

# Campus Sexual Misconduct: Restorative Justice Approaches to Enhance Compliance With Title IX Guidance

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## Abstract

Campus response to sexual violence is increasingly governed by federal law and administrative guidance such as the 1972 Title IX, the 2011 Dear Colleague Letter (DCL), and the 2013 Violence Against Women Act. Educational institutions are directed to expand disciplinary responses and establish coordinated action to eliminate sexual violence and remedy its effects. Compliance fosters a quasi-criminal justice approach not suited to all sexual misconduct and inconsistent with developing practice in student conduct management. This article envisions restorative justice (RJ) enhancements to traditional student conduct processes that maintain compliance, expand options, empower victim choice, and increase responsiveness to DCL aims. The article (1) defines sexual violence and sexual harassment within the DCL scope, (2) elaborates the DCL position on permissible alternative resolutions and differentiates mediation from RJ, (3) sequences action steps from case report to finalization, including both restorative and traditional justice pathways; and (4) discusses building support for innovation beginning with existing campus response.

## Keywords

sexual assault, sexual offenders, restorative justice, criminology, higher education, student misconduct, student affairs

## Key Findings

- Under the recent guidance in the Dear Colleague Letter (DCL) issued by the U.S. Department of Education's Office for Civil Rights, institutions of higher education are responsible for addressing at least 42 types of sexual behavior with the goals of eliminating misconduct, preventing its recurrence, and remedying its effects.
- The DCL mandates a quasi-criminal justice, investigative and judicial response to sexual misconduct that is too narrow for the scope of sexual misconduct and the desired outcomes of institutional response.
- DCL guidance permits the use of restorative justice in student sexual misconduct cases in at least four ways: as a resolution process, as a victim impact process, as a sanctioning process, and as a reintegration process.
- Restorative justice resolution has been implemented for sexual misconduct with evidence of feasibility, safety, and justice satisfaction among participants.
- When implemented appropriately and effectively, restorative justice processes support the shared interest of victim survivors, institutions, the Office for Civil Rights, and student conduct professionals.

harassment are forms of sex-based discrimination that institutions must address under Title IX (i.e., the federal statute prohibiting sex-based discrimination at educational institutions receiving federal funding; 1972, 20 U.S.C. §1681). Intended as a guidance document concerning OCR's expectations and enforcement obligations under Title IX, the DCL describes how institutions should respond once a report of sexual misconduct is received. At present, institutions nationwide are scrambling to align their practices with the DCL requirements or risk the loss of federal financial support, including student grants, student loans, and research funding. The DCL has played a unique role in the chronological progression of law and guidance governing institutional response to student sexual misconduct beginning with the passage of Title IX in 1972, the Clery Act in 1990, the *Campus Sexual Assault Victims' Bill of Rights* in 1992, Revised Sexual Harassment Guidance from U.S. Department of Education, Office for Civil Rights, in 2001, the Violence Against Women Reauthorization Act of

On April 4, 2011, the U.S. Department of Education's Office for Civil Rights (OCR) issued a "DCL" highlighting the epidemic of sexual violence on college campuses (Ali, 2011). The DCL reminded institutions that sexual violence and sexual

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2013 and President Obama's Presidential Memorandum on January 22, 2014 calling for renewed attention to the alarming rates of sexual assaults on campuses (White House Council on Women and Girls, 2014). For our purposes, the DCL stands out because it provides the most insight on the resolution options that are the subject of this article. Our goal is to envision the integration of restorative justice (RJ) responses into the traditional student conduct process for cases involving sexual misconduct between two or more students. We assert that doing so could more fully support the intent of the DCL, which includes establishing a coordinated system to encourage reporting, humanizing the treatment of harmed parties, and eliminating or reducing sexual misconduct consistent with Title IX's goal of equal access for women to higher education. We believe that RJ could enhance institutional responsiveness and provide options that in some cases may better achieve the underlying goals of Title IX, the DCL, and the field of student conduct management. This article focuses on sexual misconduct and excludes sexual forms of abuse within relationships where domestic violence exists. We do not address prevention efforts, applicability to elementary and secondary institutions, or acts involving faculty or staff. Likewise, this is not a legal analysis concerning the complexities of other applicable law or guidance beyond the DCL. We begin by defining key terms and delineating the acts that could constitute sexual misconduct at institutions of higher education. Following that section, we analyze the language that describes the DCL position on informal resolution options and provide a brief review and comparison of mediation and RJ, which are the leading alternatives to traditional resolution in higher education. The alignment of these resolution approaches is viewed in the context of student conduct theory. Next, we outline a sequence of actions, illustrating how a case would proceed from report to finalization in a student conduct process that blended restorative and traditional options. The article concludes with a short discussion of how concurrent legal proceedings impact campus processes and a brief description of strategies that could be used to initiate justice innovation on campuses.

### Definition of Terms

Definition of several core terms is necessary because those used in the DCL to delimit sexual misconduct and permitted responses to it are vague, conflict in some instances with other bodies of literature, and omit common terms used by institutions of higher education with respect to student conduct. To begin, the DCL refers to the set of actions that constitute the required institutional response as *grievance procedures*. We find the word *grievance* inappropriate because sexual misconduct involves alleged acts that are potential violations of criminal and/or civil law and involve a wrongdoer and a wronged person. Additionally, that term has legalistic connotations that institutions generally seek to avoid in the student conduct arena. Instead, we use *resolution process* to refer to the action steps and services administered by student conduct professionals from initial reporting to case finalization by the institution. The term *student conduct professional* refers to the person who is principally responsible for coordinating

institutional processes designed to hold students accountable for misconduct and maintain compliance with applicable policy, including Title IX. On some campuses, the student conduct professional may also be the Title IX Coordinator or a Deputy Coordinator. Regardless of title or reporting relationship, the student conduct professional plays a key role in maintaining Title IX compliance in the sexual misconduct arena either on their own or in conjunction with the Title IX Coordinator. The body of knowledge and theory that articulates the aims of student conduct processes is alternately referred to as student conflict resolution or student conduct management. We prefer *conduct management* because the word *conflict* presents a problematic characterization of sexual misconduct. The word *victim* is used in this article to designate the person or persons who were harmed. The term *responsible person* refers to a party or parties who committed sexual misconduct, whether their responsibility was established by admission or was the conclusion of a fact-finding process. The term *sexual misconduct* refers to the unwanted sexual behaviors that the DCL purportedly governs. This term is discussed in greater depth in the material that follows.

### Sexual Misconduct

The DCL states that sexual harassment is an umbrella term that subsumes two forms of student behavior: sexual violence and sexual harassment. The DCL explanation relies heavily on legal terminology that varies in interpretation depending on the statutes and policies that are examined (e.g., federal, state, and educational institution). For example, according to the DCL, sexual violence means "... physical sex acts perpetrated against a person's will or where a person is incapable of giving consent" (Ali, 2011, p. 1). The acts that fall into the category include "sexual assault, sexual battery, and sexual coercion" (Ali, 2011, pp. 1–2). "Sexual harassment is unwelcome conduct of a sexual nature. It includes unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of a sexual nature" (Ali, 2011, p. 3). The difference between sexual violence and sexual harassment is that the former applies to "... sexual contact, including intercourse without consent" and the latter references "... unwanted conduct of sexual nature that does not rise to the level of sexual assault" (Bhargava, & Jackson, 2013, p. 2). In the higher education context, we prefer the term *sexual misconduct* to refer to the sexual violence and sexual harassment behaviors to which DCL guidance applies. We take a pragmatic approach to define sexual misconduct. Using wording from two widely used surveys, we derived a list of 42 specific acts and organized them within the DCL sexual violence/sexual harassment framework. The forms of sexual misconduct on the list drew from (a) The Sexual Experiences Survey (SES) (Koss et al., 2007), which is a measure of unwanted acts that include noncontact sexual behavior, sexual contact without consent, and at the most extreme forcible oral, anal, or vaginal penetration; and (b) the Sexual Experiences Questionnaire (SEQ); (Fitzgerald, Magley, Drasgow, & Waldo, 1999), which is an assessment of sexual harassment. It is important to concretize DCL terminology

**Table 1.** Behaviorally Specific Descriptions of Sexual Violence.

| Nonconsensual sexual acts  |   |
|--|---|
| Noncontact   |   |
| Someone stared at me in a sexual way or looked at the sexual parts of my body after I had asked them to stop   |   |
| Someone made teasing comments of a sexual nature about my body or appearance after I asked them to stop  |   |
| Someone sent me sexual or obscene materials such as pictures, jokes, or stories in the mail or by phone— <i>Do not include mass mailings or spam</i>   |   |
| Someone showed me pornographic pictures when I had not agreed to look at them  |   |
| Someone made sexual or obscene phone calls to me when I had not agreed to talk with them   |   |
| Someone made sexual motions to me, <i>such as</i> grabbing their crotch, pretending to masturbate, or imitating oral sex without my consent  |   |
| Someone took photos or videotapes of me when I was undressing, was nude, or was having sex, without my consent   |   |
| Someone uploaded to the Internet pictures of me nude or having sex without my consent  |   |
| Someone watched me while I was undressing, was nude, or was having sex, without my consent   |   |
| Someone showed me the private areas of their body (e.g., butt, penis, or breasts) without my consent   |   |
| Someone masturbated in front of me without my consent  |   |
| Contact  |   |
| Someone fondled, kissed, or rubbed up against the private areas of my body (lips, breast/chest, crotch, or butt) or removed some of my clothes without my consent (but did not attempt sexual penetration) |   |
| Rape   |   |
| Someone had oral sex with me or made me have oral sex with them without my consent   |   |
| A man put his penis into my vagina, or someone inserted fingers or objects without my consent  |   |
| A man put his penis into my butt, or someone inserted fingers or objects without my consent  |   |
| Attempted rape   |   |
| Even though it didn't happen, a man TRIED to put his penis into my butt, or someone tried to stick in objects or fingers without my consent  |   |
| Even though it didn't happen, someone TRIED to have oral sex with me, or make me have oral sex with them without my consent  |   |
| Even though it didn't happen, a man TRIED to put his penis into my vagina, or someone tried to stick in fingers or objects without my consent  |   |
| Strategies to Compel Sex Against Consent   | Behavioral Examples   |
| Negative coercion  | Telling lies, threatening to end the relationship, threatening to spread rumors about me, making promises I knew were untrue, or continually verbally pressuring me after I said I didn't want to   |
| Escalated coercion   | Showing displeasure, criticizing my sexuality or attractiveness, getting angry but not using physical force, after I said I didn't want to  |
| Incapacitation   | Using me sexually after I had been: (a) drinking alcohol and was conscious but too intoxicated ( <i>drunk</i> ) to give consent or stop what was happening; (b) Serving me high alcohol content drinks when they appeared to be regular strength drinks; (c) when I was asleep or unconscious <i>from drugs</i> ; (d) encouraging and pressuring me to use drugs such as pot, or Valium; (d) Giving me a drug such as Rohypnol, GHB, "fry cigarettes," "ecstasy," or "Ketamine" without my knowledge. Also includes people who were asleep without intoxication, incapacitated by serious mental illness or developmental disability, or below the statutory age of consent |
| Threats of bodily harm   | Threatening to physically harm me or someone close to me  |
| Physical force   | Using force such as (a) holding me down with their body weight, pinning my arms, or having a weapon; (b) acting together with <i>two or more people</i> to do sexual things to me even though I objected or was unable to give consent or stop what was happening   |

Note. Item content is quoted from Koss et al. (2007). The noncontact acts appear in the long-form SES and the remaining text is found in the short-form.

because in doing so, it becomes clearer that the guidance represents a controversial and arguably inappropriate expansion in the type and severity of acts to which Title IX applies.

Table 1 lists the SES items (Koss et al., 2007). The top section delineates a range of unwanted sex acts that vary in severity. The bottom section defines the behaviors that constitute lack of consent to a sexual act. A sex act becomes unwanted when the responsible person compels the victim's involvement by using or proceeding in the face of one or more of these indicators of lack of consent. Table 2 contains the SEQ items (Fitzgerald et al., 1999). Table 2 is comprised of four sections that each represents a statistically derived component of sexual harassment. These subtypes include (a) sexist hostility, (b) sexual hostility,

(c) unwanted sexual attention, and (d) sexual coercion. The differences between these terms are clarified by reading the wording of items that measures each of them. Combining the items of the SES and the SEQ yields 42 specific acts of sexual misconduct with only 7 items that are clearly identical between the two surveys. Furthermore, Tables 1 and 2 show that each survey refers to a different sphere of students' lives. The SES evokes social and romantic relationships, whereas the SEQ is anchored in the learning/training environment and workplace. The DCL presents a hierarchy of sexual misconduct, wherein sexual violence is a subset of sexual harassment. Survey measurement suggests that the preponderance of unwanted sexual acts is conceptually distinct from sexual harassment.

**Table 2.** Behaviorally Specific Descriptions of Sexual Harassment.

|  |
|--|
| Gender harassment: sexist hostility  |
| Treated you differently” because of your sex (e.g., mistreated, slighted, or ignored you)  |
| Displayed, used, or distributed sexist or suggestive materials (e.g., pictures, stories, or pornography which you found offensive) |
| Made offensive sexist remarks (e.g., suggesting that people of your sex are not suited for the kind of work you do)                |
| Put you down or was condescending to you because of your sex   |
| Gender harassment: sexual hostility  |
| Repeatedly told sexual stories or jokes that were offensive to you   |
| Whistled, called, or hooted at you in a sexual way   |
| Made unwelcome attempts to draw you into a discussion of sexual matters (e.g., attempted to discuss or comment on your sex life)   |
| Made crude and offensive sexual remarks, either publicly (e.g., in your workplace) or privately                                    |
| Made offensive remarks about your appearance, body, or sexual activities   |
| Made gestures or used body language of a sexual nature which embarrassed or offended you   |
| Stared, leered, or ogled you in a way that made you feel uncomfortable   |
| Exposed themselves physically (e.g., “mooned” you) in a way that embarrassed you or made you feel uncomfortable                    |
| Unwanted sexual attention  |
| Displayed, used, or distributed sexist or suggestive materials (e.g., pictures, stories, or pornography which you found offensive) |
| Made unwanted attempts to establish a romantic sexual relationship with you despite your efforts to discourage it                  |
| Continued to ask you for dates, drinks, dinner, etc. even though you said “No”?  |
| Touched you in a way that made you feel uncomfortable  |
| Made unwanted attempts to stroke, fondle, or kiss you  |
| Attempted to have sex with you without your consent or against your will but was unsuccessful                                      |
| Had sex with you without your consent or against your will   |
| Sexual coercion  |
| Made you feel like you were being bribed with some sort of reward or special treatment to engage in sexual behavior                |
| Made you feel threatened with some sort of retaliation for not being sexually cooperative (e.g., by mentioning an upcoming review) |
| Treated you badly for refusing to have sex   |
| Implied faster promotions or better treatment if you were sexually cooperative   |
| Made you afraid you would be treated poorly if you didn’t cooperate sexually   |

Note. Item content is quoted from Fitzgerald et al. (1999).

### Resolution Models

The forms of sexual misconduct just identified are evidence that OCR through the DCL guidance has extended Title IX’s applicability to a wide range of behavior that taken as a whole is incapable of being addressed appropriately by a one-size-fits-all resolution process. Yet, examination of the required and recommended components of the DCL approach to the grievance process that are summarized in Table 3 reveals minimal attention to any responses other than quasi-criminal justice. Alternative responses to sexual misconduct are referenced in just two sentences of the DCL. Specifically, “Grievance

procedures generally may include voluntary informal mechanisms (e.g., mediation) for resolving some types of sexual harassment complaints.” However, “. . . in cases involving allegations of sexual assault, mediation is not appropriate even on a voluntary basis” (2011, p. 8). Thus, the DCL specifically states that mediation may not be used for sexual assault. It is unclear whether the term sexual assault in this instance references all nonconsensual sexual acts or is restricted to rape, and if so, how rape is defined. The DCL is silent on the rationale for approving mediation for some cases of sexual misconduct (harassment) and not others (sexual assault). OCR’s stance on resolution options other than quasi-judicial grievance procedures is so underelaborated in the DCL that it is unclear what scholarly foundation, if any informed the mandate. To critically evaluate this guidance, we continue with a brief overview of mediation and then compare it with RJ.

### Mediation

Mediation can be generally defined as “. . . conciliatory interventions by an acceptable third party who works with individuals or groups in conflict to facilitate the development of a shared and mutually acceptable solution to their problem(s)” (Warters, 2009, p. 126). Although terminology varies between campuses and programs, parties in mediation processes often are referred to as disputants. Typical issues addressed by these programs include cases such as roommate conflict, fights between students, landlord/tenant disputes, and conflicts arising within student groups. Since many mediators are first trained in the problem-solving or interest-based approach to mediation, many campus mediation programs take that form. In problem-solving mediation, mediators assist parties in separating their spoken positions from their underlying interests and help disputants create mutually acceptable settlement agreements (Warters, 2009). Other forms of mediation include (a) transformative mediation, which is relationship centered and utilizes conflict as an opportunity for moral growth, development, and empowerment (Baruch Bush & Folger, 1994); (b) narrative mediation, which places emphasis on constructing a conflict story based on individual perceptions as opposed to established facts (Winslade & Monk, 2000); (c) insight mediation, which focuses on learning, personal growth, and understanding the emotions, values, concerns, and threats presented in a given conflict (Melchin & Picard, 2008); and (d) social justice mediation that seeks to avoid replication of privileging based on social identity (Wing, 2002). All models except the latter are characterized by their neutrality to the parties involved. The exception, social justice mediation, involves an approach called multipartiality, which recognizes that power imbalances exist in every situation due to the social identities of the parties involved. However, this stance is unexamined in the context of sexual misconduct and thus it is premature to evaluate its potential usefulness.

Justice responses to sexual misconduct must acknowledge and obviate the negative effects of societal and individual norms that operate to silence victims and create opportunities for

**Table 3.** Dear Colleague Letter Guidance on Grievance Procedures.<sup>a</sup>

| Adopt and publish grievance procedures  |          |             |
|---|----------|-------------|
| Task  | Required | Recommended |
| Procedures must apply to complaints filed against employees, students, or third parties                                     | ✓        |             |
| If disciplinary procedures are used, Title IX coordinator should review them to ensure consistency                          | ✓        |             |
| Clarify that mediation will not be used to resolve sexual assault complaints  |          | ✓           |
| Complaints must not be addressed solely by Athletics if complaint involves an athlete                                       | ✓        |             |
| Provide for adequate, reliable, and impartial investigation   | ✓        |             |
| Designate reasonably prompt time frames for major stages of complaint process   | ✓        |             |
| Notify parties of outcome of complaint and any appeal consistent with FERPA and Clery                                       | ✓        |             |
| Provide parties with notice of outcome concurrently <sup>b</sup>  |          | ✓           |
| Use language understood by the audience   | ✓        |             |
| Notify complainant of right to file criminal complaint and do not dissuade from doing so                                    | ✓        |             |
| Do not wait for criminal investigation or proceeding to conclude before beginning investigation                             | ✓        |             |
| Ensure that any agreement or MOU with local law enforcement is consistent with DCL  | ✓        |             |
| Use "preponderance of the evidence" standard or equivalent  | ✓        |             |
| Provide parties with equal opportunity to present relevant witnesses and evidence   | ✓        |             |
| Provide parties with similar and timely access to information that will be used at the hearing                              | ✓        |             |
| If lawyers are permitted to participate, provide equal participation rights to each party                                   | ✓        |             |
| Forbid parties to personally question or cross-examine each other   |          | ✓           |
| Provide an appeals process  |          | ✓           |
| If appeals proceed, provide access equally to both parties  | ✓        |             |
| Maintain documentation of all proceedings   | ✓        |             |
| Train all individuals responsible for implementing procedures or ensure relevant experience                                 | ✓        |             |
| Disclose any real or perceived conflict of interest that fact finder or decision maker may have                             | ✓        |             |
| Provide due process to alleged perpetrator without unnecessarily delaying Title IX protections of complainant               | ✓        |             |
| Provide periodic status updates to parties  | ✓        |             |
| Do not require complainant's to accept or sign nondisclosure agreements concerning the outcome of a disciplinary proceeding | ✓        |             |

<sup>a</sup>The table text is based on the DCL (Ari, 2011).

<sup>b</sup>The recommendation for concurrent notification was elevated to a mandatory action in the 2013 Violence Against Women Act.

reabuse. When someone has been harmed by another person, mediation that provides neutrality and treats parties as equal partners in the resolution process is inappropriate. These features of mediation models support the DCL's exclusion of them as responses to sexual violence but also raise questions about their suitability to sexual harassment. In the next section, RJ approaches are described to illustrate that RJ and mediation are not the same and to demonstrate that RJ, in contrast to mediation, can be useful in addressing sexual misconduct

### *RJ*

The conceptual foundation of RJ is that harm has been done and someone is responsible for repairing it (Umbreit, Vos, Coates, & Lightfoot, 2006; for a brief overview of RJ for sexual assault, see Koss & Achilles, 2006). Responsible persons hurt direct victims and that harm has ripple effects on (a) family and friends of victims who suffer distress over the injury sustained by the direct victim and also have emotions of their own over issues such as inability to protect the victim from harm; (b) family and friends of responsible persons who may experience shame, anger, and other emotions stemming from being part of an interpersonal context that includes a person responsible for sexual misconduct; and (c) community members who experience less safety and social connection when they perceive high

levels of offense and low deterrence. RJ aims to balance the needs of each group of participants.

The fundamental difference between mediation and RJ is the requirement that the responsible person accepts responsibility as a precondition of participation as opposed to neutrality toward the parties (McGlynn, 2011). All models of RJ are premised on a responsible person or persons who either voluntarily accept responsibility for the wrongdoing or who have been found responsible through an appropriate fact-finding process. The focus of RJ is present and future oriented. Looking back to weigh evidence and deliberate fault is the function of adversarial justice, which we believe the DCL guidance encourages by not highlighting the utility of informal resolution options in which responsible persons accept responsibility early and work collaboratively with impacted parties and support resources to repair the harm and prevent reoffending behaviors.

Focus groups or listening projects with victims, service providers, and advocates have been conducted in several U.S. states and in other countries (e.g., McGlynn, Westmarland, & Godden, 2012; Mika, Achilles, Halbert, Amstutz, & Zehr, n.d.; Monroe et al., 2005; Nancarrow, 2010). A consensus of published studies is that sexual assault victims need to tell their own stories about their experiences, obtain answers to questions, experience validation as a legitimate victim, observe offender remorse for harming them, receive support that counteracts

isolation and self-blame, and above all have choice and input into the resolution of their violation. Victim-sensitive justice capable of responding to these needs involves processes that respect victims as autonomous persons, individualizes both their needs and the appropriate avenues for offender accountability, provides for validation that the victim was harmed, allows material reparation if desired, protects from physical harm and verbal reabuse, and facilitates offender fulfillment of commitments.

A large body of commentary examines and critiques the application of RJ to sexual crimes (e.g., Daly & Nancarrow, 2010; Jülich et al., 2010; Jülich & Buttle, 2010; McGlynn, 2011; McGlynn et al., 2012; Nancarrow, 2010; Naylor, 2010; Reimund, 2005; Stubbs, 2010). McGlynn and colleagues frame the issues succinctly, “Some argue that it [RJ] may trivialize violence against women, revictimize the vulnerable, and endanger the safety of victim-survivors” (p. 213). On the other hand, RJ “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” (p. 213). In this brief quotation, they encapsulate the reasons that RJ cannot be evaluated in a vacuum but instead must be viewed against the backdrop of current practice. It is difficult to achieve justice for sexual assault because of significant attrition of cases that occur due to underreporting, case closure by law enforcement and prosecution, and the remarkably low level of guilty verdicts in rape cases (Daly & Bouhours, 2010; Seidman & Pokorak, 2011; Seidman & Vickers, 2005; Temkin & Krahé, 2008). Interactions with police and medical providers can be retraumatizing (Campbell, 2005). And even when a person is found responsible by plea or verdict, victims often do not achieve what they sought through sentencing (McGlynn et al., 2012). It is worth noting that the experiential bases from which scholars critical of RJ draw typically equates sexual and domestic violence. In fact, these two forms of maltreatment differ on a number of dimensions with bearing on the justice response to each (Hopkins & Koss, 2005; Hopkins, Koss, & Bachar, 2004). Often, negative experiences with involuntary divorce mediation are generalized to all forms of RJ without recognition of the distinguishing core principles. In the following section, we review several RJ approaches that have been used outside of higher education with victims of sexual crime and subsequently conceptualize how they might harmonize and enhance existing institutional practices.

### *Victim–Offender Dialogue*

Victim–offender dialogue involves a direct meeting of the victim(s) and responsible person and has existed for 30 years (for a review, see Umbreit et al., 2006). The agenda is determined by the victim and may include stating the impact of the crime, asking questions, and seeking acknowledgment of responsibility. Victim–offender dialogue programs typically occur in prisons (reviewed in McGlynn et al., 2012; Naylor, 2012), although some community models outside criminal justice exist as well (Madsen, 2004, 2006). The victim–offender dialogue process does not involve reparations or accountability beyond that already imposed by the criminal justice system. Many studies

have documented positive outcomes of victim–offender dialogue, but program designs typically were intended to apply to all serious crime categories and were not specifically adapted to the needs of sex crime victims (see Umbreit et al., 2006).

### *Sentencing Circles*

This RJ approach involves a group of individuals who come together after responsibility has been established, often within the criminal justice system, to consider the extent of harm and create a plan of sanctions and rehabilitative activities for the responsible person. Attendees may include victims, responsible persons, their family/friends, criminal justice personnel (judges, prosecutors, defense attorneys, and police), social service providers, and community members (Shapland, 2003). Sentencing circles offer the opportunity for more people to have input and to individualize response to wrongdoing. Konradi (2010) found that when victims participated in sentencing hearings, they reported “feeling that they had moved beyond the rape in some emotional way” (p. 52). Concerns about sentencing circles from a gender perspective have focused on the potential to silence victims, who are outnumbered and perhaps intimidated by authority figures, and lack of a clear normative judgment (Coker, 2004). Much of the criticism has involved implementations for domestic violence in indigenous communities. As with all models of RJ, the potential value of sentencing circles for sexual misconduct hinges on thoughtful attention in program design to mitigate these concerns.

### *Circles of Support and Accountability*

Circles of support and accountability have been applied in multiple contexts including situations in which responsible persons have completed their prison sentences and are returning to their community. These circles operate by forming a support network around responsible persons with several goals in mind, including (a) involving community members directly in justice; (b) reducing secrecy and citizens’ fears of sex offenders; (c) reconnecting or recreating a responsible person’s social networks; and (d) reinforcing belief in the possibility of transformation (Quaker Peace & Social Witness, 2005). Circles of support and accountability are an adjunct, not a substitute for institutional resources including probation officers, counselors, and case managers. They provide support that reduces isolation and loneliness, augments problem solving, invites responsible persons into social networks, connects them with resources, models appropriate relationships, and demonstrates caring behavior. Their services also involve tracking the achievement of treatment objectives and communication with institutional authorities as well as involving committed individuals to provide bystander observation in high-risk situations such as parties involving alcohol. Although acknowledging victims’ needs for healing is a stated key principle, we could find no evidence that in practice circles of support directly involve victims. Evaluations have suggested that formerly incarcerated persons who committed sex crimes and are supported upon release have reduced recidivism compared to responsible persons without

circle support (Quaker Peace & Social Witness, 2005; Wilson, Cortoni, & McWhinnie, 2009).

### Conferencing

Conferencing is a widely used methodology dating to the late 1980s that combines elements of the previous models and is thus considered to be the most evolved form of RJ. It has been adopted specifically for juvenile sexual offenses in many communities and to adult sexual crimes through community-based programs including RESTORE (e.g., Koss, 2004, 2010, 2014) and RESTORE-NZ (New Zealand; Jülich, 2006, 2010). RESTORE involves consensual agreement by victims, responsible persons, and their family and friends to prepare for a meeting together. Weeks or months of preparation are devoted to readying all participants to experience a safe conference that is perceived as fair and imposes accountability proportional to the harm done. When the meeting is convened, it is typically guided by a trained facilitator who follows an agenda and imposes conference rules to ensure that key points are discussed, speech is nonabusive, and everyone has a chance to speak. The conference agenda includes the responsible person describing his or her acts and taking responsibility for them, the victim voicing the impact of the violation, followed by family and friends of both the victim and responsible person. The meeting concludes with planning and formalizing a written redress plan that outlines the programmatic and victim-driven components that constitute the concrete means through which the responsible person will be held accountable and remedy the impacts on victims and the community. The redress plan, which is monitored for fulfillment, includes required elements to ensure that accountability that is matched to the offense committed. For example, the RESTORE redress plan requires psychological assessment and counseling (e.g., sex offender treatment, alcohol interventions, and anger management; for more information, see [http://www.csom.org/pubs/assessment\\_brief.pdf](http://www.csom.org/pubs/assessment_brief.pdf)), monthly face-to-face meetings with a case manager, weekly checkup phone calls, community service, and compliance with stay away orders. This close monitoring serves a number of purposes including tracking any changes in the risk factors for reoffending and holding the responsible person to the agreed upon time line for completion of redress. Victim-added redress are those activities in the plan that have personal significance such as selection of the type of community service, replacement of damaged property, contributions to charity in the victim's name, input into rehabilitative activities required of the responsible person, and payment of expenses for victim therapeutic or reparative interventions. A 12-month supervision period of the responsible person follows the conference to monitor compliance with and completion of the plan's components.

The RESTORE program has been evaluated on a sample of 66 sex crime cases referred by prosecutors who vetted them for legal merit and appropriateness to community-based resolution (10% of cases involved university students). Evaluation involved quantitative data from conference observation, case files, and pre-post self-reports (Koss, 2014). In addition,

qualitative evaluation was conducted with statements of responsibility and impact to compare the perspectives of victims and responsible persons (Bletzer & Koss, 2012). A second evaluation focused on the written apologies prepared by responsible persons to mark their program completion (Bletzer & Koss, 2013). Finally, an independent evaluation involved qualitative analysis of interviews with prosecutors, program staff, and participants (Stubbs, 2009). All the evaluation data must be interpreted cautiously because the sample was small, the findings are more nuanced than can be elaborated here, and only quantitative findings are included in the following summary. With that proviso, some of the most notable findings include the following: (a) RJ was chosen over traditional justice by 63% of victims and by 90% of responsible persons; (b) among those referred for felony sexual assault (i.e., rape), 63% accepted responsibility; (c) 75% of felony sexual assault victims elected to meet face-to-face; (d) 91% of cases initiated progressed through the preparation stage and completed a conference; and (e) 80% of responsible persons at these conferences completed all elements of their redress plan within 12 months (Koss, 2014). Findings from postconference surveys of multiple groups of participants (e.g., victims, responsible persons, family, and friends) reveal that more than 90% of all participants agreed that they felt listened to, supported, treated fairly, treated with respect, and believed that the conference was a success (Koss, 2014). Safety was reflected by no incidents of physical threats and decreases in victim posttraumatic stress disorder symptoms from intake to postconference as measured by standardized assessment (Koss, 2014). Daly, Bouhours, Curtis-Fawley, Weber, and Scholl (2007) concluded that RJ conferences are viewed more favorably by victims than trials. Conferences are more likely than courts to provide victims with an admission of responsibility and raise the likelihood that the responsible person will receive counseling to reduce the likelihood of hurting others (Daly, 2006).

We have been unable to identify scholarly analysis on RJ methods involving students and programs specifically designed to respond to student sexual misconduct. This brief review of published work demonstrates that (a) mediation is not analogous to RJ and (b) RJ has been utilized safely and successfully in community settings for sexual misconduct matters (e.g., Bletzer & Koss, 2012, 2013; Jülich, 2011). In the next section, we briefly review the goals of student conduct management and highlight their alignment with the aims of RJ, Title IX, and the DCL.

### Student Conduct Process

Although historically rooted in due process and determining responsibility for reported violations of institutional policy, the objectives of student conduct management have evolved to include student development and community justice goals (Giacomini, 2009). The Council for the Advancement of Standards in Higher Education (2006) summarizes, "Student Conduct Programs must identify relevant and desirable student learning and development outcomes and provide programs that encourage the development of these outcomes" (p. 3). Taylor and Varner (2009) identify student conduct professionals as contributors to the educational objectives of higher education and point out

that students spend more time outside the classroom than inside it. Conduct management can contribute to advancing students' knowledge acquisition, interpersonal and intrapersonal competence, cognitive development and moral complexity, practical competence, civic engagement, social responsibility, and propensity for self-guided lifelong learning (e.g., Karp & Allena, 2004; Taylor & Varner, 2009). When institutional response fails to impose sufficient accountability on responsible persons, student conduct management misses a teachable moment with heightened opportunity to promote educational outcomes.

The preceding brief overview of student conduct management theory aligns with the goals of the DCL to reduce sexual misconduct and to remedy its effects and with the intent of Title IX to ensure women student's equal access to education. However, the required elements intended to advance these goals instead resembles the approach known as the model code (Stoner & Lowery, 2004). Karp (2009) compared the vocabulary used in the model code with the scripts he and his colleagues use to conduct RJ conferences in their Student Accountability and Restorative Research Project (also known as the STARR Project). The model code language mirrors the DCL, with terms such as complainant, violation, disciplinary charges, hearing, witnesses, and testimony. STARR language is more consistent with student conduct objectives including key terms such as incident, harm, repair, voluntary, agreement, voice, dialogue, circle, trust, and honesty. Likewise, Karp's (2009) analysis of model code language regarding sanctioning identifies terminology dominated by reference to probation, loss of privileges, fines, residence hall expulsion, suspension, expulsion, and revocation of admission or degree. In contrast, RJ redress plans such as used in STARR include language such as accepting responsibility, listening to and validating the harm done to victims, making reparations, undertaking activities to prevent reoccurrence, and repairing harm to the broader community. Empirical evaluation has demonstrated that RJ better achieves the objectives of student conduct management than quasi-judicial responses based on the model codes. These results were based on data collected on 18 campuses including over 600 cases (Karp & Sacks, 2014). The resolution model was the most important predictor of the six learning outcomes evaluated as part of the project. In each case, the desired outcome was greater with RJ or RJ combined with traditional resolution processes than with a strictly model code.

Student conduct professionals recognize the need to expand options to accomplish the various student development, victim reparation, offender accountability, and community justice goals. Schrage and Thompson (2009) describe a spectrum of resolution options in student misconduct management including both quasi-judicial hearings and alternative resolution. They visualize not only a range of options drawn from multiple justice approaches but also identify time points where options may be useful as a case progresses. Building on their lead, we focus specifically on sexual misconduct and draw upon principles of RJ to envision alternative processes that could expand resolution options, retain conformity with the DCL, and enhance institutional ability to realize women's equal access to

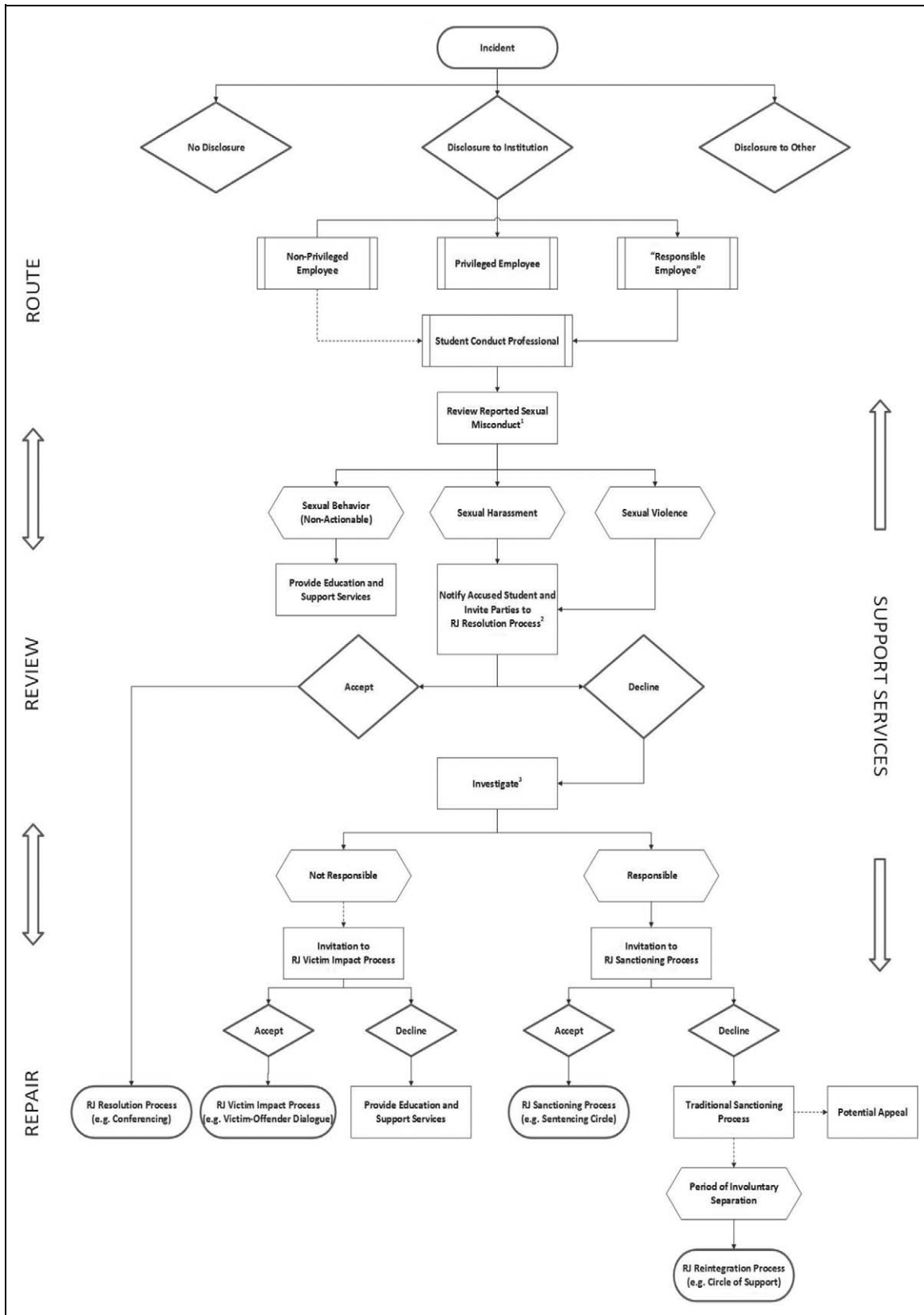
an education free from unwanted sexual conduct. The next section explains how that might be accomplished.

## Restorative Responses to Student Sexual Misconduct

Figure 1 is a sequence diagram of actions that occur in traditional resolution processes from the point at which an incident occurs and is reported to the institution to case finalization. Alongside traditional resolution, RJ processes are included that can be used as part of the resolution, victim impact, sanctioning, and reintegration process. The following narrative describes Figure 1 from top to bottom and aims to accomplish multiple purposes: (a) outline the DCL response framework under which institutions of higher education are currently operating; (b) identify the time points at which RJ options present themselves; (c) describe the circumstances when RJ alternatives to traditional resolution processes are appropriate; (d) illustrate how RJ practices can enhance compliance with the DCL without sacrificing the flexibility in matching approach to desired outcomes valued by student conduct professionals; and (e) provide a conceptual model intended to prompt campus dialogue. Figure 1 will be informative to higher education institutions where there is established understanding and compliance with existing law and guidance applicable to student conduct processes and to student sexual misconduct matters specifically. Although the processes envisioned in Figure 1 are our own, the conceptualization had many inspirations (i.e., Giacomini, 2009; Karp, 2013; Schrage & Thompson, 2009). The appeal of Figure 1 rests on individual and institutional openness to consider RJ practices and capacity for change.

The right axis of Figure 1 emphasizes the duty of institutions to provide appropriate support services to those impacted throughout the resolution process. These services may, depending on the institution and the resources available at each, take the form of (a) emotional support such as those offered through a campus counseling center or a unit dedicated to sexual violence support, advocacy, awareness, or prevention; (b) medical support to assess physical injury, disease, and pregnancy risks, and collect forensic evidence (if desired by the victim); (c) physical support to appropriately separate the victim from the individual who is reported to have engaged in the misconduct; (d) academic support from advisors, tutors, academic units, or instructors; (e) procedural support through student conduct professionals familiar with institutional policy and process; (f) spiritual support from campus religious organizations; (g) legal support, which at larger institutions is often available to students from a campus-based legal advisor; and (h) financial support such as offering a tuition refund to a victim who would like to withdraw from courses or from the institution. This range of services addresses the DCL aim of improving victim experience and may also be relevant to its recommended elements guiding institutional response to responsible persons. The left axis of Figure 1 divides the resolution process into three stages (routing, review, and repair) that unfold across time from initial institutional knowledge of sexual misconduct through case finalization.





**Figure 1.** Restorative justice responses to student sexual misconduct: A sequence diagram illustrating the framework and the possibilities. *Note.* <sup>1</sup>Institutions have a responsibility to report and respond to certain behavior under the Clery Act. Those obligations should be fulfilled throughout the process as necessary. <sup>2</sup>All RJ processes require voluntary participation. “Accept” in this diagram indicates that both parties accept the invitation. “Decline” indicates that one or more parties decline. <sup>3</sup>“Investigate” in this instance includes investigative and hearing-based methods for reaching a factual determination regarding the reported behavior.

## The Routing Stage

The Routing stage includes the locations where reports of sexual misconduct may be received, the procedure for directing reports to appropriate entities within the institution once it is on notice of the incident, and the actions available to each responding authority.

**No Disclosure.** The No Disclosure box near the top of Figure 1 recognizes that sexual misconduct is traumatizing to victims and also very difficult to disclose to others, including those who may most want to support them such as family or friends, and police or student conduct professionals who are positioned to administer available systems of justice (Martin, Macy, & Young, 2011; Seidman & Pokorak, 2011). Some victims simply do not want anyone to know what happened, which precludes an institution from responding in any individualized way.

**Disclosure to Other.** When victims choose to disclose the experience, they may tell someone such as friend or family member who does not have any obligation to act. They may also disclose to a person or entity such as off-campus crisis center counselors and local police departments that have an obligation to respond in a particular way, but not on behalf of the educational institution. This possibility is noted in Figure 1 as Disclosure to Other. Although a report to a person or entity of this type may later result in a report to an institution of higher education, such as when the disclosure is made to a local police agency that has a partnership agreement with the institution, it does not create the response obligation that would ensue from a disclosure to an institutional employee.

**Disclosure to Institutional Employee.** An institution's obligation to respond begins when the institution has knowledge of the reported misconduct. For purposes of student sexual misconduct, OCR guidance (U.S. Department of Education, Office for Civil Rights, 2001) suggests that institutional knowledge is acquired when a *responsible employee* of the institution knows or, in the exercise of reasonable care, should know that a student may have engaged in sexual misconduct (i.e., when constructive knowledge is obtained). In their 2001 Guidance, OCR defined a responsible employee as "... any employee who has the authority to take action to redress the harassment, who has the duty to report to appropriate school officials sexual harassment or any other misconduct by students or employees, or an individual who a student could reasonably believe has this authority or responsibility" (U.S. Department of Education, Office for Civil Rights, 2001, p. 13). This definition clearly excludes employees who maintain a recognized privilege that prevents their knowledge from being revealed to the institution, such as licensed therapists, physicians, sexual assault nurse examiners, legal advisors, and spiritual counselors employed by the university. There is less clarity regarding how deeply the classification of responsible employees may extend into a hierarchical organizational structure. The framework depicted in Figure 1 demonstrates that all institutional employees can effectively be divided into three groups: responsible employees who have an

obligation to act on behalf of the institution when they have constructive knowledge of potential sexual misconduct, privileged employees who have no obligation to act on behalf of the institution due to a recognized confidentiality privilege, and a third group of employees who are not required to disclose under current guidance. Members of the latter group are referred to in Figure 1 as nonprivileged employees and are often simply encouraged under institutional practice to report their knowledge to the student conduct professional. The dotted line in Figure 1 represents this optional action. It remains to be determined if these groupings of employees will stand because a recent Resolution Agreement between OCR, the Department of Justice, and the University of Montana requires all employees except those with explicit confidentiality privileges to act on behalf of the institution (Bhargava, & Jackson, 2013).

Institutions have concurrent responsibilities under the Clery Act (1991). Among other obligations, compliance with the Clery Act requires institutions to (a) issue timely warnings to members of the community when there are threats to community safety and (b) accurately compile and disseminate statistics regarding the number of reports received that involve specified crimes including sex offenses. Although further discussion and critique would be worthwhile regarding the overlapping and, in some cases, conflicting responsibilities of institutions under the DCL and the Clery Act, that topic is beyond the scope of this article. For present purposes, it should simply be understood that institutions have an obligation to respond when responsible employees have constructive knowledge of sexual misconduct.

**Referral to Student Conduct Professional.** Once the institution has constructive knowledge, the employee who received the report must decide where to route it to reach the attention of the designated person/office that is responsible for responding in a manner consistent with institutional protocol. At most institutions, this individual is likely to be situated in the office, department, or division of student affairs. However, it could be someone such as the Title IX Coordinator who may be based in the office tasked with responding to reported civil rights abuses among staff, faculty, and/or students. Regardless of title or location in the organizational structure and whether the official carries out actions personally or supervises a team, Figure 1 uses the term student conduct professional to refer to personnel who are responsible for administering the review and repair stages that are described below.

## The Review Stage

The review stage refers to the various ways in which institutions ascertain the underlying facts of the incident as perceived by those who have knowledge of it.

**Reviewing Reported Sexual Misconduct.** After the student conduct professional receives notice of the reported misconduct, they often begin by reviewing all available information, which may include victim complaint forms, police reports, witness statements, pictures, incident reports filed by responsible employees

such as resident advisors, or other available information. The initial review by a student conduct professional primarily seeks to determine (a) whether the behavior, if substantiated, would constitute a violation of institutional policy; (b) whether there is any immediate support or safety needs such as separating the students involved to protect them and the larger community; and (c) if the incident activates responses under the Clery Act. Generally speaking, the behavior reviewed at this stage is likely to fall into one of the three categories noted in Figure 1: sexual harassment or sexual violence as defined previously, or *nonactionable sexual behavior*, which is defined as behavior that is sexual in nature, yet not actionable under institutional policy. An example of potentially nonactionable sexual behavior would be a group of male students singing a sexually explicit song in an area of a public campus designated for free speech. In instances such as these, there is little an institution can do to sanction the students because the behavior, even if substantiated, is unlikely to violate institutional policy. These cases may nevertheless create needs for victim support and educational intervention with the person(s) who reportedly engaged in the behavior. Although institutional responses to nonactionable sexual behavior may include RJ elements, such as a conversation with the students, we identify them as educational or support services.

*Invitation to Accept Responsibility.* Once a preliminary review is completed, student conduct professionals typically notify the student named in the report to comply with foundational due process requirements that afford notice of the allegation and an opportunity to be heard (e.g., Cantalupo, 2012; Taylor & Varner, 2009). Under an RJ framework, the notification could be augmented by an offer to accept or deny responsibility for the misconduct. This step creates an alternative to immediately charging the accused student with a policy violation and proceeding directly to the investigation or hearing process that is typical of institutional policy. An RJ conference model like the RESTORE program described previously and further explored subsequently may be suitable under specific conditions: (a) the case meets institutional guidelines for alternative resolution including severity and continuing risk considerations; (b) the victim voluntarily selects RJ resolution; and (c) the accused student is willing to accept responsibility and forgo investigative or adversarial determination of responsibility. If the victim prefers a traditional resolution process or the accused refuses to accept responsibility, then the institution must investigate as described in the following section.

*Investigation.* Although the DCL clearly states that institutions should be using a preponderance of the evidence standard when reviewing sexual misconduct matters, it does not explicitly prescribe a mechanism by which institutions should evaluate the underlying facts of a report (Ali, 2011). As a result, some institutions utilize an investigative model while others use a hearing-based approach or some combination of the two. Under the investigative model, the student conduct professional considers all available information and retains decision-making authority for the factual determination regarding the responsibility of the accused student. In a hearing-based model, the

student conduct professional organizes and administers an adversarial process to weigh the information in a manner that often resembles a quasi-judicial trial, hearing, or arbitration. Hybrid models employ components of each by, for example, utilizing an investigator to gather and present the underlying facts to a hearing board that is ultimately responsible for making a factual determination. Regardless of model, accused students are generally found either responsible or not responsible for sexual misconduct that violates institutional policy. In some situations, the determination may be that the facts are inconclusive, which yields the same practical effect as a not responsible finding. All investigative processes result in some conclusion regarding the reported behavior and many incorporate an appeal process as noted in Figure 1. For our purposes though, the Repair Stage that follows the investigation is the most important because of the variety of RJ options it presents.

### *The Repair Stage*

This is the final stage in the sequence diagram. Once the institution has arrived at a finding of responsibility, either through self-admission or by formal investigative and/or hearing process, action shifts to the sanctioning process and remedying the effects of the behavior. From an RJ perspective, the repair stage is more ambitious than the ways in which institutions currently seek to impose accountability. Repair includes activities to (a) achieve validation and reparation for the harm caused to direct and indirect victims; (b) initiate counseling for the responsible person to address behavior that raises the risks for perpetrating sexual misconduct such as substance abuse, anger, impulse control, hostility to women, deviant arousal patterns, and unwisely selected peer groups; and (c) activities to reinforce antisexual violence norms in the campus community. RJ can be used to address repair objectives in four ways, proceeding from left to right across Figure 1.

*RJ as a Resolution Process.* As illustrated on the left side of Figure 1, RJ as resolution process becomes an option when victims and responsible persons mutually select this pathway following an invitation from the student conduct professional. The RESTORE program described previously is an example of RJ as resolution. Truthfulness in RJ approaches is best encouraged by using a confidentiality agreement. This is permissible under DCL guidelines as long as sexual violence victims are not required to sign it. Quoting from the DCL, "... postsecondary institutions may not require a complainant to abide by a nondisclosure agreement" (Ali, 2011, p. 14). The offer of RJ resolution should describe all components including any forms that participants will be expected to sign. This step, as well as the other components of RJ resolution, is intended to empower victim choice. If a victim objects to nondisclosure, options not requiring confidentiality should be offered. RJ resolution is chosen by those to whom this approach is appealing. Imposing it would violate RJ's core principles, the DCL, and the foundational values that guide student conduct professionals. True empowerment means victims may reject RJ resolution in favor of the institutions' traditional process for adjudication.

Under the RJ resolution approach, the student conduct professional would assume roles of the case manager in the RESTORE program as described in Koss (2010, 2014). Briefly, these responsibilities involve full explanation of the process to ensure that both victim and responsible person are participating voluntarily, connecting them with needed support services, helping them identify who will attend the conference, preparing for the conference through development of what each person will say in their statement of impact (victims, family, and friends) or responsibility (responsible persons), training nonstudent facilitators to conduct the conferences, and monitoring completion of the redress plan so that responsible persons who are not meeting their agreements can be terminated for noncompliance and placed into the traditional sanctioning process. Not all victims that select RJ resolution want a face-to-face meeting. If the victim agrees, it is possible to conduct a conference with a surrogate representing him or her. Beyond the opportunity to voice impact, RJ conferences result in a redress plan that formalizes a number of activities through which the responsible person will be held accountable. These may include reparations, counseling, and campus community service. In the campus setting, additional elements may be included such as avoidance of similar class schedules or attending the same social events. Mandatory supervision should be part of any sexual misconduct redress plan to alert student conduct professionals to changes in safety risk alone or in combination with incomplete plan fulfillment that would require transferring the responsible person to traditional sanctioning.

*RJ as a Victim Impact Process.* Typically victim–offender dialogue occurs postsentencing, during incarceration, or prerelease (Miller, 2011). In Figure 1, we envision a role for dialogue in the campus setting with cases that fail to result in findings of responsibility. These circumstances leave one party feeling that justice has failed and sometimes ends with the other party suspecting that something went wrong, even if it was not actionable under institutional policy. If dialogue is desired by the person who reported the conduct and there is willingness of the other party to meet under ground rules to protect safety and preclude non-productive discussion, dialogue may be arranged and facilitated by a student conduct professional trained in RJ methodology. This approach recognizes that individuals accused of sexual misconduct may be willing to accept responsibility for repairing harm they created even if their behavior did not amount to a policy violation and that they may be willing to repair that harm in a manner that would be useful to the victim.

*RJ as a Sanctioning Process.* Among cases where responsibility has been assigned by admission or traditional resolution, a sanctioning process resembling a sentencing circle could be appropriate if the victim chooses and the student ruled to be responsible agrees to acknowledge their wrongdoing. This process expands sanctioning beyond the student conduct professional and allows a larger group of people to express impact and contribute to shaping a proportional, individualized sanction plan similar to the redress plans that result from RJ conference resolution. When the victim does not desire restorative sanctioning, or when responsibility is

denied despite the results of fact-finding, standard sanctioning occurs following established guidelines. At their most severe, institutionally imposed sanctions may include involuntary separation from the institution on a temporary (i.e., suspension) or permanent (i.e., expulsion) basis. Restorative sanctioning includes separation when it is voluntarily agreed upon.

*RJ as a Reintegration Process.* The final time point at which RJ presents as an opportunity in student sexual misconduct matters is after a responsible person completes a period of separation from the institution as noted in the lower right corner of Figure 1. Suppose, for example, that a student is found responsible for sexual misconduct and is involuntarily suspended from the institution for 2 years. If the student fulfills the conditions of his or her suspension, including any meetings necessary to assess readiness for reenrollment and ensure community safety, he or she may be permitted to reenroll. However, to maximize the likelihood of successful reintegration into the student body and to further decrease the risk of reoffending, student conduct professionals can facilitate a process modeled after the circles of support and accountability described earlier. This approach recognizes that responsible persons often benefit from a community that buffers the social stigma of being an offender and provides emotional and tangible support to avoid risky situations associated with previous sexual misconduct such as excessive alcohol use or socialization with negative peer groups. Toward that end, reintegration support could also be utilized in situations where a responsible person has voluntarily undertaken a period of separation pursuant to one of the other RJ processes discussed previously.

### *Concurrent Legal Proceedings*

Institutional student behavior guidelines and criminal law are different statements of community norms. It is not unusual for campus conduct codes to have somewhat different scope and language than law. In theory, campus and criminal justice process are independent. However, in practice campus resolution must account for criminal proceedings. The involvement of criminal justice could impact, among other things, the responsible person's willingness to proceed with an RJ process that requires an admission of responsibility. It is possible to implement RJ in the context of criminal justice involvement as demonstrated by the RESTORE Program. Important features of program design and implementation include confidentiality agreements that protect the sanctity and purpose of the RJ process without interfering with the criminal process. Memorandums of understanding with local prosecutors, judges, and law enforcement personnel must be developed that memorialize the way in which these matters are being addressed by the institution and local officials in a manner that satisfies multiple goals including issues such as confidentiality, privilege of records, and recording case disposition into criminal justice databases. How these issues are addressed will vary in each context where RJ is used. To be sure, the work is complex and technical and requires collaborative, interest-based negotiation between university administrators and local officials, which remains focused on the shared goals of eliminating the misconduct, preventing its recurrence, and

remediating its effects. Although institutions may be inclined to avoid these complicating features by limiting RJ processes to only noncriminal, sexual harassment matters, we assert that doing so as a matter of policy ignores the utility of RJ processes in the most difficult cases and makes RJ unavailable to students who may stand to benefit from it the most. Additionally, precluding RJ options could have the unintended consequence of decreasing accountability in situations where the facts do not meet criminal standards (i.e., beyond a reasonable doubt) but would satisfy the lower preponderance of evidence standard utilized by most college campuses. (For additional information about how one model of RJ resolution addressed these issues, see Koss, 2010.)

As noted previously, the required and recommended components of grievance procedures [terminology in original] outlined in the DCL (see Table 3) shape a quasi-criminal justice model of resolution. Hewing to a single investigative process, although it meets the intent of the DCL to impose accountability on responsible persons, is less likely to accomplish the equally important goals the guidance articulates including remediating the effects of sexual misconduct on victims and preventing its occurrence. Student conduct professionals who are interested in alternative resolution processes, yet tasked to comply with DCL guidance may feel conflicted. They have worked for years to decrease the legalism of student conduct processes and separate the terminology of student misconduct management from criminal procedures (e.g., Schrage & Thompson, 2009; Stoner & Lowery, 2004). Their intent in managing misconduct is, of course, to reduce it and maintain campus safety. To do so, they embrace a process that facilitates student-engaged learning and personal development including ethical behavior and responsible citizenship. When viewed as a menu of alternative pathways, the RJ options discussed in this section provide a robust compliment to traditional resolution.

## Conclusions

There is clear congruence across the contemporary goals of student conduct professionals, the DCL guidance, and Title IX. All aspire to promote access to education, manage sexual misconduct through accountability, remedy effects on victims, and prevent reoccurrence. However, despite apparent symmetry, the DCL replicates an antiquated approach that utilizes investigations or judicial hearings as the primary pathway for resolving sexual misconduct. Traditional resolution processes were designed to offer due process adjudication for accused students. They were not designed to meet victim's needs or achieve goals other than punishment. A variety of options are needed to be victim-centered and to appropriately pair process with more than 40 distinct forms of sexual misconduct identified earlier and with the variation among students and their situations. The DCL acknowledges the limitations of a one-size-fits-all approach with sexual harassment by offering mediation as an alternative resolution option but stops short of articulating it for sexual assault. Unfortunately, many student conduct professionals are not cognizant of the conceptual and procedural distinctions between mediation and RJ (Goldblum, 2009). As a

result, they conclude that RJ cannot even be contemplated for sexual misconduct. Resistance is compounded by the heavy hand of DCL jurisdiction that threatens revocation of funding for actions that run afoul of federal expectations concerning the use of mediation in sexual violence. We have attempted to establish that RJ is not mediation. Empirical evidence suggests that an RJ model for resolving student misconduct is superior to judicial hearing models in achieving the educational outcomes valued by student conduct professionals. Through a sequence diagram, we envisioned how several RJ approaches could be integrated at different time points into institutional response processes, while remaining compliant with DCL guidance and functioning within an integrated system that also includes traditional investigative, judicial, and sanctioning processes.

Although RJ programs are present on many campuses as evidenced by the level of participation in evaluation research, few or none of them have formally integrated sexual misconduct. Many institutions that are using or open to trying RJ options for some forms of misconduct have excluded sexual assault because they view it as so unique that it involves special handling or they have been scared off by misinterpretation of the DCL guidance. Therefore, it is incongruous that standard hearing processes typically have only a limited number of modifications for application to sexual assault. We do not recommend that RJ models are adopted without adaptation to the nature of sexual misconduct violations. Many additions to standard RJ models have been identified as necessary to safely and satisfactorily conduct programs involving sexual crime (Koss, 2010, 2014). Community-based programs may serve as models, but currently there are no standard campus RJ sexual misconduct programs to replicate. The most strategic approach to building RJ options has yet to emerge. On one hand, it might be more productive to implement some RJ approaches for nonsexual cases first and after institutional buy-in is firmly established, expand to sexual misconduct. An argument against this approach is that some campus RJ programs have been operating for many years without evolving to the stage where sexual misconduct cases are included. An alternate action plan is to include some of the lower level forms of sexual misconduct into RJ implementation to avoid reinforcing the attitude that the methods are not suitable for any sexual matter. Regardless, we hope this article encourages institutions to thoughtfully explore the possibilities as a way of better serving victims, preventing the recurrence of sexual misconduct, and enhancing compliance with Title IX.

The DCL motivated many campuses to examine their sexual misconduct policies and response protocols and to look for additional tools. Before engaging in RJ implementation efforts, however, institutions should carefully consider their readiness. Moving from concepts to programs in higher education requires shifting institutional policy, practice, and culture. Someone on the campus must take leadership and have the vision to foresee where the hesitations and bumps might arise. Achieving institutional change depends on input and consensus among representatives of groups that maintain an investment in addressing sexual misconduct. These groups may include campus victim advocates, Title IX coordinator(s), student affairs staff and administrators, students, and the larger campus community (Taylor &

Varner, 2009). Each constituency comes with its own needs for information, set of questions, and issues to consider (Taylor & Varner, 2009). To implement options, an institution needs highly skilled practitioners, experience supporting sexual assault victims, clarity and transparency, flexibility of options, and wide inclusion of partners (McGlynn, 2012).

Institutional capacity to move from theory to practice (Wandersman et al., 2008) depends on engaging key players in the development process, sharing information, training new competencies, and establishing policy. These activities are within the skills of student conduct professionals and their colleagues on and off campus. Their shared commitment to accountability, developing students as individuals, and building healthy campus communities suggests that the hope of innovation in response to sexual misconduct rests on a solid foundation.

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### Suggested Reading

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### Author Biographies



**Mary P. Koss, PhD**, is a Regents’ Professor in the Mel and Enid Zuckerman College of Public Health at the University of Arizona. She received her PhD in clinical psychology from the University of Minnesota. In addition to numerous empirical publications, she is coedited a two book series for the American Psychological Association, *Violence Against Women and Children* (2011). She published the first national study on acquaintance rape in 1987 and developed the most frequently used survey to measure unwanted sexual experiences on college campuses. She consults nationally and internationally on sexual assault prevalence. Her other research interests include restorative justice, violence prevention, program evaluation and policy focusing on violence against women. She served on the National Academy of Sciences Panel on Violence Against Women and the Coordinating Committee of the Sexual Violence Initiative based in Johannesburg, South Africa. In recognition of her contributions, the American Psychological Association honored her with its Award for Distinguished Contributions to Research in Public Policy. She received the Visionary Award from the law enforcement training and technical assistance organization, End Violence Against Women International. In 2013 the Mary P. Koss Profile in Courage Award was created by the One in Four USA organization.



**Jay K. Wilgus, JD., MDR**, is a director of the Office of Student Conflict Resolution at the University of Michigan where he leads a spectrum-based approach to conduct and conflict management that aims to build trust, promote justice, and teach peace. He formerly served as an assistant dean of Students at the University of Utah where he was responsible for Greek Life and a shared caseload of student conduct matters. He is a certified rape crisis counselor, an instructor on law in higher education, and a member of the Utah State Bar where he previously operated a solo practice focused on criminal defense. He earned his law degree from the S.J. Quinney College of Law at the University of Utah and his master’s in Dispute Resolution from the Straus Institute for Dispute Resolution at Pepperdine University.



**Kaaren M. Williamsen** is the founding director of the Gender and Sexuality Center at Carleton College. Opened in 2001, it is an innovative small school resource center combining lesbian, gay, bisexual, and transgender student support, sexual violence prevention, and healthy relationships education. She was an integral part in revamping Carleton’s sexual misconduct adjudication process and has been leading an effort to create an alternative process based in restorative justice. She got her BA from Gustavus Adolphus College, her MS in Women’s Studies from Minnesota State, Mankato, an MA in counseling and student personnel psychology from the University of Minnesota and is working on her dissertation for her PhD in Organizational Leadership and Policy Development from the University of Minnesota. She is a native of Annapolis, Maryland.