

Attachment A

Draft Information Sheet on a Restorative Justice Approach to Campus-Based Sexual and Gender-Based Harassment, Including Sexual Violence

Whole Campus Approach

The whole campus approach includes three tiers of intervention. Tier I is designed for prevention education and intended for all members of the campus community to co-create a safe and responsible community by engaging in meaningful circle-based discussions about sexual harassment, including sexual violence (including situations that might not rise to the level of a violation of a school's policy). When an incident of sexual harassment occurs, Tier II restorative interventions can address the harm as an alternative or supplement to formal hearings. Tier III restorative reentry circles assist with the reintegration of students who have been suspended. Not only are these students anxious about how they will be received upon their return to campus, but the wider community needs reassurance that they will be responsible and committed to causing no further harm. Even if they begin with implementation in one arena only, a sequential development of all three tiers of intervention has the best promise of success. Schools may also want to consider whether use of restorative justice for other types of student misconduct might help the university community better understand and accept its use for sexual harassment and sexual violence.

Restorative Intervention Should Be Seen as an Approach that is Highly Accountable and Highly Supportive
Retributive sanctioning is often called for because it is high on accountability, but it is often low on the social support necessary for reducing recidivism. Rehabilitation can be supportive, but often fails to clearly express moral disapproval of the offending behavior. Restorative justice offers a third way that combines the favorable characteristics of the traditional sanctioning and rehabilitation approaches, while avoiding their disadvantages. It is both high on support and accountability. **Rather than simply assigning passive offender accountability, in which punishment is delivered but change is not measured or assured, and is therefore consistent with the educational and developmental focus of student conduct procedures. RJ cultivates active accountability in which offenders can repair harm and demonstrate responsible behavior.**

Restorative Interventions Should Be Voluntary

One of the primary values of restorative justice is voluntary participation. It is easy for a university to write policy that states participation is voluntary and no institution is likely to require participation in an RJ process for an incident of sexual harassment or violence. But it is more difficult to protect against coercive pressure, which is much more subjective. In any restorative process, the participants must be able to choose freely whether to participate, withdraw at any time during the process, and pursue alternative options should the RJ process prove unsatisfactory.

Restorative Interventions Should Be Confidential

Confidentiality is important for any participant in a restorative process. For an accused student, the opportunity to participate may provide a path to meaningful accountability. But it may also put them at risk for harsher consequences should the RJ process fail. Although survivors can always pursue a formal campus adjudication or criminal case, using evidence obtained through the restorative justice process for them is problematic. It is essential to develop policy mechanisms to protect the confidentiality of the RJ process in order to prevent it from becoming a retributive mechanism for obtaining confessions. Restorative practitioners subscribe to the "Reverse Miranda Rule"—anything said inside the RJ process will not be used against the accused person in another adjudication process (although that does not preclude the use of evidence obtained outside of the RJ process).

Restorative Interventions Should Emphasize Inclusive Decision-Making

Although individual incidents of sexual misconduct primarily harm the individuals involved, the ripple effects of such incidents require diverse considerations. Foremost, the affected parties should have an influential voice in the decision-making process including opportunities to define their participation and articulate their perspectives on the incident as well as their goals and needs moving forward. A restorative process should include voices that can articulate any broader considerations. One voice, for example, could represent institutional concerns about ongoing

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community safety. Other voices could attend to relevant social identities and ensure fair treatment to groups that are often stigmatized, marginalized, ignored, or disadvantaged in a conduct process.

Facilitator Training Should Be Intensive and Higher Education Institution Should Have Well-Developed RJ Programs and Experience before Implementing RJ for Sexual Misconduct

Restorative justice program coordination and case facilitation requires in-depth training and experience.

Facilitators should be trained in an apprenticeship model where practice begins with simpler cases and progresses, with support and supervision, to more complex cases. Facilitators must be skilled in all of the key stages of a restorative process: pre-dialogue preparation and assessment, restorative facilitated dialogue, and post-dialogue agreement monitoring and support. For sexual misconduct cases, it is necessary to have training in restorative practices, student development in higher education, and especially trauma-informed gender-based harassment and violence.

Restorative Practices Should Be Seen as Distinct from Mediation

While mediation and restorative practices share some similarities including the use of trained facilitators and the empowerment of participants to collaboratively decide outcomes, they differ in important ways. **RJ conferencing is used when an accused student acknowledges engaging in the harmful behavior (although they may not grasp the full impact) and commits to taking responsibility for the misconduct and its resulting harms.**

Mediation does not require that a party take responsibility for their role in the conflict. **Acceptance of responsibility is a primary determinant for referral to RJ and is essential for preventing adversarial confrontation and victim-blaming. Unlike some forms of mediation, RJ facilitators meet extensively with participants during the preparation process to assess whether the case should include a face-to-face dialogue and to prepare participants in advance of the dialogue. To decide whether the case will go to a RJ dialogue, facilitators assess *risk of revictimization* and *ensure safety*, whether participants feel *pressure or coercion to participate* and if the participants', institution's, and community's goals are in alignment with RJ. Although it cannot eliminate all risk of revictimization, RJ is distinctive in its guidelines and practical strategies to create a safe and noncoercive environment.**

RJ Programs for Sexual Misconduct Should Be Piloted with Attention to Best Practice and Careful Assessment and This Requires Broad Input

Campuses should work in a collaborative way to build RJ interventions for sexual misconduct cases. They should cooperate with practitioners with on-the-ground experience with policy, procedure, and case facilitation. They should partner with researchers with knowledge of best practice and methods of assessment. They should be advised by a broad range of stakeholders including Title IX coordinators, prevention specialists, treatment professionals, conduct administrators, attorneys, researchers, students, victim advocates, survivors, and diverse voices especially from communities of color and LGBTQ+. This can help ensure acceptance of restorative justice by the campus community.

Attachment B
Draft Information Sheet for Parties Regarding Alternative Resolution¹

The Title IX Office offers several methods for alternative resolution:

- **Mediation:** An informal process in which a neutral third party with no power to impose a resolution helps the parties try to reach a mutually acceptable settlement. The focus is often on providing a space for voices to be heard and perspectives to be shared. Generally, the University will honor the agreement worked out by the parties.
- **Restorative Process:** One in which those who have a stake in the reported matter work together to identify and address harms, needs, and obligations, in order to heal and put things as right as possible.² A respondent need not admit to violating the Community Standards or the Student Sexual Misconduct Policy, but they must be ready to acknowledge that their conduct was of concern to the complainant and possibly others. A restorative process is a “non-adversarial approach that seeks to identify and repair harm and rebuild trust through facilitated dialogue. It includes a variety of practices ... designed to empower harmed parties and strengthen offenders’ social ties and accountability to the community.”³ A restorative conference will generally involve only the parties. A restorative circle can also include members of the university community (including university interests) to aid in exploring individual and community impact, harm, obligations, and opportunity for repairing them.
- **Circle of Accountability:** Using restorative principles, a facilitated interaction between the Respondent, the Title IX Office, and members of the university community designed to provide accountability, structured support, and the development and/or fulfillment of measures designed to demonstrate their acceptance of responsibility (including a learning plan). The focus of a COA is to balance support and accountability for an individual who has acknowledged their obligation to repair harm and willingness to take steps to demonstrate their accountability. The COA can take place in response to a complaint and/or when the respondent completes the measures demonstrating acceptance of responsibility.

Either party may request, or the Title IX Office in its discretion may offer the parties the opportunity to resolve a report through alternative resolution. Complainants, respondents, and others affected by the reported misconduct often benefit when resolution processes and outcomes are tailored to meet their unique needs and interests. A complainant and other participants may find it useful to meet with a respondent who acknowledges the substance of the underlying events and who acknowledges that the complainant or other participants have reported experiencing harm. Structured interactions between participants can facilitate long-term healing and reduce recidivism. Participants in alternate resolution must be protected from secondary victimization and other potential harms.

Regardless of the method chosen, the following principles will apply:

- The Title IX Office must determine that the matter is appropriate for alternative resolution; e.g., in a case in which there are multiple complainants and/or an indication of widespread harm to the community, the Title IX Office may determine that mediation might not be appropriate or that the University may need to take additional actions.
- The Title IX Office will provide the complainant with information about alternative resolution and, if the complainant expresses interest and OSC has determined that alternative resolution is appropriate, will then

¹ Adapted from a form used by the University of Michigan.

² Zehr, H. (2002). *The little book of restorative justice*. Intercourse, PA: Good Books. P.37.

³ Karp, D.R., Shackford-Bradley, J., Wilson, R.J. & Williamsen, K.M. 2016. *Campus PRISM: A Report on Promoting Restorative Initiatives for Sexual Misconduct on College Campuses*. Saratoga Springs, NY: Skidmore College Project on Restorative Justice. P.11.

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provide that information to the respondent. The Title IX Office will assist the parties with coordination of the alternative resolution.

- The individual facilitating the alternate resolution process will meet with each of the parties to identify interests and needs, and to explore alternative resolution approaches.
- Both parties must agree to the approach in writing; the Title IX Office will not pressure or compel a party to participate. Either party may choose to end the process at any time before a resolution agreement is signed, and the individual facilitating the process may also determine that the process is no longer appropriate.
- Parties who wish to participate in an adaptable resolution process must have successfully completed preparatory meetings with the individual facilitating the process.
- Parties may be accompanied by an adviser at any meetings related to the process.
- For a restorative circle, the parties must agree as to who will be present and those identified must agree in writing to participate.
- Alternate resolution may not result in transcript notations or a disciplinary record, but may include imposing appropriate and reasonable remedies, including a period of separation from the university, education, and/or training, as agreed to by the parties.
- Any agreements reached must be documented and approved by the Title IX Office.
- Once an agreement has been signed, the respondent will be required to comply with it. Failure to comply may result in a violation of the Community Standards. The parties are bound by the terms of the agreement and cannot return to investigative resolution.
- Should either party decide to no longer participate in the alternative resolution process or should the process not be successful in reaching an agreement, the complainant may initiate the investigation and hearing process. Information obtained during an alternate resolution process cannot be used during the investigation and hearing process, unless obtained independently through that process.

To fairly assess pattern or systemic behavior, the Title IX Office will maintain records of all reports and conduct referred for alternative resolution. The time frame for completion of alternative resolution may vary, but the University will seek to initiate action within thirty (30) calendar days of the initial assessment.