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# Title IX and Restorative Justice

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# Overview

- Legal History
  - Informal resolution in matters involving harassment
  - Title IX mandates and roll backs
  - Adequate educational response
- Restorative Justice
  - Tenants of Restorative Justice
  - Benefits of Approach in Title IX Context
- Preparing and presenting a restorative justice program in campus life



# Legal History



# Evolution of Legal Movements



## Alternative Dispute Resolution

- 1970s – Government internal resolution process
- 1980s – Legal scholars catch on ADR movement
- 1990s case law developments permitting alternative resolution
- 1995 ADR practitioners are firmly entrenched in legal system and most court systems
- Arbitration evolved to mediation methods to resolve matters short of litigation

## Sexual Harassment

- 1964 Civil Rights
- 1972 Title IX
- 1970 Court cases on topic
- 1980 EEOC confirms sex harassment is sex discrimination
- 1986 Speech alone can constitute harassment
- 1991 Civil Rights
- 1994 VAWA



# Early Entity Response

## Corporate

- Policies and procedures
- Requiring ADR to resolve some disputes
- Responsibility is on person bringing complaint to show that it was clear behavior was unwelcome

## Education

- Questioning responsibility for employee and non-employee (student) behavior
- Identifying boundaries as to what requires involvement of school
- Staying away from sexual criminal actions and matters



# ADR Scholars

Challenges presented by **Power Differential** explored

Assumes an equal bargaining position for parties in certain instances

When sexual discrimination/harassment involves a power differential, a mediation environment is inherently intimidating environment for victim/complainant.

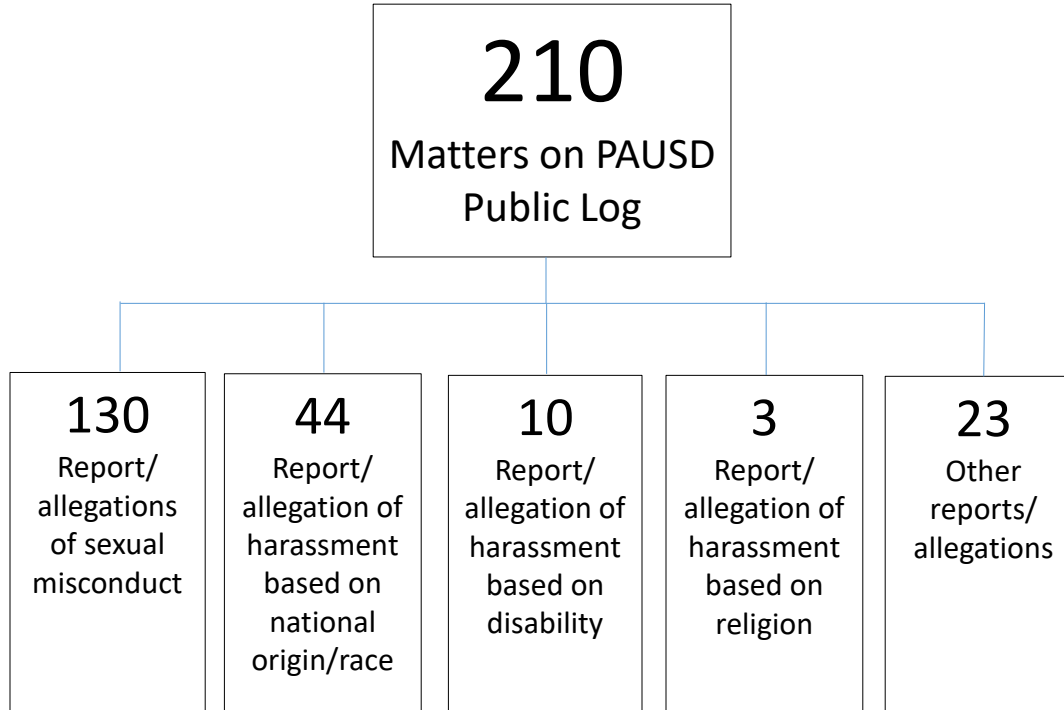


# Title IX and Sexual Harassment

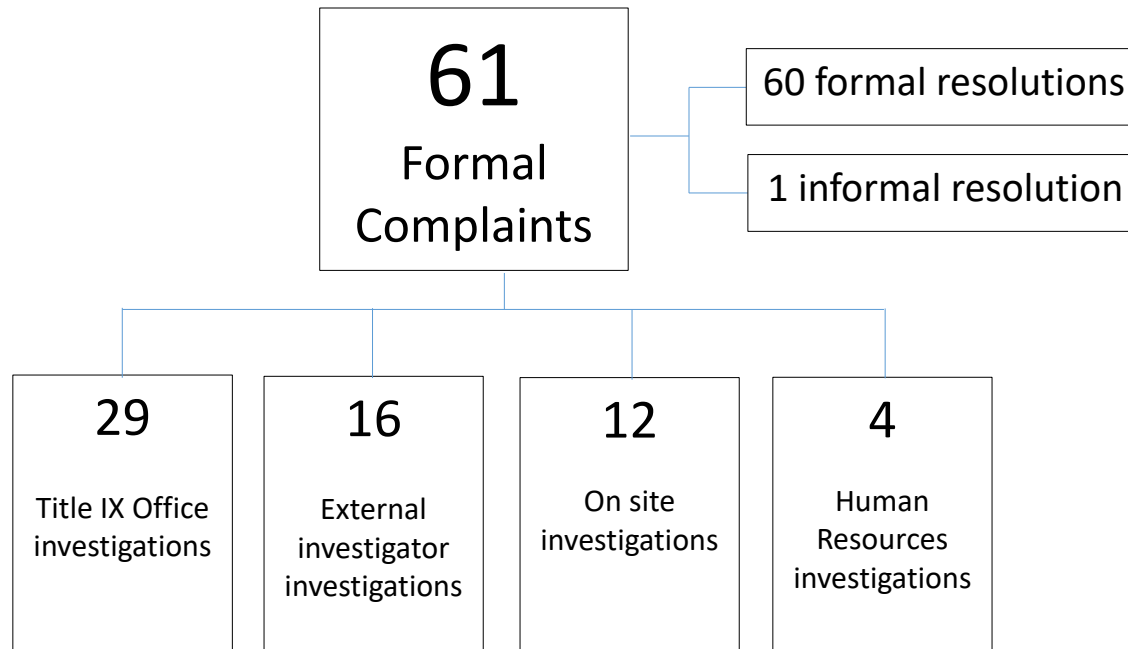
- 1997 OCR Guidance
  - “Welcomeness” - Schools should be particularly concerned about the issue of welcomeness if the harasser is in a position of authority.
  - it is not appropriate for a student who is complaining of harassment to be required to work out the problem directly with the individual alleged to be harassing him
- 1998 Gebser v. Lago Vista
  - Set the deliberate indifference standard for Title IX
- 1999 Davis v. Monroe County Board of Education
  - Private damage actions may lie against schools that act with deliberate indifference to harassment that is severe enough to prevent victims from enjoying educational opportunities.
- 2001 Guidance
  - There may be more than one right way to respond
- 2011 & 2014 Guidance – no mediation of sexual violence matters
- 2017 Guidance
  - Mediation permitted with consent



## LOG BY TYPE



## One School District's Claim Trends 2017-2018



# Impact of Formal Process at PAUSD

## Resources

- Formal resolution
  - Timeframe 2-8 months
  - Cost - \$15k-\$200k+
- Informal resolution
  - Significantly decreased
- Restorative Justice
  - Significantly decrease

## Satisfaction

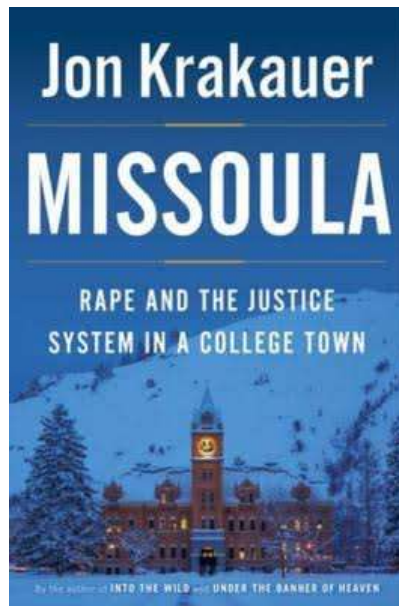
- Formal
  - Rarely satisfied with process/results/discipline
- Informal
  - Increased understanding of adversary; opportunity to confront behavior
- Restorative Justice
  - Parties and facilitators increased



# RJ at Skidmore: Before and After



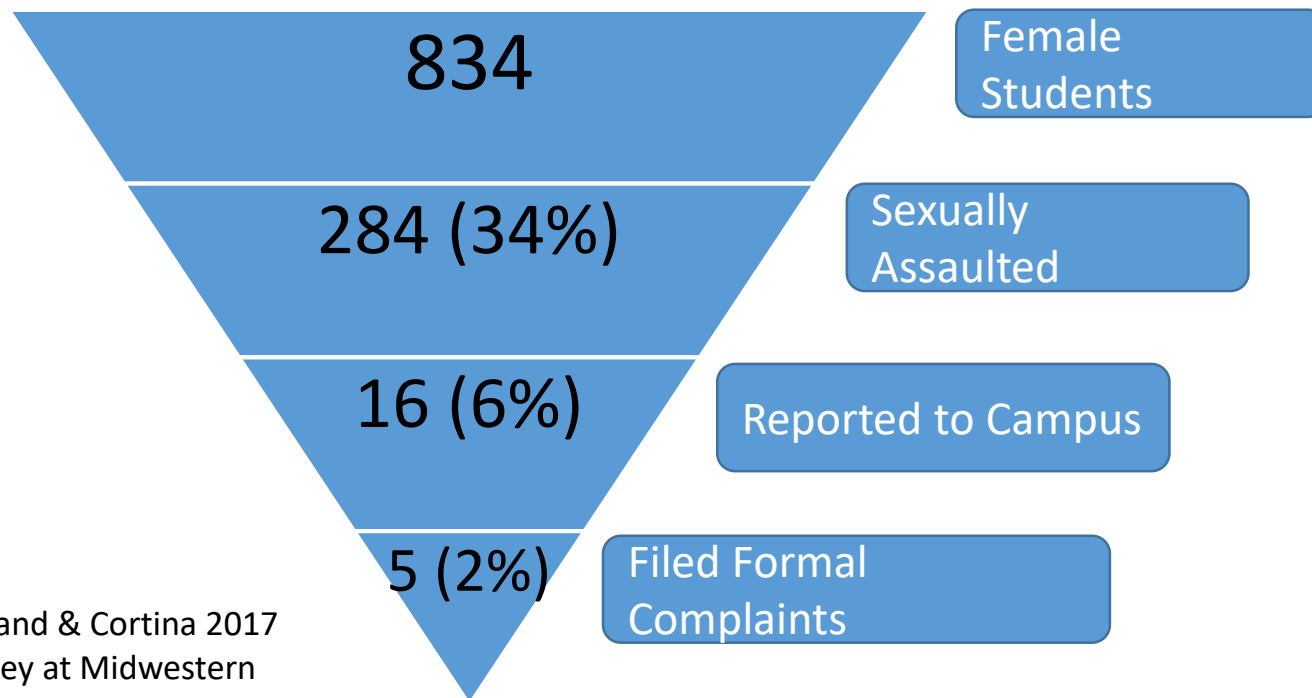
# The Restorative Impulse



Allison Huguet      Beau Donaldson  
“He promised me that he would get treatment for his drug, alcohol, and sexual issues,” Allison recalled. “And I made it clear that this promise was the only reason I wasn’t going to the police”



# Reporting and Adjudication



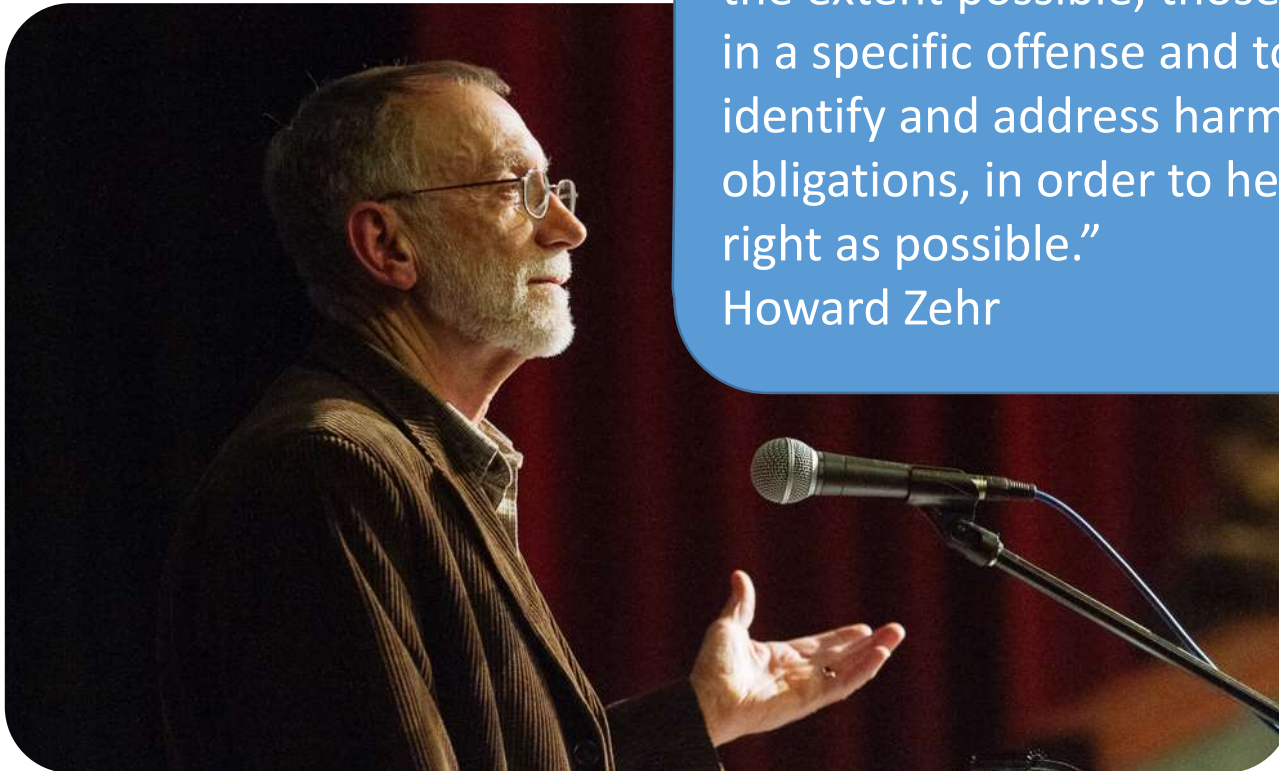
Holland & Cortina 2017  
Survey at Midwestern  
University



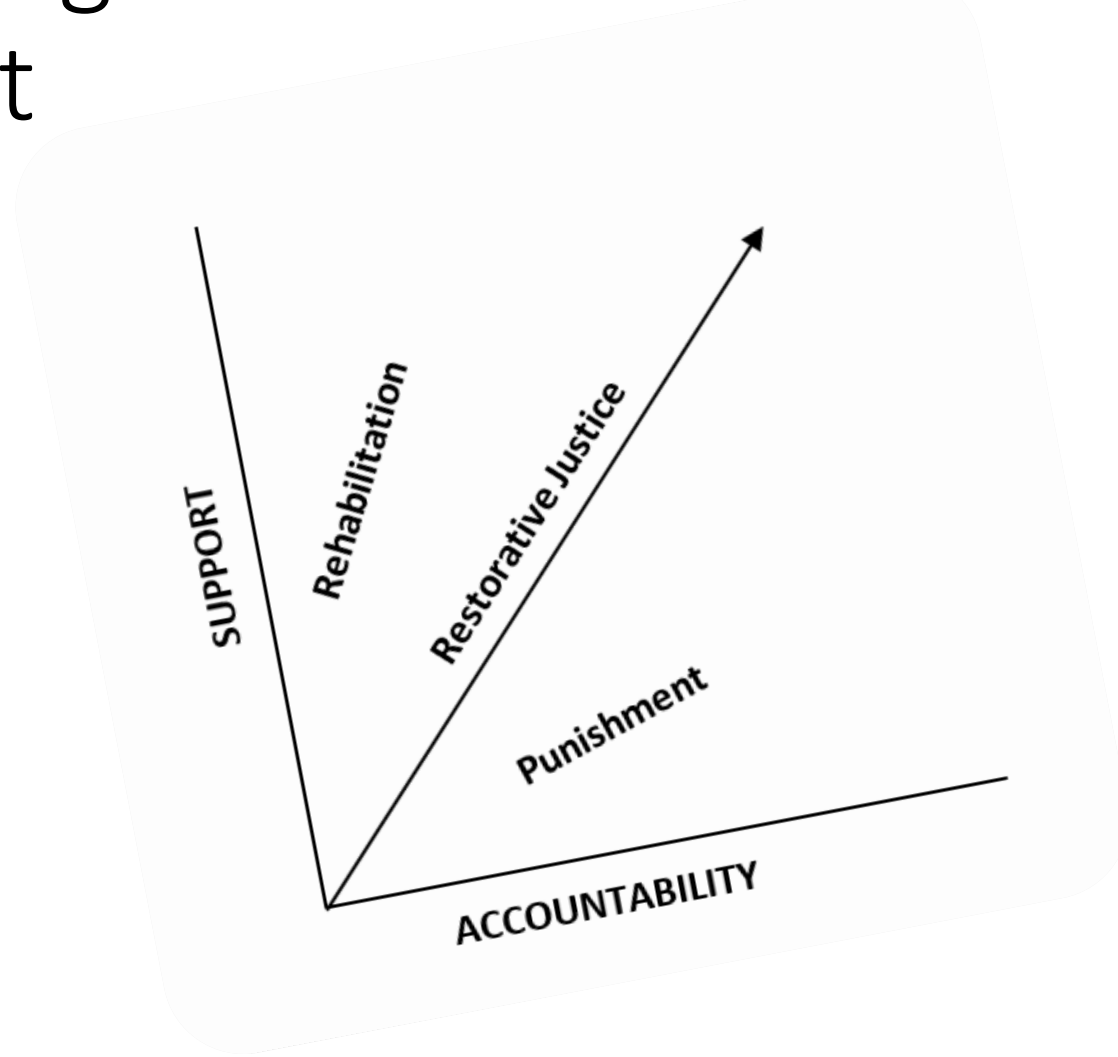
# RJ Defined

“Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible.”

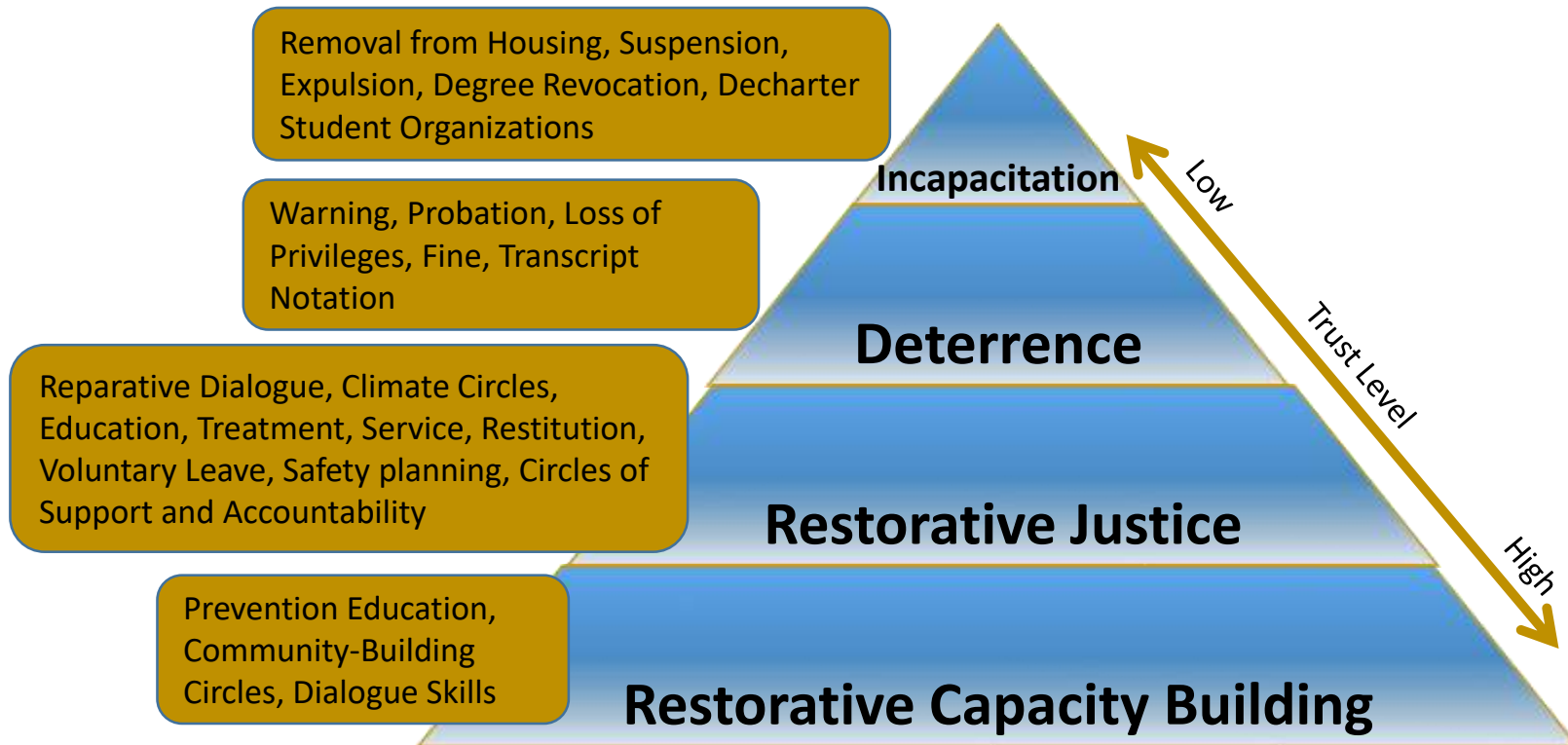
Howard Zehr



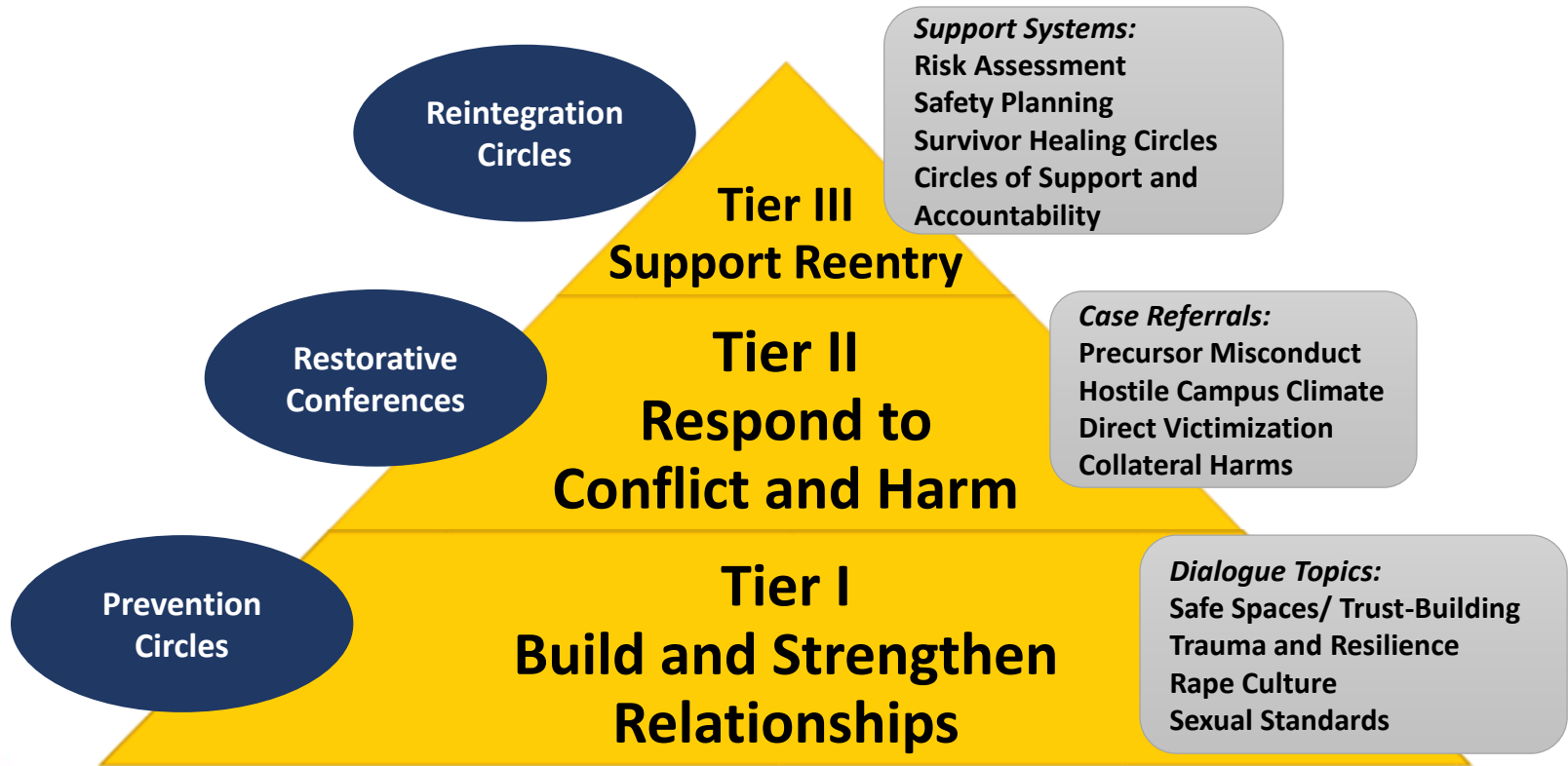
# Achieving Accountability and Support



# Responsive Sanctioning Pyramid



# Campus PRISM: Whole Campus Approach



# Tier 1: Prevention Education



To build community and strengthen relationships

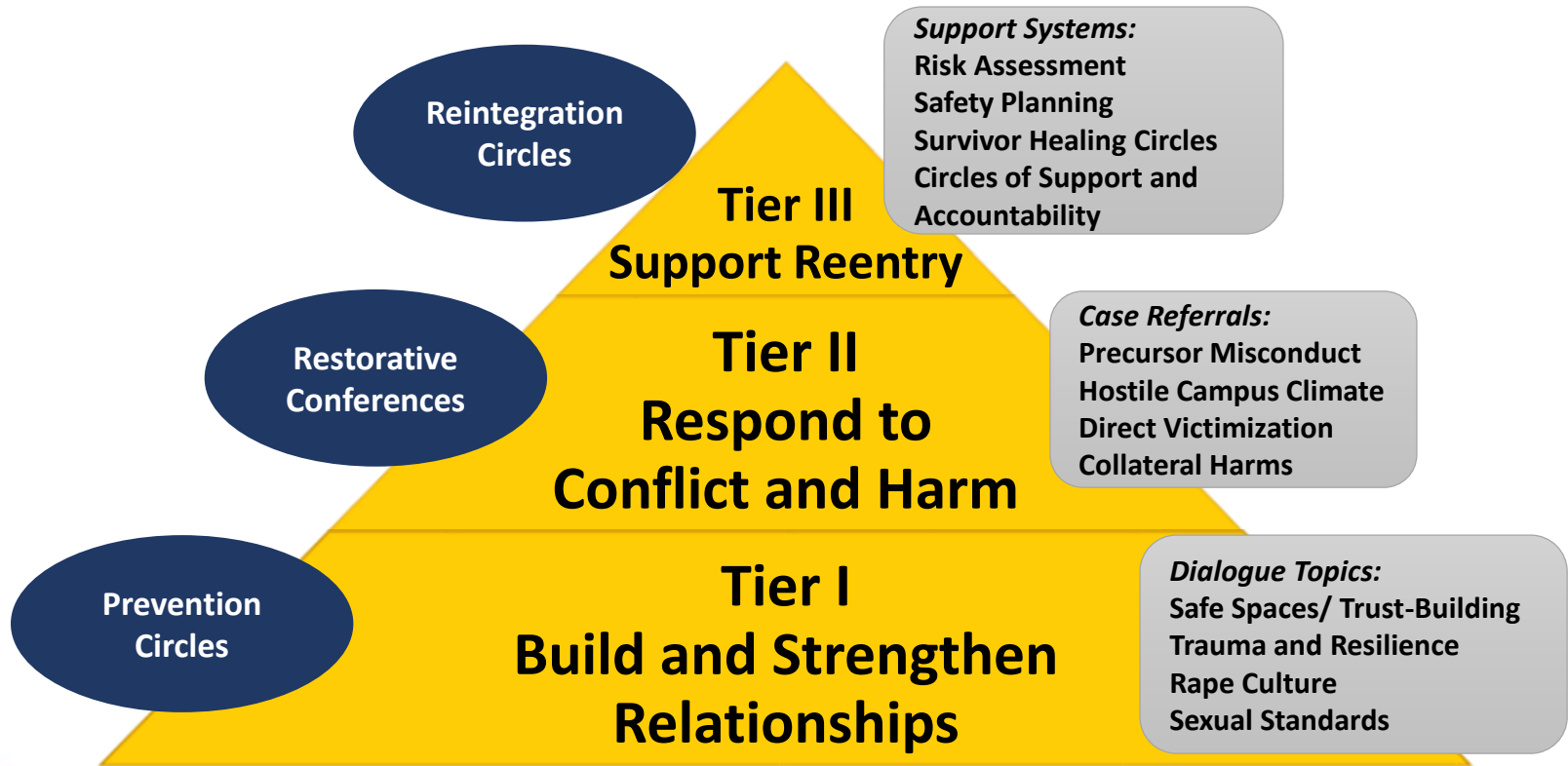
To create a safe container for difficult dialogue

To voice harms and concerns in community

To collaborate on next steps for response



# Campus PRISM: Whole Campus Approach

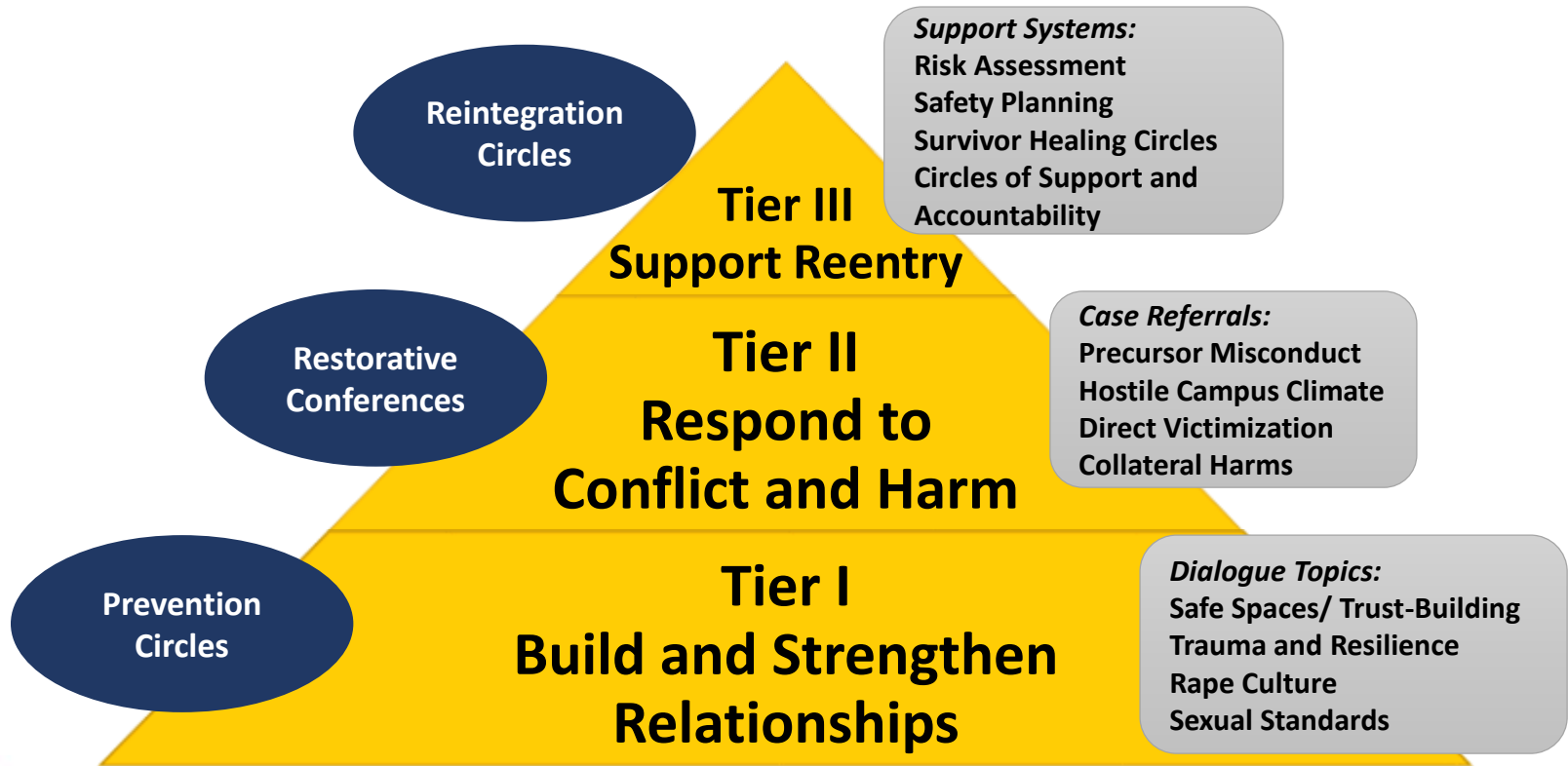


# Tier 3: Reintegration

## Circles of Support and Accountability



# Campus PRISM: Whole Campus Approach

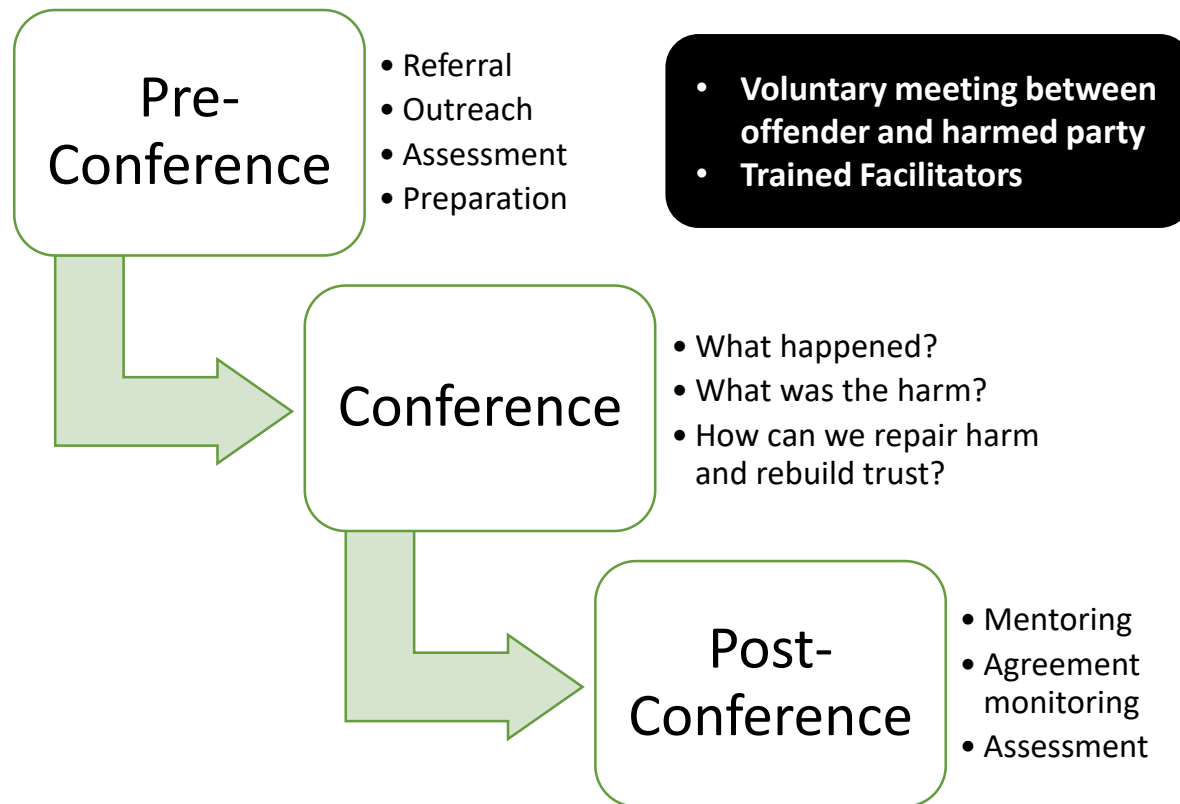


# Tier 2: Responding to Harm

How do we create the conditions in which it is possible for someone who has caused sexual harm to acknowledge and take responsibility for that harm?



# Fundamental RJ Process



# RJ Conferencing for Sexual and Gender-Based Misconduct

## Pre-Cursors to Sexual and Gender-Based Misconduct

- Alcohol violations
- Hazing
- Entitlement

## Hostile Campus Climate

- No targeted, direct victim
- Sexism, hegemonic masculinity
- Banners, dance floors, social media

## Direct Victimization

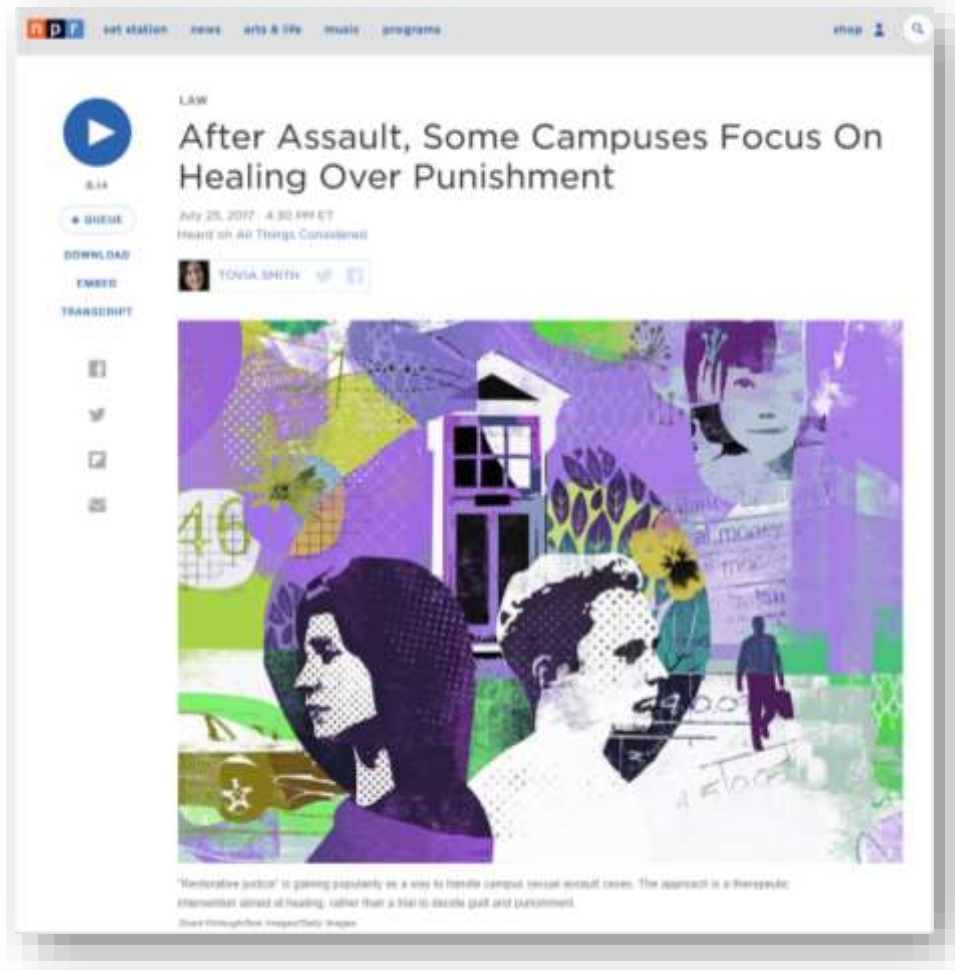
- Stalking, harassment, sexual assault, intimate partner violence

## Collateral Harms

- Ripple effects/fallout from specific incidents
- Retaliation



## Tier II: Anwen and Sameer



The screenshot shows a podcast player interface. At the top, there are navigation links for 'hot station', 'news', 'arts & life', 'music', and 'programs'. The main title is 'LAW After Assault, Some Campuses Focus On Healing Over Punishment'. Below the title, it says 'July 25, 2017 4:30 PM ET' and 'Heard on All Things Considered'. The host is listed as 'TOVIA SMITH'. On the left side, there are controls for 'PLAY', 'QUEUE', 'DOWNLOAD', 'EMBED', and 'TRANSCRIPT'. The central image is a colorful, abstract collage featuring a woman in a purple headscarf, a man's face, a building, and various symbols like a car and a person walking. Below the image, there is a short description: '"Restorative justice" is gaining popularity as a way to handle campus sexual assault cases. The approach is a therapeutic alternative aimed at healing, rather than a trial to decide guilt and punishment.'



# Beyond Face-to-Face: Still Meeting Needs

Video  
Conference

Video  
Exchange

Writing  
Exchange

Victim Impact  
Statement

Surrogate  
Participation

Victim  
Support  
Circles



# The College of New Jersey



Spring Semester 2018

13 sexual assault/ 22 other Title IX reports (N=35)

3 resolved through formal hearing or investigatory process (9%)

4 resolved through RJ (3 penetration/1 touching) (11%)

The rest chose no adjudication



# TCNJ Staff Labor

(Average Hours/Case)

Formal Hearing vs RJ (Indirect)



Process	Hearing	RJ
Meetings with Reporter	7	6
Meetings with Respondent	7	7
Meetings with Witnesses	7	0
Documentation/Report	14	2
Hearing/Appeal	6	0
Email Communications	34	10
<b>TOTAL</b>	<b>75</b>	<b>25</b>





# Campus PRISM

Promoting Restorative Initiatives for  
Sexual Misconduct on Campus

- Campus administrators
- RJ practitioners
- Academics
- Students

[Read Our Report](#)

[SkidmoreRJ.org](http://SkidmoreRJ.org)

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# Alternative Resolution at Notre Dame: Before and After



# The Impact of a Tragedy: 2010



TITLE

IX











# University of Notre Dame



2017- 2018 Academic Year

Title IX reports

Investigations

Formal Hearings

Alternative Resolutions



# University of Notre Dame: Alternatives



Five horizontal blue rounded rectangular bars, stacked vertically, serving as a placeholder for text or a list of alternatives.



# Restorative Justice at Notre Dame: A New Beginning

