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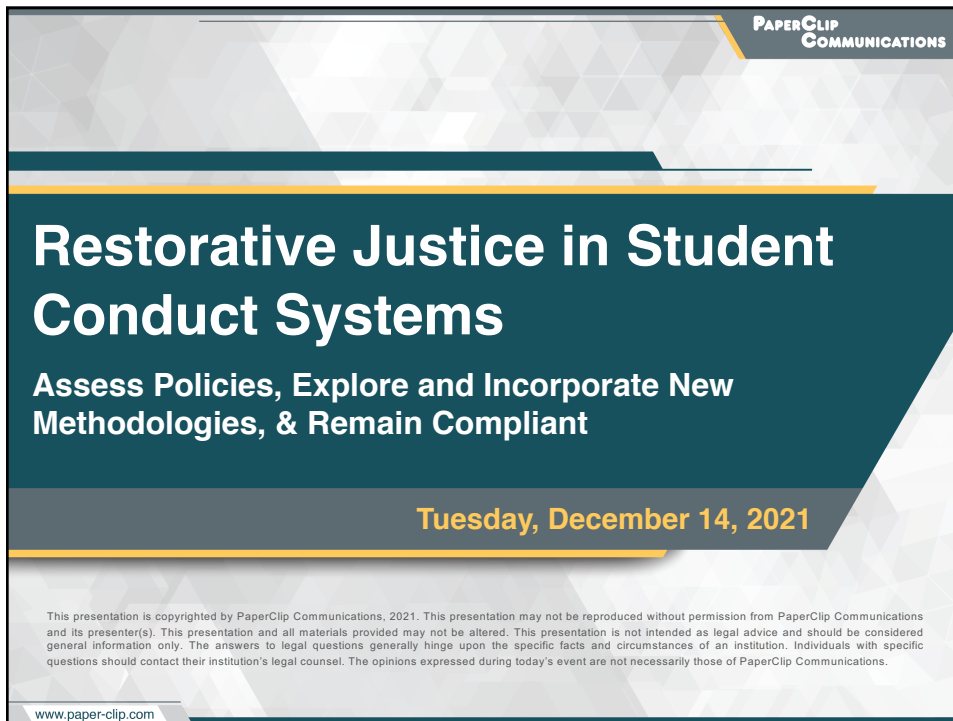
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1

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# Restorative Justice in Student Conduct Systems

**Assess Policies, Explore and Incorporate New Methodologies, & Remain Compliant**

**Tuesday, December 14, 2021**

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2

**Today's Moderator and Presenter**

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3



What departments are
represented in
the room today?

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4

# THE LANDSCAPE

5

**All of our work should and does encompass diversity, equity, and inclusion components.**

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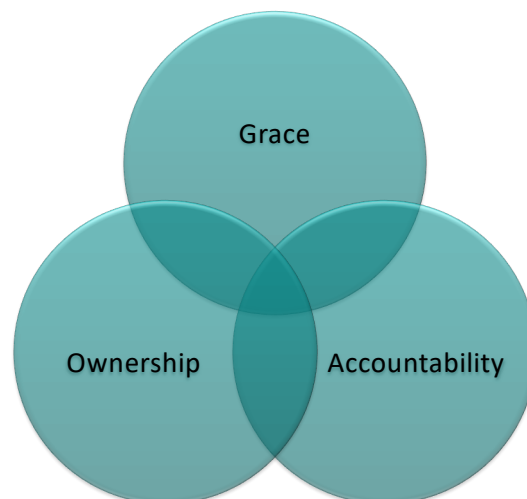
"We live in an age in which the fundamental principles to which we subscribe—liberty, equality and justice for all—are encountering extraordinary challenges…"

Justice Ruth Bader Ginsburg

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9

"But it is also an age in which we can join hands with others who hold those principles and face similar challenges."

Justice Ruth Bader Ginsburg

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10

# TRENDING FORWARD: THE BASELINE FOR INFORMAL RESOLUTION

11

- "…one trend seems clear: Colleges are being mandated to use more formalized adjudicatory processes. College 'court,' for better or worse, is emerging. But will a trend toward mandated formal adjudicatory models in higher education propel other models—perhaps ones higher education chooses for itself?"

*"Mediation is Making an Impact on College Campuses."*

12

- "The legal system itself now depends heavily on alternative dispute resolution (ADR)—which includes mediation. Individuals with serious disputes often want, need and even deserve ADR. ADR gained widespread acceptance a generation ago for the simple reason that not everything can, or should, go to court or be subject to adversarial or overly formal processes."

"*Mediation is Making an Impact on College Campuses.*"

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13

# Positive Possibilities

- "The goal of using informal procedures is to provide self-determination and control to survivors in the appropriate situations, not to avoid liability, provide traditional justice, or minimize the use of formal procedures."

"*Sexual Misconduct on Campus.*"

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14

# Positive Possibilities

- Transferrable skills
  - Facilitated conversation rather than adversarial approach
- Unique opportunities
  - Incorporation of learning and educational outcomes
  - Potential incorporation of restorative justice

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15

# Implementation

- "Toward this end, the Title IX coordinator should review each situation and sign off on any use of informal mechanisms, **with guidelines** instituted regarding the factors and means of **screening** complaints to determine the **appropriateness** of informal options."

"*Sexual Misconduct on Campus.*"

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## Necessary Stakeholders

Student Affairs/Dean of Students

Title IX

Human Resources

Equity/Diversity/Equal Opportunity

General Counsel

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17

Now it's time for today's activity.

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18

## Activity

Define what restorative justice means to you.

List ways that restorative justice practices or informal resolution have been used successfully on your campus.

If it hasn't been used, jot down some scenarios where you could successfully incorporate restorative justice or informal resolution.

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# TYPES OF INFORMAL RESOLUTION

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# Restorative Justice Generally

- Focuses on accountability, restitution, and resolution of a violation of human relationships rather than just policy and law
- Centralizes victim in process (as opposed to retributive models or rehabilitative models)
  - Primary victims
  - Secondary victims

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21

# Mediation Defined

- "Mediation is a private process where a neutral third person called a mediator helps the parties discuss and try to resolve the dispute."

*"Dispute Resolution Processes: Mediation."*

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22

# Mediator Role

- "The mediator does not have the power to make a decision for the parties, but can **help** the parties **find a resolution** that is **mutually acceptable**. The only people who can resolve the dispute in mediation are the parties themselves."

"*Dispute Resolution Processes: Mediation*."

23

# Mediation Process

- Lay the groundwork: explain the process with a preplanned agenda.
- Allow parties to make an initial statement, which should include potential outcomes.
- Conduct the mediation.
  - Joint
  - Shuttle
- If an agreement is reached, create a written memorandum which the parties should sign.

"*Dispute Resolution Processes: Mediation*."

24

# Arbitration Defined

- "Arbitration is a private process where disputing parties agree that one or several individuals can make a decision about the dispute after receiving evidence and hearing arguments."

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*"Dispute Resolution Processes: Arbitration."*

25

# Arbitrator Role

- "Arbitration is different from mediation because the neutral arbitrator has the authority to make a decision about the dispute."

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*"Dispute Resolution Processes: Arbitration."*

26

## Arbitration Process

- Arbitration is like a trial, but less formal.
- It begins with opening statements and the presentation of evidence to the arbitrator.
- After this presentation from the parties, the arbitrator makes a decision about the dispute.

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*"Dispute Resolution Processes: Arbitration."*

27

## Arbitration Process

- Outside of the higher education setting, there is a "bare bones" award without explanation and a "reasoned" award with explanation.
  - Based on existing guidance and the proposed regulations, a "bare bones" award is not recommended in the higher education realm.

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*"Dispute Resolution Processes: Arbitration."*

28

## Other Options

- Conflict coaching
- Facilitated dialogue
- Restorative justice circles

29

# Now it's time for a short break.

30

Is your institution currently incorporating informal resolution as an alternative to the adjudication process?

If you answered yes to the first poll, what types of informal resolution have you utilized successfully?

If you answered yes to the first poll, what types of informal resolution have been unsuccessful?

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# PRACTICAL CONSIDERATIONS

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# Difficult Realities

- Intense
- Emotional
- Traumatic

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# Constructive Opportunities

- Established goal of mutual understanding
- Avoidance of pressure
- Customizable, but defined process
- Sanction alternatives
- Inclusion of support structures
  - Attorneys
  - Non-attorney advocates
  - University advisor
  - Support person

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34

# Typical Conduct Sanctions

- Written warning
- Educational sanction
- Housing relocation
- Barring of contact
- Suspension
- Expulsion

35

# Informal Resolution Alternatives

- "The perpetrator wrote the woman an apology and agreed to turn their experience into a cautionary tale for others. Together, they produced a video in which both of them describe the assault from their own perspective and in relatable terms. At the end, the male student says, 'I have raped. I hurt her in a way that I can never take back.' The two took the video on the road to show groups ranging from his own fraternity brothers to local high school students."

"*Brown University Implements Restorative Justice Program.*"

36

# Informal Resolution Alternatives

- "Reflecting on the process, the young woman says on one hand, 'writing the joint narrative was really hard because it was digging up memories.' On the other hand, their story publicly was 'really therapeutic because those deep, dark secrets that you hold, the more people you show them to, the more light you shed on them, the lighter they become.'"

*"Brown University Implements Restorative Justice Program."*

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# Informal Resolution Alternatives

- "The woman says working together helped her understand that the man's intent was not so much malicious as it was misguided and it helped with the healing process to see that he fully understood what he did wrong and owned it."

*"Brown University Implements Restorative Justice Program."*

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38

# Informal Resolution Staff

- Internal: counselors, deans, ombuds
- External: attorneys, retired judges, arbitrators/mediators

39

# Policy Considerations

- Types of informal resolution available
  - Any restrictions?
    - Appeal process or grievance process to oppose restrictions?
- "Escape valves"
- Identification of staff
- Confidential or non-confidential?
  - Record retention

40

## Practical Considerations

- Flexible, but scripted
- Provide script/agenda before the session
- Allow parties to see the space before
- Ensure there are adequate supplies
  - Tissues
  - Notebooks
  - Snacks
  - Water
  - Coffee

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## Practical Considerations

- Space
  - Reserve a large enough space for the resolution process itself
  - Have back-up separate space
    - Ability to call or Skype or otherwise
- Bathroom location
- Entry points of building
- Holding rooms/break rooms
- Staffing

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42

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51

# Now it's time for today's key takeaways.

52

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# Today's Key Takeaways

1. Clear, well publicized process is critical, not only for institutional protection, but also for those who are participating. Flexibility and consideration are also crucial elements in making this a navigable, satisfactory process for all involved.

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53

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# Today's Key Takeaways

2. Although there is an increasing lean toward making the conduct process legalistic, it should still be easily navigable by the parties. Consider the creation of different resources to help parties through process elements. Avoid using judicial/court-related jargon when possible.

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54

# Today's Key Takeaways

3. There are a variety of models of informal resolution that emphasize the educational component of the process in addition to providing a mutually agreeable alleviation of the harm caused. This allows expansion beyond the current range of typical sanctions issued in the conduct process and can provide new outlets of restitution for the victim and community.

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# Today's Key Takeaways

4. Although informal resolution can provide alternative outlets of restitution, it also can be a challenging process for the participants involved. Having a detailed "escape valve" and the incorporation of support structure into informal resolution is just as crucial as it is for more formal adjudicatory processes.

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## Today's Key Takeaways

5. Even though individuals may be trained to implement informal resolution (i.e., a trained mediator), Title IX and campus conduct cases have nuances that need to be accounted for. In order to ensure compliance, specific training on the campus policies and procedures is critical, as well as training about campus conduct issues, sexual misconduct, and interpersonal violence-related issues.

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# Now it's time for the Q&A.

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## Q&A Session

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60

61



62

63

**Webinar Debriefing Questions**

We know how much value there is in the conversation that ensues after a webinar. Here are some debriefing questions to help you get this critical conversation started. We wish you all the best as you work hard to continue to improve your campus community.

- If you have already incorporated informal resolution on your campus, what areas of success can you celebrate with your policies, procedures, and practices? What areas of risk have you identified as a result of the presentation? Beyond compliance risks, what are some areas that have room for improvement in terms of making the process more easily navigable, more supportive, more comfortable, and more satisfactory for those involved?

- If you have not incorporated informal resolution yet, what action items, in rank order, do you need to complete to set up such a system in light of the session? What partners do you need to assist in the action items?

- What areas of training do you need to seek out/incorporate to enable incorporation of informal resolution?

- What areas do you need to continue monitoring for updates or change in your jurisdiction?

- What are some other areas in your overarching conduct program that you need to address to make the experience of your students, faculty, and staff better?