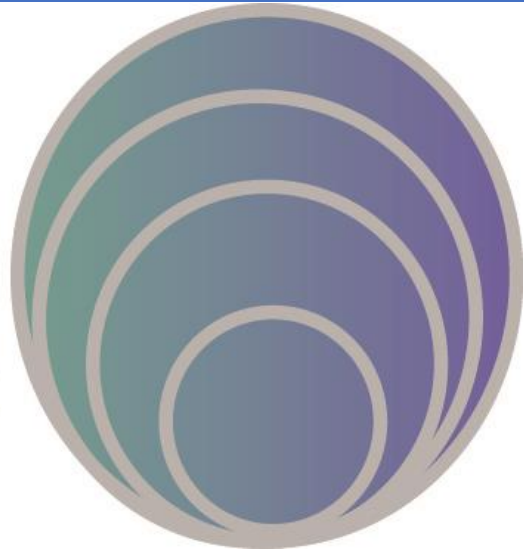


CAMPUS

Technical Assistance
and Resource Project



Training and Technical Assistance Institute III: Student Conduct Atlanta, GA | March 2020

This project is supported by Grant No. 2019-TA-AX-K028 awarded by the Office on Violence Against Women, U.S. Department of Justice. Points of view in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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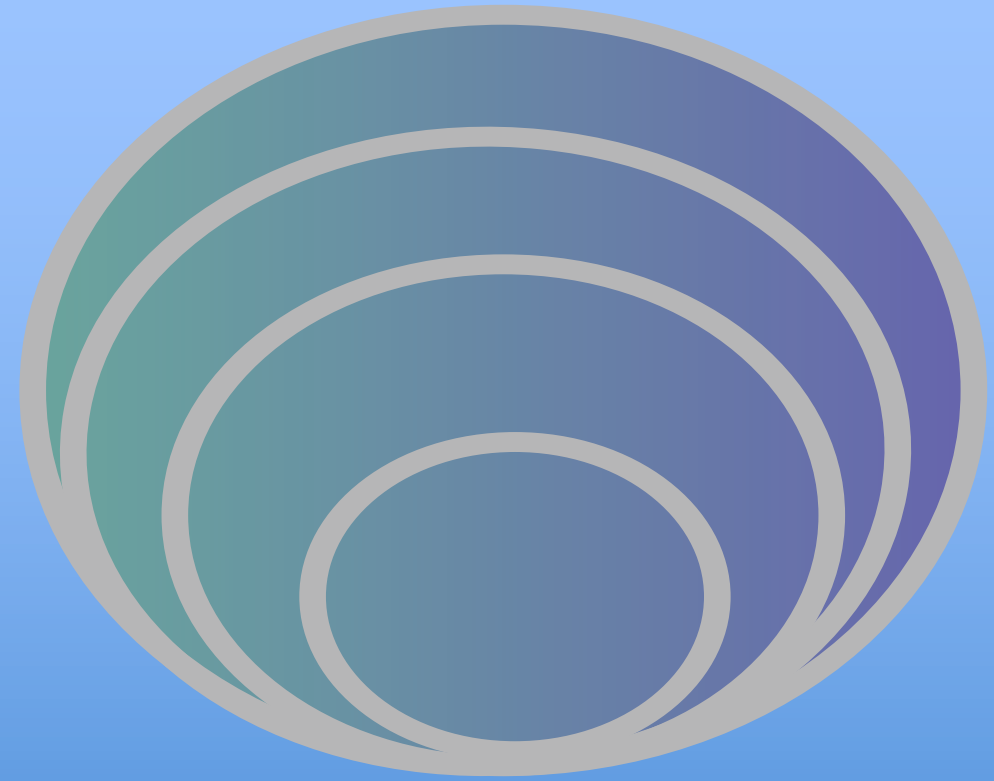
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CAMPUS

Technical Assistance
and Resource Project



Conduct Track: TTI #3

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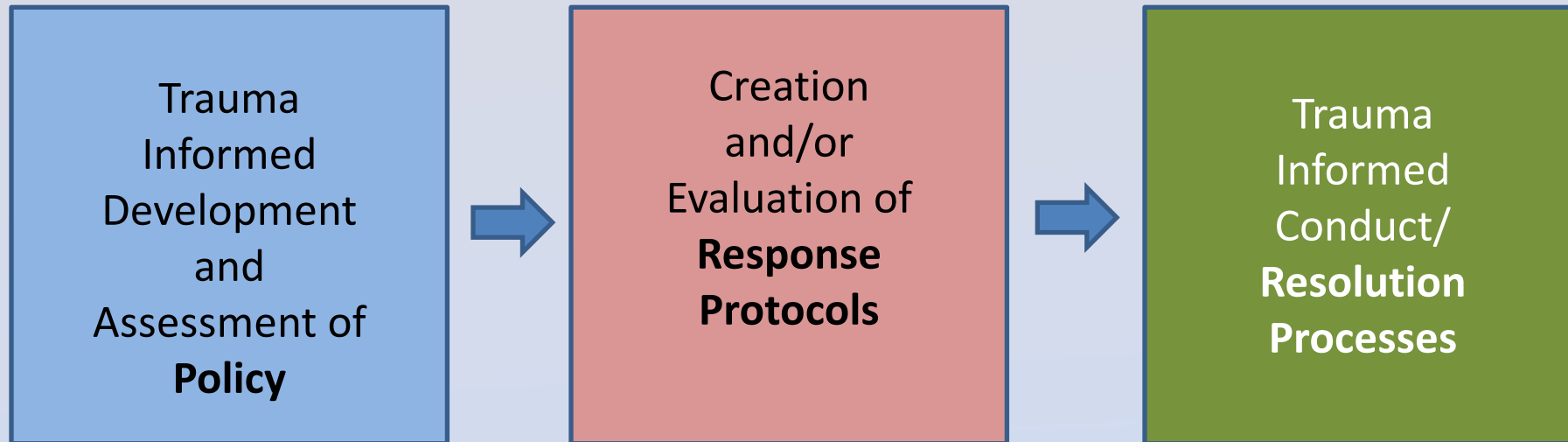
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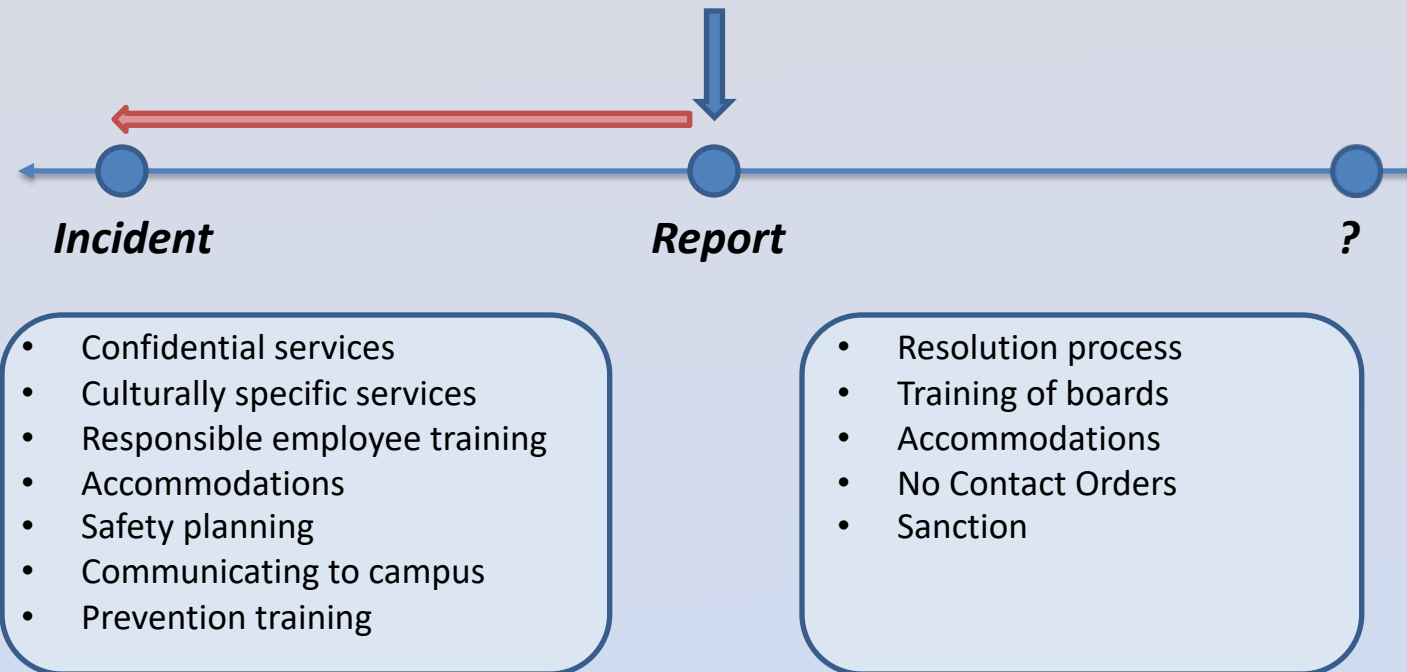
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Focus Per TTI



Reframing the Response Timeline



Policy/Procedures:

- Clear, concise, **policies and procedures** for addressing situations of sexual assault, domestic/dating violence, and stalking.
 - Purpose, Definitions, Jurisdiction
 - Accessibility and Inclusion
 - Policy Assessments

Response Protocols:

- Clearly defined **protocols for students and staff** when responding to campus sexual assault, dating/domestic violence and stalking related to providing safety planning, health and other remedial measures.
 - Distinctions between SA, DV and Stalking
 - Victim Reporting and Response
 - Safety Planning and No Contact Orders
 - Responsible Employees, Campus Security Authorities

Resolution Process:

- Training for all individuals and/or boards involved with the **campus resolution process** for situations of sexual assault, domestic/dating violence, and stalking.

Agenda

- ❑ Assessment Exercise
- ❑ Initial Meetings/Managing the Investigation
- ❑ Fundamentals of the Report Structure
- ❑ Questioning
- ❑ Deliberations & Sanctions



Jeremy Inabinet

- Associate Dean of Students, University of Chicago
- National Trainer on Investigations, Panel Member Training, Resolution Process Design, Intersection of Policy and Procedures
- Consultant since 2012

Conduct Structure Assessment

Hypothetical: Bailey and Alex met during their second year of college and started dating shortly thereafter. Alex was emotionally, physically, and sexually abusive towards Bailey during the relationship. Bailey did not feel comfortable talking about the abuse while she was still dating Alex. After a couple years, during their senior year of college, Bailey ends the relationship and feels ready to report. However, Bailey has several concerns about reporting to the college and she does not know what to expect, so she decides to meet with the college beforehand. She has a meeting with the Title IX Coordinator and they discuss the following information and questions.

Bailey expresses that she has difficulty talking about the relationship and all the abuse she experienced. She also cannot always describe specifics because of the amount of abuse. Bailey also expresses concern about Alex focusing on her behavior and actions if she were to pursue the process. Bailey needs a lot of support.

- a. What do you tell her about available resources on and off campus?
- b. What do you tell her about available safety measures?
- c. What do you tell her about the role of advisors?

Bailey expresses concern that the college will not understand why she stayed in the relationship for two years and why she did not end the relationship. Bailey is afraid of not being believed.

- a. What do you tell her about who on campus receives the training?
- b. What do you tell her about who is the trainer and the type of training employees receive?

Bailey expresses concern about what is going to happen in the process and how long it is going to take. She and Alex are seniors and are expected to graduate next semester, so she worries that the process will not complete before graduation.

- a. What do you tell her about what she can expect from the process?
- b. What do you tell her about the expected timeframe for resolution?
- c. What do you tell her about who is involved during the process?

Bailey worries about having to be in the same room as Alex. She has panic attacks if she sees him. She wants to know more information about how her complaint will be investigated.

- a. What do you tell her about the type of process (i.e. investigation, hearing, and/or both)?
- b. What do you tell her about seeing Alex during the process?
- c. When is the exchange of documents?

Bailey wants to explain how this has negatively affected every aspect of her life and how it is not right that Alex has not been affected in any way. She has heard conflicting information from students about whether or not she will hear of any sanctions. She worries that the college may not find Alex responsible.

- a. What do you tell her about victim impact/mitigation statements?
- b. What do you tell her about the range of sanctions?
- c. What do you tell her about notification of the outcome?
- d. What do you tell her about an appeals process?

Espoused to enacted: Initial meetings and managing the investigation



OVW TTI

October 2018 - Orlando

Jeremy W. Inabinet, M. Ed.

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Objectives by TTI:

- 1: Clear, concise, **policies and procedures** for addressing situations of sexual assault, domestic/dating violence, and stalking.
- 2: Clearly defined **protocols for students and staff** when responding to campus sexual assault, dating/domestic violence and stalking related to providing safety planning, health and other remedial measures.
- 3: Training for all individuals and/or boards involved with the **campus resolution process** for situations of sexual assault, domestic/dating violence, and stalking.

Initial meetings and managing the investigation

Preview

- Describe different types of campus investigation/resolution models
- Identify areas where messages about the process originate
- Explore initial information given to complainants and respondents

**WHERE DOES THE CAMPUS
COMMUNITY RECEIVE MESSAGES
ABOUT THE RESOLUTION PROCESS?**

Messages

- Orientation
- Online programs (prior to attendance)
- Internet
 - Website
 - News outlets
 - Social media
- Students
- Campus programs
- Student organizations

Describe your institution in 5 words

What influences these messages?

Institutional Lenses

- Public/Private
- Size
- System school
- Location (rural/urban)
- Region (Northeast/South/Midwest)
- HBCU/HSI/PWI
- Religiously affiliated/faith-based
- 2-year/4-year
- Technical/Community
- Liberal Arts
- Research
- Advocates
- For profit
- Veterans
- Institutional age
- Athletic conference assoc.
- Residential/Non-residential
- Online
- Governance Structure
- Mission
- Institutional culture
- Undergraduate only
- Commuter
- International
- Endowment size
- Academic/institutional reputation
- Counseling center
- Leadership origin
- Selectivity

RESOLUTION STRUCTURES

An acknowledgement of difference and common understanding

Resolution Structures

- General applicability
- Campus specifics
- Your community

Resolution Structures

- Hearings
 - Conduct Board
 - All faculty
 - All staff
 - All students
 - Faculty and staff
 - Faculty, staff, and students
 - Administrative Board
 - Dual Hearing Officers
 - Sole Hearing Officer
- Non-student Conduct
- Investigator Model
- Outside

Common Understanding

What are we trying to do?

Common Understanding

What are we trying to do?

Create a fair and equitable process to resolve cases of gender-based misconduct, in accordance with our institutional mission and values, and all applicable laws.

Common Understanding

What are we trying to do?

- We are looking at this from an institutional policy violation standpoint
- We are addressing the needs of our community and unique campus culture
- We are not determining right and wrong

Common Understanding

$$B = f(P, E)$$

(Lewin)

Evaluating the Message

- Code of Conduct
- Currently written procedures
- Previously written procedures
- University mission
- Campus climate study
- Case files
- Newspaper articles

(What do we tell people about our process? Private?
Confidential?)

Message and the Process

- Timeline
- Time commitment
- Procedure
- Perception
- Starting point
- Ending point
- People gaining information vs. people involved
 - Chart this
- Table top exercises

Experience in the Process

- An individual's experience in the process may impact your reporting numbers (Katel, 2011)
- It is likely that most individuals that file a complaint are not given information on what to expect (Sabina, 2014)

When does your process begin?

Points of Entry

- Note all possible entry points
- Know referral process
- Look for concerns of equity

Experience in the Process

- Consistent
- Planned
- Documented

Consistent

- Information
- Evaluation
- Opportunity

-Dependability of undeviating processes and procedures for all participants in a resolution process, regardless of any defining or identifying characteristics.

-Consistency should not determine the outcome of a situation, rather it should be the foundation for processing information

Consistent

- Information
- Evaluation
- Opportunity

Choices/Where exist?

- Not everyone will make the same choices, but everyone should have the same opportunity to make a choice
- Information for the choices should be consistent

Planned

- Work with the Title IX Coordinator
- Be aware of other entities
- Establish a timeline

Documented

- Case file
- Documents
- Interactions
- Communication
- Results
- Participant informed
- Standard Report

Looking at current practice



Research

- Variety of institutions (35)
- What do institutions espouse when dealing with student-to-student cases of alleged sexual misconduct?

Research

16 Themes emerged

- Ease of access
- Messaging
- Victim blaming
- Situational understanding
- Tone
- Intended audience
- Terminology
- Consent
- Title IX Coordinator
- Accommodations
- Retaliation
- Flow of information
- Reporting
- Confidentiality
- Seriousness
- Tangibility

Research

5 Categories emerged

- Rapport Building
- Care
- Policy and Compliance Requirements
- Institutional Response Process
- Other Considerations

Research

- In action
- Initial meetings

Initial Meeting

Rapport Building

- Introduce yourself
- Explain your role in the process and at the institution
- Explain why the complainant/respondent is meeting with you
- Acknowledge advisor/support person*
 - Allow for questions

Initial Meeting

Care

- Ask how the person is doing
 - Allow for wandering and rambling
 - Preferred pronouns
- Ask about a support network
 - Listening for interconnectedness
- Refer to services
 - On and off
- Ask who knows about the incident
 - Why important?

Initial Meeting

Institutional Response Process

- Explain the resolution process
 - Visuals
- Timelines

Initial Meeting

Policy and Compliance Requirements (Complainant)

- Review rights
- Review possible accommodations (ongoing)
- Discuss difference between remedies and sanctions
- Offer to issue a “No Contact” directive
- Explain retaliation
- Inform what you will be speaking about with the respondent
- Talk about the criminal process
- Review the amnesty policy*

(no promises)

Initial Meeting

Policy and Compliance Requirements (Respondent)

- Review rights
- Issue a “No Contact” directive*
- Explain retaliation
- Discuss any impact on respondent as a result of complainant accommodations
- Inform what you have and will be speaking about with the complainant
- Talk about the criminal process
- Explain any interim measures to be imposed*

Initial Meeting

Other Considerations

- Set time for follow-up meeting/email
- Get a weekly schedule (non-class)
- Ask if you can do anything to be of assistance
- Ask if there are any questions
- Give direct contact information
- Verify contact information
- Provide written information packet
- Extend thanks
- Planning meetings (Don't show up)
- Confidentiality/Who will be informed

Assessing and Planning

- Initial Assessment
 - Log all information
 - Review current information
 - Set boundaries
- Work with Title IX Coordinator
- Determine the following
 - What information is known?
 - What information needs to be known?
 - Where is the best place to get the information?

Partnerships

- Campus police/safety
- Counseling/Wellness centers
 - On/Off-campus
 - Sliding Scale
- Hospitals
- Community providers
- CCR
- SART
- Attorneys

Procedural Expertise

- Timeline
 - Weekly updates
 - Forecasting
- Process
- Accommodations
- Resolution
 - Options
 - Possibilities

Analyzing Policy

- Review policies together
- Common definitions
- Goal of policy

- Who interprets your policy?
- Direction of attention to parts of the policy

Cultural/Community Competency

- Partnership
- Underrepresented populations
- Religious concerns
- Power and privilege
- Non-traditional students
- Sexual orientation
- Disability
- Sex and Gender
- Who is your community

Gender-based Misconduct

- Unique social environments: small community, shared friends, teams, clubs
- Peer pressure/closed social networks/youth as witnesses (identities still in flux; fear of backlash for “siding with” or supporting complainant)
- Even if respondent leaves campus, friends may remain and harass complainant or engage in retaliatory behavior

Reflective Thoughts

- Making people feel safe on campus
- Uphold policy
- Accountability
- Be reasonable
- Follow your role
- Care

Preparing for the decision

Report writing and questioning

Preview

- Explore elements of an investigation report
- Discuss use of investigation
- Enhance questioning skills
- Identify differences in deliberative and investigative roles
- Discuss issues related to stalking and IPV
- Identify competencies

Working with Survivors

"There is no more effective neurobiological intervention than a safe relationship" – Bruce Perry on the importance of the 'helping relationship' we (first responders, therapeutic or any systems) develop with survivors.

1. The behavior of the survivor did not CAUSE the incident.
2. The behavior of the offender did cause the incident (not alcohol or hormones).
3. Sexual violence is a choice, but not of the survivor

Working with Survivors

- Whatever a survivor expresses....Guilt, Shame, Worthlessness, Anger, Etc.... They are having a normal response to an abnormal situation
- You can be warm and compassionate and still “get at the truth”
- Sometimes the survivor will not be likeable and sometimes the accused will be quite likeable

Beginning with the end in mind

Post-investigation and the report

A Report

- Comprehensive view of the information
- Consistent
- Clear language
- Thorough

A Report

- Introduction
- Involved Parties
- Date Incident Reported
- History of Case
- Alleged Violations
- Jurisdiction
- Standard of Proof
- The Complaint
- The Response
- Witness Summaries
- Additional Information
- Negative Inquiries
- Optional Responses

A Report

- Neutral
- Looks at all sides
- Approaches every possibility
- The information drives the outcome

Post-Investigation

- Report writing
- Delivering information to participants
- Preparing for the next steps
- Resolution

Report Writing

- What information needs to be known?
- Who is your audience?
- Tool for addressing future complaints
- Filter out non-relevant information

Delivering information to Participants

Participants should be given ample time to read/process case file

- Location
- Access
- Explanation
- Outline
- Walk through
- Written and personal communication on coordination

Preparing for Next Steps

Participants should be well informed for every step of the process

- Outline
- Walk through
 - Space
- Written and personal communication on coordination
 - Decision Delivery

Questioning Skills

Questioning Skills

Ground Rules

Lens of gathering more information

General Questioning Skills

Questioning Skills

Context of asking questions based on

- Role
- System
- Previous Training

Questioning Skills

Why do we ask questions?

Questioning Skills

Why do we ask questions?

To gather information to assist in

- Determining responsibility
- Determining credibility
- Determining sanctions
- Educating
- Assessing awareness and understanding

Questioning Skills

Types of questions

- Open
- Closed

Questioning Skills

WHAT questions

- Detail
- Specifics
- Clarifying
- “What happened next?”
- “What were you drinking that night?”

Questioning Skills

HOW questions

- Elicit emotional understanding
- Clarify sequence of events
- “How did that make you feel?”
- “How did you two meet?”

Questioning Skills

NON questions

- “Tell me about...”
- “Help me understand...”

could questions

why questions

Didn't you and *what were*

Language continuum

- Connotative
- Denotative

The Role of the Investigator

- Neutral
- Work through the process
- Open
- Thorough
- Investigative

The Role of the Adjudicator

- Neutral
- Work through the process
- Open
- Deliberative

Cash Register

Bias

Once people form an impression they unwittingly seek, interpret, and create behavioral data that verify it.

(McNatte, 2000)

Interviewing

Make the strange seem familiar

Location

- $B=f(p,e)$

Preparation

Environment

- Waiting, location, hospitality, where, seat of people

Previous messages (AV, reports, amnesty, legal)

Role

Process

Timelines (when to interview)

Gender lenses

Snowball technique

Interview/Question Skills

- Pre plan, but be flexible
- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
- Be in the moment
- Attentive behavior
- Be aware of body language
- How we set up our questions (witnesses)

Interview/Question Skills

- What do I need to know?
- Why do I need to know it?
 - Is the answer relevant to the allegation or just because I want to know?
 - Will this information affect the outcome or substantially affect the witness' s credibility?
- What is the best way to **ask** or word the question?
- When is the best time to ask this question?
- Am I the best person to ask this question?*

Interview/Question Skills

- What information do we need?
- Focus on areas of difference
- Be straightforward
- Avoid victim blaming
 - Question construction
- Listen to what is said and not said
- Listen to understand

Interview/Question Skills

Only _____% of what is understood in a given exchange is communicated through words

Paralanguage accounts for _____% of what is understood

Body language adds an additional _____% to communication

Interview/Question Skills

I didn't say you were stupid.

Interview/Question Skills

Follow up questions

- “...and some stuff...”
- Note the follow up/stay in line
- Pronouns
- Assumptions/Be clear on the information
- “Doesn’t sound like something I would do”

Interview/Question Skills

- Silence speaks volumes (5 to 7 seconds)
- Avoid multiple/multiple choice questions
- Stay in line
- Writing with the recording
- Asking the question in the best way to get the information you know exists
- Poisonous pronouns (reading reports)
- Check for understanding (Be cautious of naming emotion)
- Let the information drive the process

Interview/Question Skills

- Know the purpose of a question
- Avoid grandstanding
- Get the answer to your question
- Be appropriately curious
- Be cautious of shiny nickels
- Emotion may appear (anger, fear, sadness)

Interview/Question Skills

Reasons for asking questions:

- Understanding
- Clarification
- Anticipation of committee questions
- Potential questions from the other party

Goals in the process

- Create a timeline
- Establish facts
- Fill in picture

The Complainant

- Rapport
 - Open
 - Honest
 - Empathy
 - Warmth
- Let them put information on the table
- Allow the interview to wander
- Engage in matching
- Start broad
- Explain your note taking
- Could this be documented in other ways?

The Complainant

- Focus on sensory experiences
 - Talk to me about what you...
 - Saw
 - Heard
 - Smelled
 - Tasted
 - Felt
- If pressed on chronology, those who experienced trauma will typically try to arrange (remembering what was said later)

The Complainant

- What were you feeling when...
- What was your thought process during this experience? (note: this is not "what were you thinking")
- Talk to me about your reactions to this experience:
 - Physically
 - Emotionally
- What was the most difficult part of this experience for you?
- What can't you forget about this experience?

Strand, Russel W. *The Forensic Experiential Trauma Interview*

The Complainant

- Is this the first telling of the information?
 - 2 sleep cycles
- Notes and recording
- Tell me about what happened
- Documentation (FB, social media, journal, outcry)
- Reluctance
 - Root of concern
 - Appropriate person to address concern
 - Availability of the process
 - Accommodations
 - Possibility of going forward without the complainant

The Complainant

- Be prepared to address a complaint withdrawal
- Know your limitations
- Be supportive

The Respondent

- Be aware of language
 - Same status as complainant
 - Be consistent
- Allow for opportunities
- Start broad
- Work to get details
- Get thoughts on motivation

The Respondent

- When do they first speak with you?
- When do you reveal the complaint?
- Allow for uninterrupted time
- Ask for witnesses, and why
- Several key questions to ask

The Respondent

- Ask the question “How did you know what you were doing was consensual?”
- If you could meet with the complainant, what would you say?
- If you could do anything different, what would you do ?
- What are your thoughts about this whole thing?
- We are determining if the respondent violated the policy, not if the complainant was irresponsible

Witnesses

- Flowcharts
 - Relationships
 - How identified
- Text messages and other documents
 - Look with
 - Ask for copies (know how to screenshot)
- Initial outreach to witness
- Try not to label the incident
- Not looking for anything in particular
- No right/wrong answers, be honest
- Conversations with the complainant/respondent
- Open invitation
- Anticipate questions

Witnesses

- You are the filter
- What do you want to tell me?
- Have clear contact information
- Who has spoken to them?
- Snowball
- Retaliation
- Confidentiality
- Address reluctance (I notice you are...)

Other

- Pictures
- Diagrams
- Physical location

IPV

Circle of Violence

- Honeymoon phase
- Build up phase
- Episode
- Repeat

Average is 7 times

Controlling Tactics

- Emotional abuse
- Economic abuse
- Isolation
- Privilege of Status
- Using children
- Minimizing, denying, and blaming
- Intimidation and threats
- Violence

IPV

- Predominate aggressor (struck more, most injures, reasonable)
- Who reported?
- Is there fear?
- How do they talk about each other?
- Does someone wrongly accept the blame?
- Written demands/expectations?
- Damaged property?
- Substance abuse?
- Other issues (vandalism, pets, other)?

IPV

Listen to language does the person:

- Refer to the partner in critical/demeaning terms
- Seem overly calm
- Convey any of the following:
 - Entitlement
 - Ownership
 - Privilege
- Sound authentic
- Make excuses for the abuser (drinking, stress)
- Describe avoidance tactics

STALKING

Stalking

- Course of conduct
- Escalates
- Lethality
- Stalking Resource Center
- Technology

Stages of Stalking

Rejection

- The trigger (real or perceived)
- Insecure individuals seeking control

Pursuit

- Attempt to (re)claim object of obsession
 - Calls, email, text, gifts, notes
- Win back (with the belief it will happen)

Revenge

- After continued rejection
- Blames victim for ruining their life

Stalking Manifested

Emotional Violence

- Destroy reputation
- Reveal personal information
- Sabotage job/school

Property Damage

- Vandalism
- Harm to pets

Physical Violence

- Threats
- Articulation of plans

Investigator Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Procedural Expertise
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- Report Writing
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- Responsiveness
- Expert Sources
- Gender-based Misconduct
 - Sexual Misconduct
 - Relationship/Domestic Violence
 - Stalking
- Psychology/Sociology of:
 - Respondent
 - Complainant
- Credibility Determination
- Sanctioning
- The Appeal Process
- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building

Investigator Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- ~~Procedural Expertise~~
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- ~~Report Writing~~
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
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- Sanctioning
- The Appeal Process
- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building

Adjudicator Competency-Based Model

- Philosophy/History of conduct
- The Resolution Process
- Critical Thinking Skills
- Analyzing Policy
- Cultural/Community Competency
- Note Taking
- **Report Reading**
- Questioning/Listening Skills
- Processing Information
- Standard of Proof
- Title IX Response Elements
- Statement Analysis
- **Deliberation Skills**
- **Hearing Decorum**
- Expert Sources
- Gender-based Misconduct
 - Sexual Misconduct
 - Relationship/Domestic Violence
 - Stalking
- Psychology/Sociology of:
 - Respondent
 - Complainant
- Credibility Determination
- **Sanctioning**
- The Appeal Process
- Role Play
- Reasoning
- Non-Heteronormative Education
- Rapport Building

Hearing Decorum

- $B=f(p,e)$
- Show the hearing space
- Handling disruption
 - Acknowledge
 - Warn
 - Follow through
- Who is in Charge
- Attire

Hearing Decorum

- Work to establish a baseline of relaxed conversation
- Maintain good eye contact
- Listen carefully to the answers to your question
 - Do not write while they are talking
 - Do not be thinking about your next question while they are talking
- Nod affirmatively to keep witness talking
- Do not fidget, roll your eyes or shake your head “no”
- Do not look shocked, smug, stunned or accusing
- Watch all individuals

Analysis and the decision

Weighing information and coming to conclusions



Preview

- Three parts of analysis
- Role of alcohol
- Processing information
- Credibility
- Deciding resolution

Incapacitation, credibility, and consent

Processing Information

Look at the totality of the information

- Possible
- Plausible
- Credible
- Supporting information
- Behavior and information
- Corroboration
- Strikingly similar information
- Fact, opinion, circumstance

Essential Title IX Compliance

Once a school has notice of sexual harassment/sexual misconduct, the school should:

1. Take immediate and appropriate steps to investigate what occurred
2. Take prompt and effective action to:
 - End the harassment
 - Remedy the effects
 - Prevent the recurrence

The school must appoint a Title IX Officer to oversee all the compliance elements

Consent

Understanding and evaluation

Consent

- Consent is clear, knowing and voluntary
- Consent is active, not passive
- Silence, in and of itself, cannot be interpreted as consent
- Consent can be given by words or actions, as long as those words or actions create mutually understandable clear permission regarding willingness to engage in (and the conditions of) sexual activity

Consent

But, consent is not where we start, because

- Sexual activity with someone by use of force or with someone who another knows to be – or based on the circumstances should reasonably have known to be – mentally or physically incapacitated (by alcohol or other drug use, unconsciousness or blackout), nullifies any consent

Consent

Force

Incapacity

Force

Physical

- Choking, pinning down, slapping, punching, etc.

Intimidation

Threats

- Outing, spreading rumors

Coercion

- Unreasonable pressure, occurs when advances not welcome

The presence of force, nullifies any consent

Incapacity

- Gather information during the investigation to make a reasoned conclusion based on the same standard of proof
- Applies regardless if the incapacitation is a result of voluntary or involuntary action

Incapacity

Cause of the incapacitation

- Alcohol
- Drugs
- Mental
- Injury
- Sleep

Incapacity

Listen and look for clues for possible incapacitation

- “The next thing I remember was...”
- “I remember bits and pieces...”
- “I can’t remember what happened next...”
- “Things start to become cloudy...”
- “I was more drunk than I have ever been...”

Work backwards from the point of concern

Incapacity

Take note of and get clarification on

- Alcohol consumption
 - What
 - How much
 - Size of drinks
 - Source
 - Timeline
- Other drugs
 - Medication
 - Recreational
 - Unknowing
- Build a timeline

Alcohol

- What is alcohol
- Standard drinks
- How alcohol gets in the system
- Rate of absorption
- How it leaves the system
- BAC/BAL
- Influences on BAC
- Myopia
- Difference between men and women

Alcohol

- What is alcohol
- Standard drinks
- How alcohol gets in the system
- Rate of absorption
- How it leaves the system
- BAC/BAL
- Influences on BAC (Quantity, Rate, Weight, Time, Sex)
- Myopia
- Difference between men and women

Alcohol

Difference in Sexes

- 160 pound man
- 120 woman

Both have 5 drinks over 3 hours

Man approximately - _____ BAL

Woman approximately - _____ BAL

Alcohol

Difference in Sexes

- 160 pound man
- 120 woman

Both have 5 drinks over 3 hours

Man approximately - .069 BAL

Woman approximately - .139 BAL

Alcohol effects at various levels of BAC

.02%	relaxed
.04%	relaxation continues, buzz develops
.06%	cognitive judgment is impaired
.08%	nausea can appear motor coordination is impaired

ASTP Pi Kappa Phi Fraternity

Alcohol effects at various levels of BAC

.10%	clear deterioration in cognitive judgment and motor coordination
.15% to .25%	black outs
.25% to .35%	pass out / lose consciousness risk of death
.40% to .45%	lethal dose

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Incapacity

Observed behavior

- Speech
- Movement
- Actions
- Consciousness
- Clarify ambiguous statements

Observer of behavior

- Ability to observe
- Reliability of information
- Potential bias

Incapacity

- Incapacitation due to alcohol or drug use is a state beyond “mere” intoxication or even being drunk.
- It exists when a person lacks the ability to make or act on a considered decision to engage in sexual activity.
- Indicators of incapacitation may include inability to communicate, lack of control over physical movements, and/or lack of awareness of circumstances.
- An incapacitated person can also experience a blackout state during which he or she appears to give consent but does not have conscious awareness or the capacity to consent.

Incapacity

Blackout

- Incapacitated
- Effect is on short term memory
- Muscle memory can continue

Incapacity

If it is concluded (more likely than not) the complainant was incapacitated, determine

- At what point in time (as it relates to sexual activity)
- Did the respondent know, or
- Should the respondent have known (reasonable person standard)

Knew or should have known

- Amount of interaction (cross reference with your notes)
- Supplier of anything
- Past experience with complainant
- Respondent's own level of capacity

Incapacity

The policy has been violated if the complainant was incapacitated and:

- The respondent knew; or
- The respondent caused; or
- The respondent should have known.

Proceed to analyze consent if:

- The complainant was not incapacitated; or
- The complainant was incapacitated, the respondent did not know, and a reasonable person would not have known.

Consent

- Look for the presence of clear words or mutually understandable actions that signaled consent
 - They must be present for each level of sexual activity
- No means no (but does not need to be present)
- Consent can be withdrawn, but must be communicated clearly by the person withdrawing consent
- Ask the respondent:
 - How did you know what you were doing was consensual?

Decisions

Sources for Understanding

- Rape Trauma Syndrome
- Tonic Immobility
- Neurobiology of Trauma
 - Rebecca Campbell, PhD – Michigan State
- Drug Impact
- Alcohol

Processing Information

- No formal rules of evidence
- Information able to help clarify what happened

Processing Information (revisited)

Look at the totality of the information

- Possible
- Plausible
- Credible
- Supporting information
- Behavior and information
- Corroboration
- Strikingly similar information
- Fact, opinion, circumstance

Processing Information

- Policy
- Standard of proof
- Go from broad to narrow
- Add up the information
- Deliberative discussions
- Using information available to everyone
- Use of statistics
- Come to a conclusion
- Responsibility
- Sanction, if applicable

Credibility

- Reliability of information
- Ability to have information
- Not the same as truthful
- Motivation of person
- Interest in outcome
- Contested and uncontested information
- Contradictions
 - Two sleep cycles
 - Memory error
- Demeanor
 - Change in non-verbals
- Non-cooperation
 - Address

Credibility

In 1995, United States District Court judge Lancaster explained that the testimony of one credible witness was sufficient to sustain the expulsion of a student found responsible for sexual misconduct from a public institution.

- Plaintiff's argument appears to be that because the tribunal based its decisions on the student's uncorroborated version of the events, the evidence was insufficient to warrant expulsion. We disagree. Tribunals of every level, whether trial courts, administrative agencies or school disciplinary boards by their very nature, must resolve disputes of fact. In doing so, they weigh the evidence, assess the credibility of witnesses, and make factual findings based on the testimony they find most credible. *Merely because a tribunal decides to rely on one witness's word rather than another's does not mean that the procedure was unfair. It simply means that the tribunal made credibility determinations. **Its primary purpose.*** (Woodard v. University of Pittsburgh, No. 95-1299, at 6 (W.D. Pa. 1995) (emphasis added))

Credibility

- Everyone is nervous
- Case facts are the most important factor
- Look for indications of truthfulness and deception
 - Response time
 - Stalling tactics
 - Change in pitch, volume, rate of speed
 - Erasures
 - Posture
 - Attitude

An Investigator is

- The steward of the process
- Fair and equitable
- Not trying to prove or disprove anything
- The information gatherer
- Question things

Standard of Proof

Preponderance of the information

- Standard slide

Determination of violation

- Character role

Post-investigation

Resolutions

- Match the sanction with the seriousness of the violation
- Consider
 - Complainant
 - Policy
 - Title IX/Applicable laws
 - University/Community
 - Respondent
- Voice of the unseen/unheard
- Impact Statements
- Prevent reoccurrence
- Rationale (Clear decision)
- Survey/Focus Groups/Case Study

Resolutions

Elements to consider, by weight

- Policy violated
- Impact on complainant
- Applicable laws
- Institutional values/community
- Respondent

Resolutions



Resolutions

Appeals

- Training
- Stay within scope
- Not a rehearing
- Narrow

CONCLUSION

QUESTIONS



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Enhancing Strategies

Applying a Restorative Approach to Cases of Gender-based Violence on Campus

Rachel King, Ph.D.
March 3, 2020

About the Presenters



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Education Program Senior Attorney
Victim Rights Law Center

Presenter's Lens

- Identity & Background
- Title IX
- Student Affairs & Student Conduct
- Professional development
- Restorative Justice facilitator
- Area of research

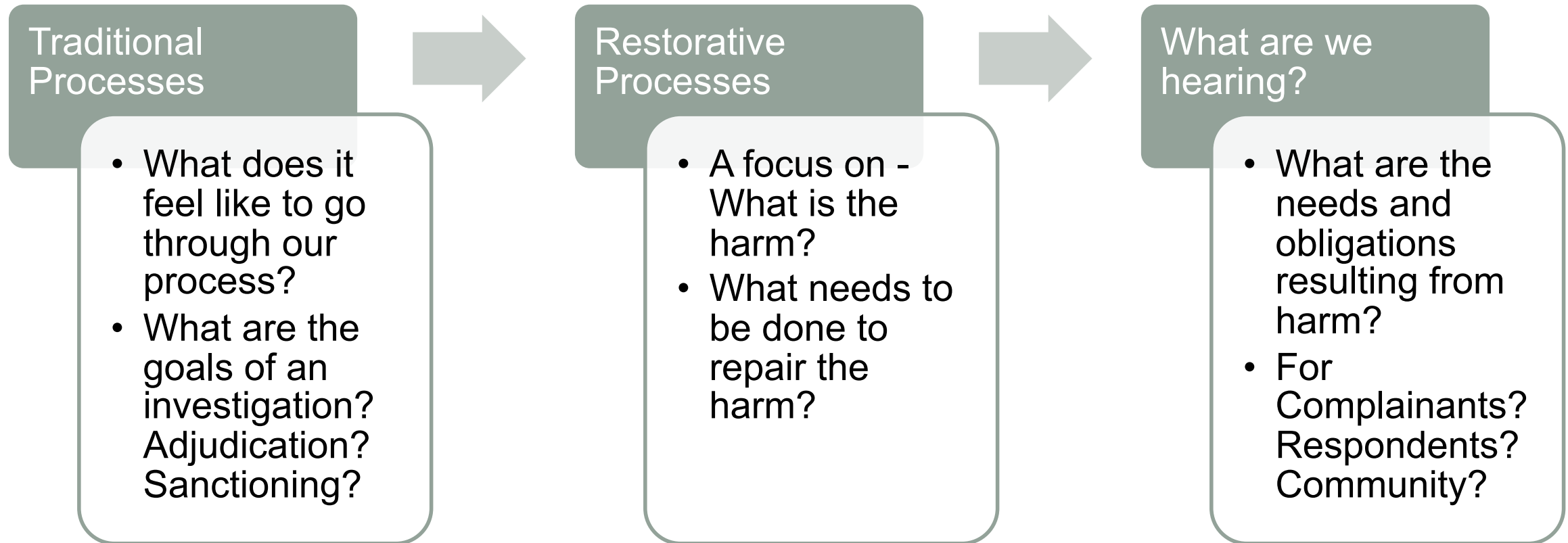


Learning Outcomes

Participants will be able to:

- Possess a broad understanding of restorative justice and restorative practices
- Assess the factors making circumstances more and less appropriate for informal and formal restorative processes
- Apply strategies for using a restorative approach in multiple contexts throughout Title IX and Student Conduct processes

From Asking Differently to Listening Differently



Restorative Justice: A Framework

- Restorative Justice is an approach, used around the world, that utilizes processes with indigenous roots to resolve crimes and conflict.



- It involves those with a stake in a specific offense to collaboratively identify harm that has resulted from that offense and address the needs to repair that harm.

Three Questions – Two Views

Conventional Criminal Justice System

- Who did it?
- What laws were broken?
- How will we punish the offender?

Restorative Way of Thinking

- What is the harm?
- What needs to be done to repair the harm?
- Who is responsible for this repair?

Student Conduct Administration

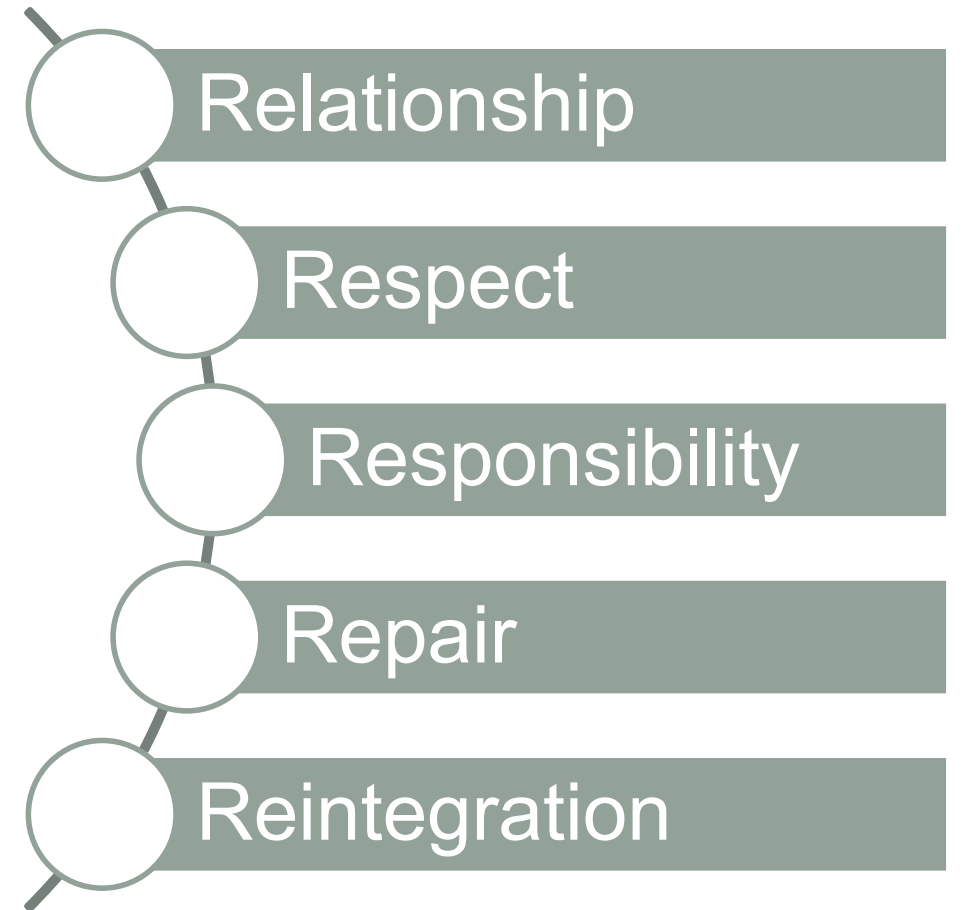
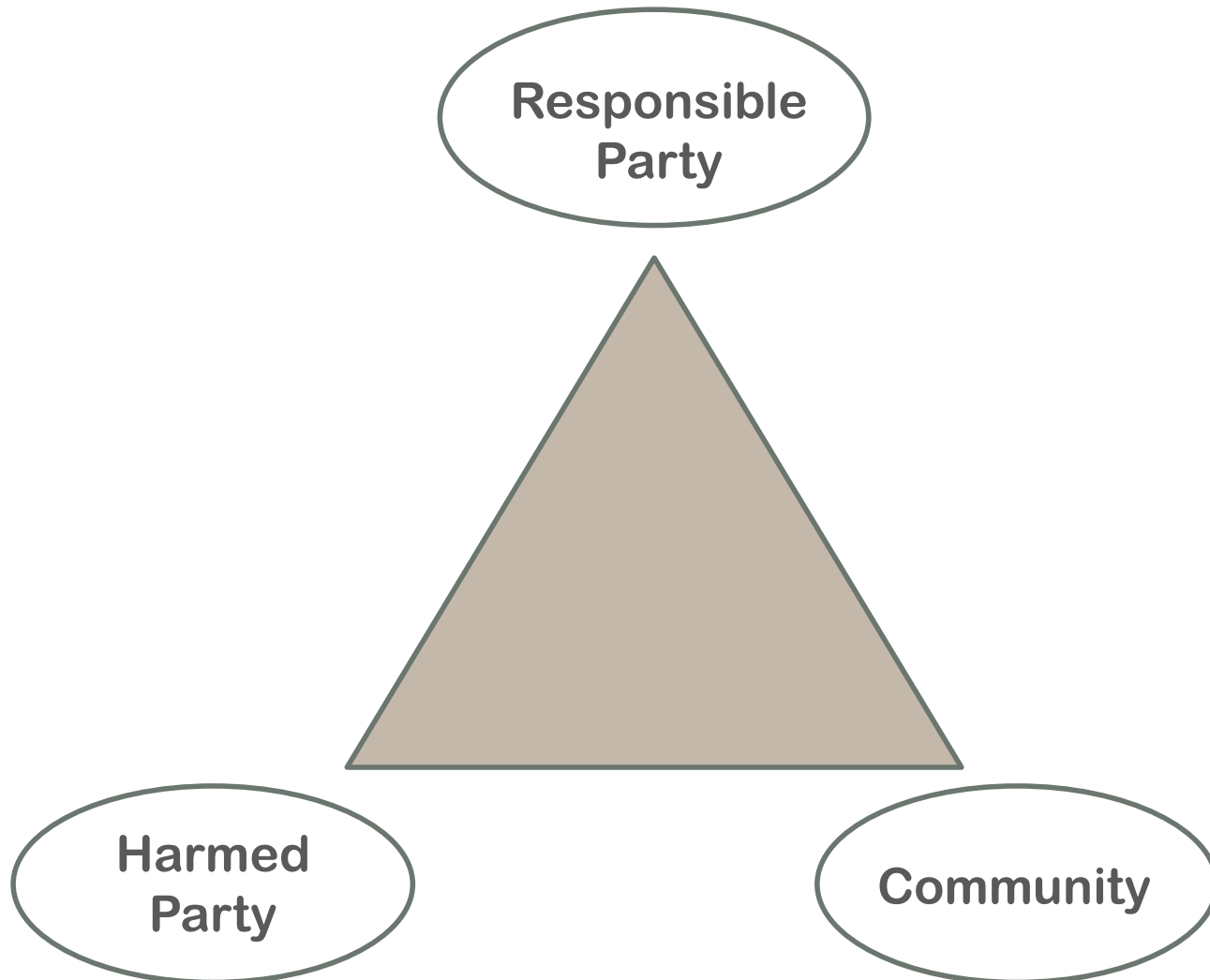
Conventional Student Conduct Process

- Who did it?
- What section of our Code of Conduct was violated?
- What sanctions will we impose?

Restorative Way of Thinking

- What is the harm?
- What needs to be done to repair the harm?
- Who is responsible for this repair?

Restorative Triangle



Restorative Approach

Relational

Addresses
harms, needs
and obligations

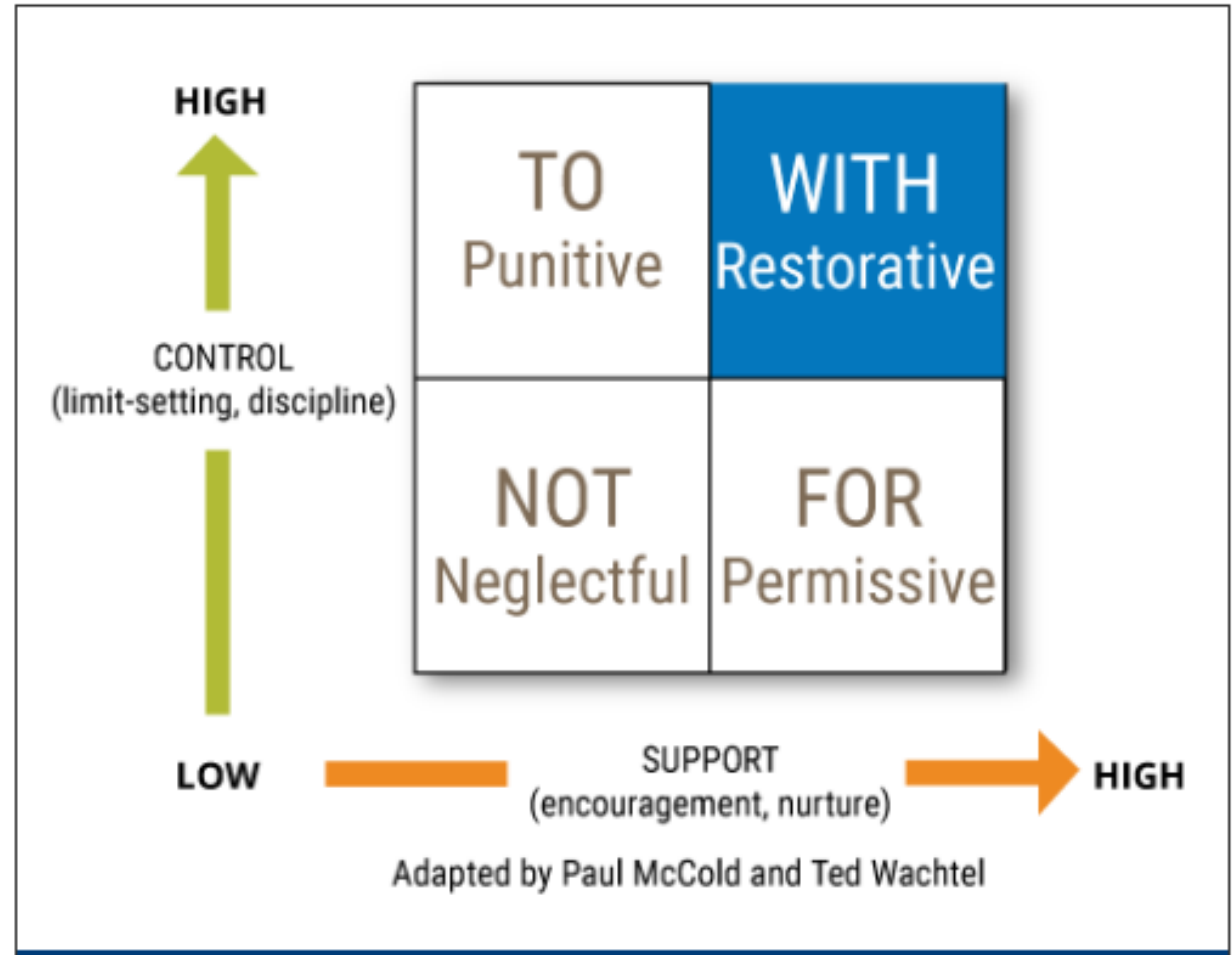
Collaborative

Equal concern
for harmed and
responsible
parties

Social Discipline Window

The fundamental unifying hypothesis of restorative practices is that “human beings are happier, more cooperative and productive, and more likely to make positive changes in their behavior when those in positions of authority do things with them, rather than to them or for them.”

This hypothesis maintains that the punitive and authoritarian to mode and the permissive and paternalistic for mode are not as effective as the restorative, participatory, engaging with mode (Wachtel, 2005).



The Institution's Role

- Does not preclude an institution from:
 - Taking steps to prioritize safety
 - Upholding community expectations, imposing sanctions when appropriate, considering precedent
 - Accounting for PR considerations as a form of addressing community needs
 - Ensuring compliance under Title IX and other applicable federal and state regulations



A “Good” Case for a Restorative Approach

What are the characteristics of a case of gender-based misconduct that you feel is well-suited for a restorative approach?

Why?

Factors for Consideration

Each case brings unique circumstances:

- Nature of the reported incident
- Parties:
 - Relationship
 - Complainant needs, reported impact, desired outcome, level of participation
 - Respondent level of participation, stance on what occurred/level of acceptance of responsibility, disciplinary history

Opportunities to Infuse a Restorative Approach

- Training
- Policy Development
- Intakes
- Investigations and “informal” adjudication proceedings
- Resolution processes
- Reintegration

Scenario 1

SEXTORTION: BIO 101

Intakes and Gatekeeping

If you are the Title IX Coordinator (or person charged with gatekeeping):

- What are you asking Monika?
- How do you describe your role? The available options?
- How might you take a restorative approach in this situation?
- What harm might she articulate?
- What needs might emerge?
- Is there a community impact?

Restorative Strategies at Intake

- Articulating the goal of your process(es)
 - How much does she know of her options?
 - What are her options, based on what she has told you? Would the alleged conduct violate institution policies? Which ones?
 - When would you feel obligated to proceed with a traditional conduct process?

Relational

Addresses
harms, needs
and obligations

Collaborative

Equal concern
for harmed and
responsible
parties ¹⁸⁴

Restorative Strategies at Intake

- What are you listening for in how she wants to respond/proceed?
 - Level of uncertainty
 - Motivation to report
 - Fear
 - Safety / Retaliation
 - Disproportionate consequences
 - Self-blame

Relational

Addresses
harms, needs
and obligations

Collaborative

Equal concern
for harmed and
responsible
parties ¹⁸⁵

Restorative Strategies at Intake

- What has the impact of this been on her?
- What needs does she identify?
 - Getting past positions, demands > interests and needs
- What might help repair those needs?
- Who else has been affected by this and how?

Relational

Addresses
harms, needs
and obligations

Collaborative

Equal concern
for harmed and
responsible
parties ¹⁸⁶

Potential Needs

- Sense of safety
- Validation
- For impact to be heard
- Deeper understanding of what transpired
- Accountability
- Enhanced confidence the behavior will not recur
- Restored trust

Whose obligation is it to repair the harm?

How do we assist in meeting those needs?

How do we respond to any community impact?

Scenario 2

“SHE WAS REALLY DRUNK...”

Complainant: Tyler

- Thrown off by how much this incident has affected him
- Voices embarrassment and confusion
- Feels like Elise needs to understand this was not ok
- Wants to go forward through your Student Conduct process



What needs is he identifying?
How has he been affected?
What might help repair that harm?
What happens if she's "Found Responsible?" "Not Responsible?"

Investigation & Informal Adjudication

Engaging Respondents in a Restorative Discipline Process:

- Separating the student from the behavior in question
- Suspending judgment
- Reintegrative shaming vs. disintegrative shaming
- Space for self-harm
- Collaborative sanctioning

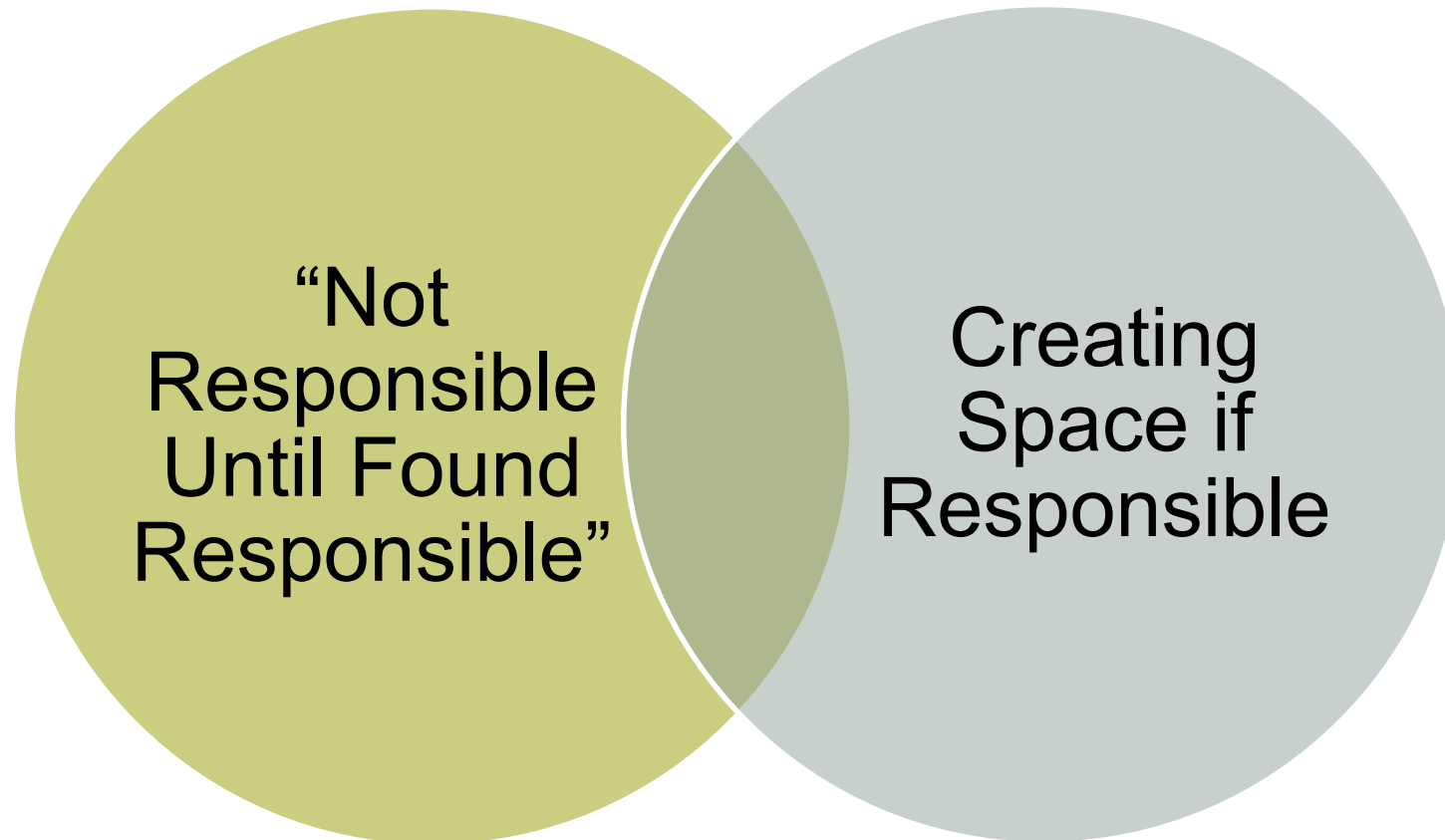
Relational

Addresses
harms, needs
and obligations

Collaborative

Equal concern
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responsible
parties ¹⁹⁰

Investigation & Informal Adjudication



- How do you know what you were doing was consensual?
- What words or actions make you feel as though you had consent?

Respondent: Elise

- What were you thinking when this happened?
 - What have you been thinking about since then?
 - Who do you think has been affected by this and how?
 - What do you think is needed to repair that harm? (assuming articulated)
-
- Asset-based process > Equal concern for Responsible Parties does not dismiss behavior or void accountability
 - Accounting for causes

Relational

Addresses
harms, needs
and obligations

Collaborative

Equal concern
for harmed and
responsible
parties ¹⁹²

Role of Community

*I know someone who reported
and nothing was done.*

I still see that kid walking around
campus....

*I feel like we hear a lot about it when something bad
happens and then we never have any idea what was done
about it.*

Role of Community

- Responding to specific incidents
 - Directly involved impacted parties, support persons
 - Follow-up when we cannot breach confidentiality
 - External to situation – may be via rumor, campus-wide communication, news coverage
 - Recipients of acts of repair
 - Participants in repairing harm
 - Partners in reintegration
- Big Picture: How does my school address misconduct?
 - Conflating of accountability and punishment
 - Engaging campus constituents
 - What is RJ? What is a restorative conduct or discipline process?
 - What does Zero Tolerance mean for our campus?

Scenario 3

Alex and Finley

Potential for Circle?

- What are you listening for:
 - In a meeting with Alex?
 - In a meeting with Finley?
- Alex:
 - Desire for Finley to understand impact
 - Desire to hear Finley's intent or awareness
 - Emphasis on being able to work together, have positive relationship
- Finley
 - Acceptance of responsibility
 - Victim blaming or empty apologies
 - Desire to repair harm or desire to better understand impact
 - Difference between Responsibility and Remorse

Restorative Resolution Processes

- Various models, circle processes
- In lieu of traditional or formal student conduct process
 - Attention to whether parties are waiving any rights
- In addition to traditional process
 - Can be considered a sanction when “voluntary” (i.e. appropriate and of interest to both parties)
 - As a means of reintegration
 - May or may not include direct responsible party or harmed party participation



Training & Policy Development

- Education
 - Engagement
 - Community building
 - Culture shift
- Who are the people on your campus you want to “buy in?”
 - Title IX Coordinator
 - Student Conduct
 - Students
 - Faculty
 - Leadership
 - Unions
 - How do you want to utilize those trained?
 - Where can you have the greatest impact?

Opportunities for Further Learning and Engagement

- Association for Student Conduct Administration (ASCA)
- Campus PRISM Project
- Campus-based training opportunities
- Community-based restorative justice programs

Contact Information

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