

STUDENT CONDUCT INSTITUTE
THE STATE UNIVERSITY OF NEW YORK

LIVE @ DISTANCE: Restorative Justice in Higher Education

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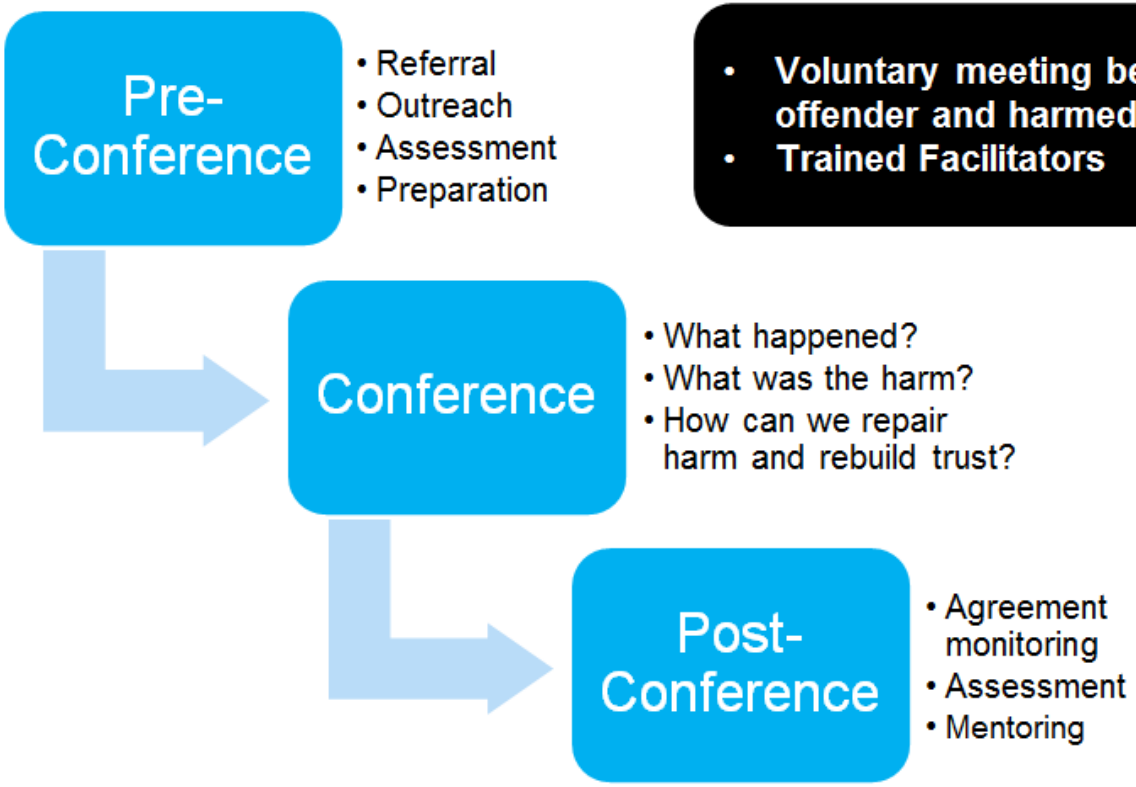
Day 1 Recap & Questions

Training Goals

Understand	Understand what restorative justice is and its application in Title IX informal resolution
Understand	Understand the components of a restorative conference and the elements of a resolution agreement
Apply	Apply restorative justice process in a hypothetical case study
Assess	Assess and explore best practices for setting up and staffing RJ programs

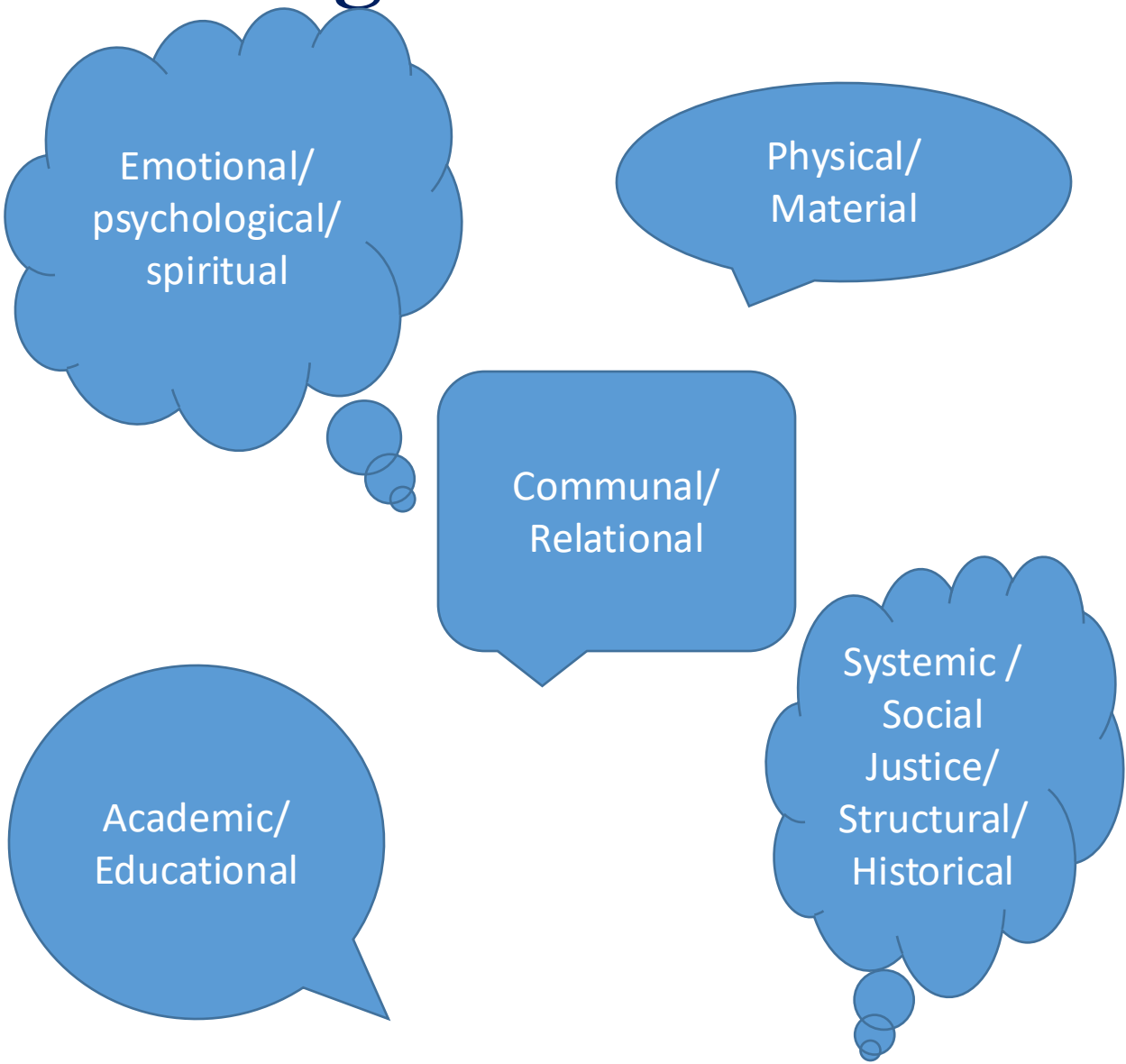
Fundamental RJ Process



Understanding "Harm"

Discussion Questions:

- How is "harm" different from a policy "violation"?
- What kinds of harms may a victim/survivor describe?
- Are there types of harms that are not typically memorialized in a Code of Conduct/Title IX policy?



Hypothetical

- Complainant and Respondent are sophomores at Great University.
- Complainant and Respondent meet at a party hosted by Respondent's (on-campus) fraternity house.
- Complainant and Respondent dance at the party, exchange contact information, and agree to hang out again. Over the next several weeks, Complainant and Respondent become good friends.
- Respondent repeatedly asks Complainant to go out "on dates" and says he wants to take the relationship to the next level. Complainant likes Respondent a lot but is not sure whether she is ready for a serious relationship yet.

Hypothetical (cont.)

- Respondent invites Complainant to a Mardi Gras-themed party at his fraternity house.
- Complainant arrives at the party with several friends. Complainant leaves her things (including her keys) in another fraternity member's bedroom, which is locked for safekeeping. Complainant and Respondent eventually meet up and begin talking and dancing.
- Complainant and Respondent each drink several cups of the fraternity's homemade "Hurricane" punch. Later in the evening, Complainant notices that she is beginning to feel tired and dizzy and decides its time to call it a night.
- Complainant looks around but cannot find her friends. She calls and texts her friends and realizes they have already collected their things and left. Complainant does not know the fraternity member whose room her belongings were left in. Complainant turns to Respondent for help.

Hypothetical (cont.)

- Respondent, who is also feeling quite tipsy, says he cannot find the fraternity member to unlock the room with Complainant's belongings. Respondent observes it is late and invites Complainant to sleep in his room until the morning, when they can get her things. Complainant agrees but tells Respondent she very tired and doesn't want "any funny business."
- Complainant and Respondent get into Respondent's bed. Respondent initially pulls Complainant into an embrace to "cuddle," but shortly thereafter begins touching Complainant's breasts and hips. Complainant pushes Respondent's hands away. Respondent then attempts to kiss Complainant's mouth, but she turns away.
- Respondent pulls Complainant closer and begins rubbing his hips against Complainant. Complainant can feel that Respondent has an erection. Respondent then grabs Complainant's hand and places it over his erection, moving Complainant's hand in a sexual manner. Respondent then requests Complainant to perform oral sex, which causes Complainant to begin crying.
- Startled, Respondent ceases activity, and the parties are silent. When Respondent wakes up, Complainant is gone. Complainant blocks Respondent on her phone and social media and avoids him on campus. Respondent believes the encounter was a "bad hook up," and doesn't think about the encounter until he receives a notice of complaint from the University's Title IX Office 6 weeks later.

Hypo – Add'l Facts from Intake Meeting with Complainant

- Complainant states that she experiences anxiety and fear whenever she sees Respondent and goes out of her way to avoid him on campus.
- Complainant says she has nightmares about the incident and "just wants to feel safe."
- Complainant is sad to have lost her friendship with Respondent, which has also made other mutual friendships awkward and distant. Complainant is also angry at Respondent's behavior and lack of respect.
- Complainant does not want to participate in a hearing or be cross-examined. Complainant also wants Respondent to "learn a lesson," but is not sure she wants to "be the reason Respondent gets expelled."

Pre-Conference: Preparatory Questions for Harmed Party

How would you ordinarily prepare for an initial investigative interview with C?

How should your approach change in a restorative process, where the goal is to identify and address harm?

What's different/missing from this list compared to a traditional investigative interview outline?

What sort of responses would be "red flags" for terminating an IR/RJ process?

- What happened?
- What impact did this incident have on you?
- What was the hardest thing about this?
- If the person responsible were here, what would you like to say to them or ask them?
- Is there anything that could be done right now that would help meet your needs?
- Are there things in this community that permit/encourage incidents like this to happen that you would like to see addressed?
- What would you like to see Respondent do to repair the harm they have caused you?
- What concerns do you have about participating in this process?

Pre-Conference: Preparatory Questions for Offending Party

How would you ordinarily prepare for an initial investigative interview with R?

How should your approach change in a restorative process, where the goal is to encourage R to accept responsibility?

What's different/missing from this list compared to a traditional investigative interview outline?

What sort of responses would be "red flags" for terminating an IR/RJ process?

- What happened from your perspective?
- At the time of the incident, what were you thinking about?
- What have you thought about since the incident?
- What impact has this incident had on you?
- Who else has been impacted? How?
- What do you think you could have done differently?
- What can you do to make things right?
- How can we rebuild trust?
- Are there things in this community that permit/encourage incidents like this to happen that you would like to see addressed?
- What concerns do you have about participating in this process?

Pre-Conferencing: Identifying & Preparing Support Persons/Advocates

❖**Contrast:**

- Who often serves as an "advisor" in a traditional conduct process/mediation? What does that advisor's participation look like under regs/policy?
- What characteristics would you want in a support person/advocate role for a restorative justice conference?

❖**Prepare:**

- What are the parties' needs for support in the process?
- Are there components of the story that the support person is well-positioned to tell? (e.g., Impact of the conduct on victim? Observations of remorse/responsibility by offender?)
- Has the support person identified particular needs/obligations for resolution?

❖**Consider**: Would an institutional representative be appropriate in the conference? Who might be potential participants in this case?

Conference: Understanding the Goal

For Complainant:

- Create opportunity to share account and impact in trauma-informed way
- Identify and understand the way an incident of sexual misconduct impacted the Complainant in order to meaningfully redress the harm

For Respondent:

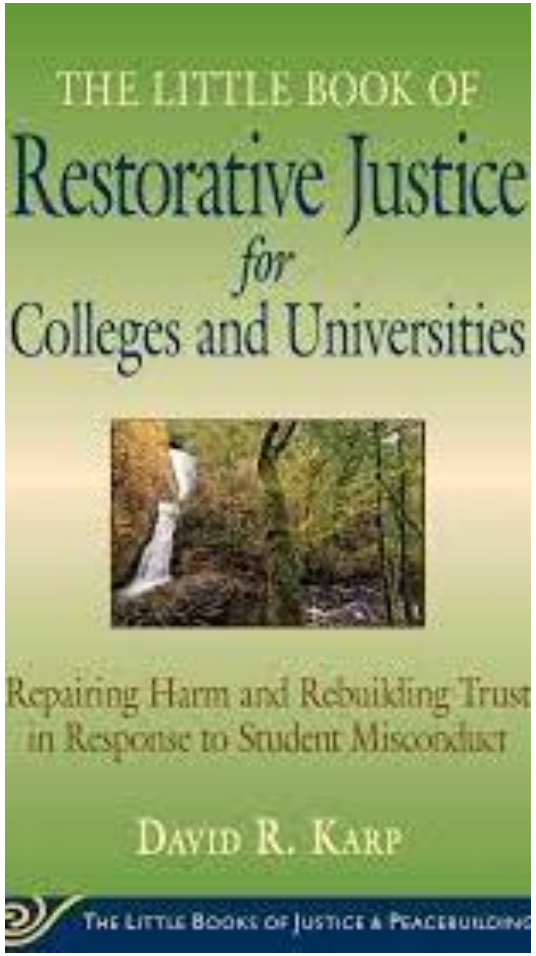
- Create opportunity and incentive for acceptance of responsibility
- Provide opportunity for understanding, education, and growth

For Institution:

- Ensure Complainant's continued access to EP&A
- Address misconduct in a meaningful way
- Identify opportunities for community/cultural change

Conference: Facilitator's Role

- Facilitate storytelling by all participants (set the stage; consider using a script)
- Monitor and respond to indications that process is unduly traumatic or becomes involuntary (often with assistance of co-facilitator)
- Identify and list harms
- Brainstorm solutions
- Outline resolution agreement with input from parties



Conference: The Significance of "Storytelling"

Back to our Hypo:

- What details do you think **Complainant** will share about the incident that you may not ordinarily capture in a traditional conduct process?
- What details do you think **Respondent** will share about the incident that you may not ordinarily capture in a traditional conduct process?
- What details might a **support person/advocate** share about the incident?

Conference: How do we facilitate "acceptance of responsibility"?

- How does the structure of a RJ conference facilitate accountability versus a traditional I/A?
- What "admissions" or acknowledgements might a Respondent make in the context of a RJ conference that would not come out in a traditional I/A?

"[A]ccountability involves facing up to what one has done. It means encouraging offenders to understand the impact of their behavior—the harms they have done—and urging them to take steps to put things right as much as possible."

-Howard Zehr

Example

"I started talking with him, I think about what I wanted and that **I didn't want a formal proceeding**. I didn't want a verdict handed down. I wanted something to come out of it. I wanted it to be discussion and I wanted to decide with Sameer what the results were going to be . . . . It was a **powerful feeling** to feel that I was not just crazy. And that he also knew that it had been wrong."

21 || A SURVIVOR AND HER PERPETRATOR FIND JUSTICE

12/3/2018



Sameer met Anwen freshman year. He was into her, and they started seeing each other. Then one night, after a fraternity party, Sameer convinced Anwen to come home with him — which is when he coerced her into sexual activity. Their senior year, Anwen invited Sameer into a process of restorative justice.

"I was **terrified** that I assaulted her. I was terrified that I'd hurt her in this way. I was terrified of myself. Because if this was true and I did assault her then what did that make me?

I was terrified of being found out. I was terrified of being sent to jail. I was terrified of all the consequences that come with sexual assault and rape and I didn't have anybody that I was like who I could tell because like . . . how do I say, 'Hi. I think I think I assaulted and raped somebody, but I'm not entirely sure.'"

http://www.reckonings.show/episodes/21

Harms?

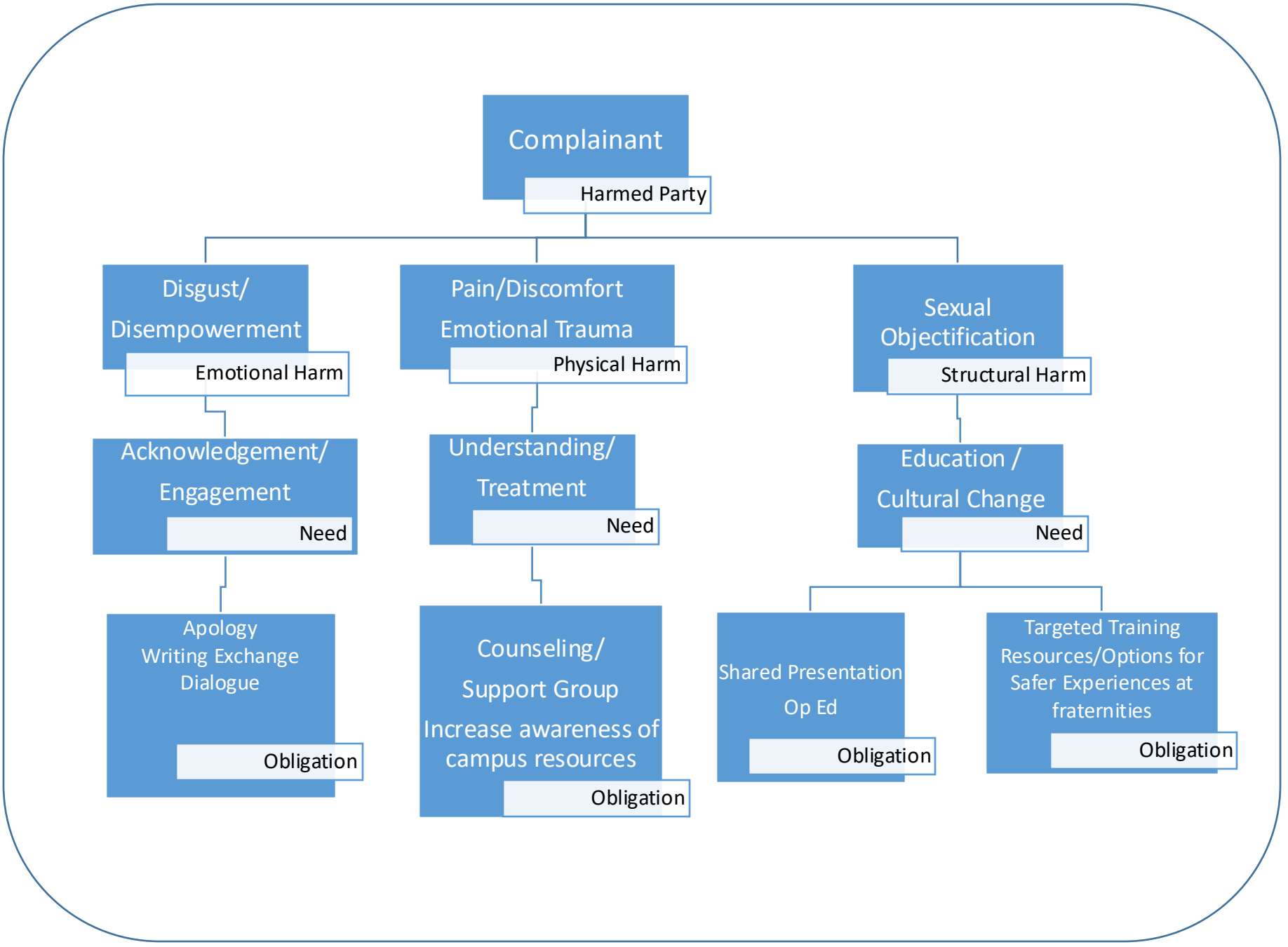
- Violation of Trust
- Emotional/relationship harm / fear, sadness
- Avoiding respondent/limit to EP/A
- Loss of safety / academic/ loss of self-worth

Needs?

- Validation of Complainant's experience
- Apology & Restitution (repairing friendships)
- Sense of learning/growth
- Fraternity/organization made safer
- Residence Life access
- Support/education for bystander intervention

Obligations?

- Verbal/written apology
- Counseling/health resources for C and/or R
- No contact/geographic academic restrictions for R
- Bystander intervention training
- Interim support measures for safety / no contact
- Educational programs / trainings
- Community service with fraternity doing training
- Mentorship based on existing relationship


Complainant
Harmed Party
Disgust/ Disempowerment
Emotional Harm
Pain/Discomfort Emotional Trauma
Physical Harm
Sexual Objectification
Structural Harm
Acknowledgement/ Engagement
Need
Understanding/ Treatment
Need
Education / Cultural Change
Need
Apology
Writing Exchange
Dialogue
Obligation
Counseling/
Support Group
Increase awareness of campus resources
Obligation
Shared Presentation
Op Ed
Obligation
Targeted Training
Resources/Options for Safer Experiences at fraternities
Obligation

Post-Conference: Final Informal Resolution Agreement

Potential elements of final resolution agreement include:

- Procedural Background
- Admission of Responsibility?**
- Sanctions, educational requirements, and other remediation measures
- Confidentiality agreement/limitations
- Consequences for breach

Post-Conference: Monitoring

- Hypo: Respondent becomes non-responsive and does not participate in agreed-to educational activities.
- How do we enforce?

Discussion:
RJ Implementation on Your Campus

Preparation/ Adoption

- Decision regarding commitment to adopting and supporting RJ program/practices
- Review current policies, practices, personnel, and resources to determine capacity for integrating RJ
- Develop plan for implementation

Initial Implementation

- Issue revised conduct and other policies
- Provide training for involved personnel and offices, such as Student Affairs, OIE, campus safety, general counsel/compliance
- Implement protocol for screening and referring cases for RJ process for targeted location, conduct, population, etc.
- Assess outcomes, areas for improvement, etc.

Broader Implementation/ Continuous Improvement

- Expand program/practices to address other populations or conduct
- Assess for opportunities to make process more efficient and accessible

Day 2 Recap & Questions

