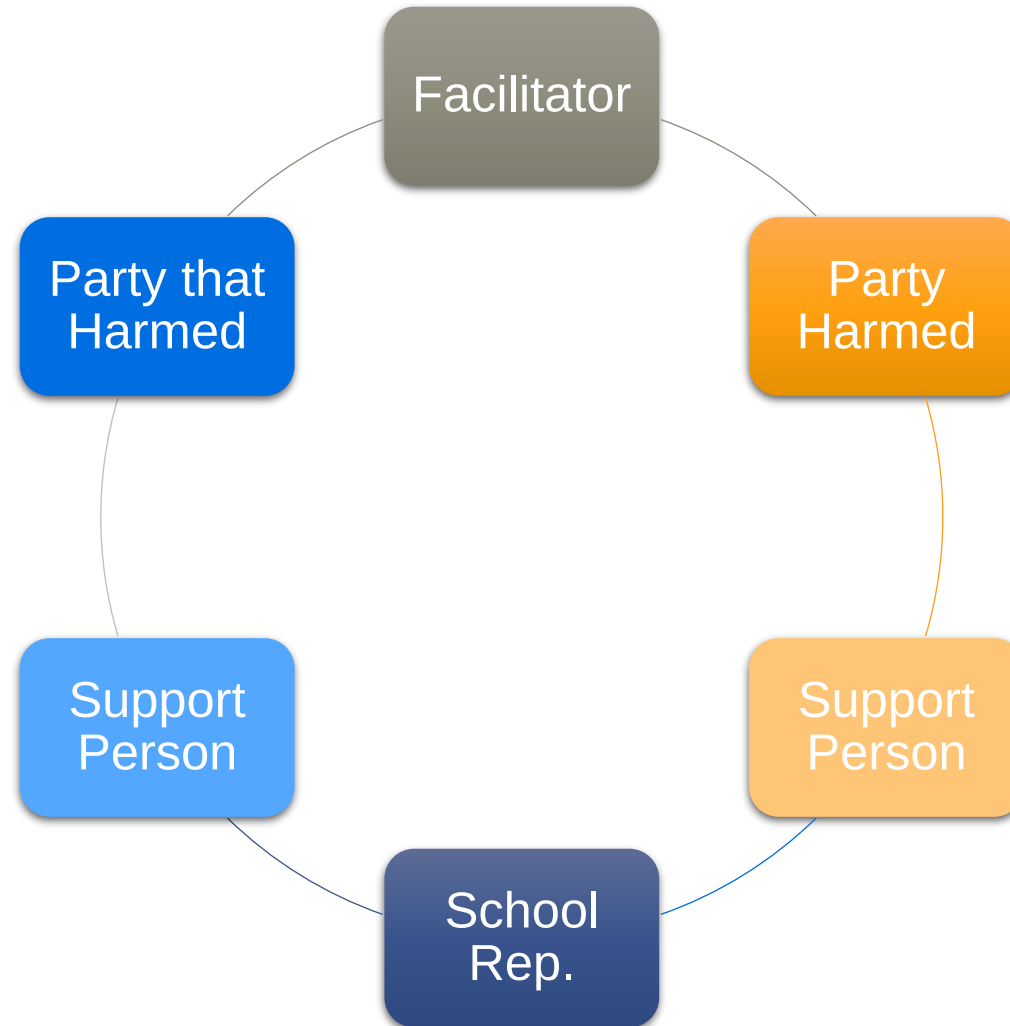
2. Facilitating a Conference



RESPONSIBILITIES OF FACILITATOR

- Listen
- Withhold judgement
- Don't guide discussion
- Ensure equal seating and equal voice

FACILITATING A CONFERENCE



ORDER OF SPEAKING

Initial Discussion

1. Person who caused harm
2. Main person harmed
3. Additional persons harmed
4. School representatives (if applicable)
5. Supporter of person harmed
6. Supporter of person who caused harm
7. Person who caused harm

Agreement

1. Person harmed
 2. Person who caused harm
- Verify agreement contents
 - Step away to finalize agreement

Steps to a Restorative Justice Conference

3. Agreement



AGREEMENT

- RJ Alternative Agreement is written prior, reviewed, and used a guide.
- At the end of discussion, both parties sign the agreement.
- This is the final step in a successful process.

What happens if a conference is inappropriate or unsuccessful?



CONFERENCE ALTERNATIVES

Restorative Sanctions

- Community Projects
- Written Apology
- Research Paper (age appropriate)
- Training Modules
- Restitution
- Counseling

Impact Statements

Conflict Resolution Conference



CONFLICT RESOLUTION CONFERENCE

- What it is
- How it differs from a Formal Conference
- When best to use

Informal Resolution

Geared toward higher education but can also be helpful for K-12



INFORMAL RESOLUTION

- A mutual and voluntary agreement between the parties involved in an allegation of sexual harassment or other sexual misconduct.
- A powerful Title IX and restorative practice tool
 - Allows parties a say in outcome
 - Can avoid cross-examination and hearing
 - Saves time and resources
 - Trauma informed
 - Student centered
 - Avoids protracted formal process
 - Reduces stress

TYPES OF INFORMAL RESOLUTION

- Facilitated Dialogue
- Restorative Circle
- Negotiated Agreement

NITTY GRITTY OF REACHING A RESOLUTION

Options for who guides the process

- Parties/Advisors in the driver's seat
- TIXC as the go-between
- Another neutral option
- Case studies from all options

Sanctions

- How to respond to sanctions suggested by parties/advisors
- Whether school should suggest certain sanctions
- Restorative justice options
 - What these options look like
 - How to implement

NITTY GRITTY OF REACHING A RESOLUTION

Creative Out-of-Box Sanctions

Payments

- Medical expenses
- Legal fees
- Others

NITTY GRITTY OF REACHING A RESOLUTION

Supportive measures? YES!

- Always available to parties, formal **AND** informal
- Examples of supportive measures:
 - Counseling
 - No Contact Orders
 - Deadline extensions / changes to work or class schedules
 - Increased security/campus escort services

Practice Tip

- Make it clear in the Notice of Allegations that parties will receive supportive measures, no matter what option they choose

INFORMAL RESOLUTION AGREEMENT

- How criminal charges could affect a resolution
- Written resolution
 - K-12
 - Higher Education
- Best practices for who drafts the resolution agreement

INFORMAL RESOLUTION AGREEMENT

- Terms to be included
- Confidentiality
- Dismissing complaints with or without prejudice
- No contact orders/agreements
 - While enrolled or formally connected with school
 - What happens after graduation or during a separation from school?
- School's role in reviewing and approving it
 - Best practices for who approves and executes

INFORMAL RESOLUTION AGREEMENT

Specifics to include:

- What the parties have agreed to
- A consequence that may apply if parties do not abide by terms
- What the student records will indicate
 - Any further allegations of misconduct
 - Student conduct / employee discipline
 - Background check
- List of people the outcome will be shared with

INFORMAL RESOLUTION AGREEMENT

Specifics to include:

- Any other terms agreed to (confidentiality, non-disparagement, no contact agreements, *etc.*)
- Acknowledgment that parties entered into terms voluntarily
- No appeal rights
- No formal process once signed

Questions?



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