

# Transforming Title IX: Using RJ for Campus Sexual Misconduct Cases

Frank A. Cirioni, Ed.D. | Germanna Community College | Restorative Justice Consulting LLC

# Land Acknowledgment

We acknowledge that Chicago resides on the traditional Territories of *the Three Fire Peoples: the Ojibwe, Odawa and Potawatomi*. The Menominee, Michigamea, Miami, Kickapoo, Peoria and Ho-Chunk nations also called this land home and as a site for gathering, trading, and healing.

We also acknowledge the concept of “settler colonialism.” **Settler colonialism** is a “name for a distinctive form of colonialism that develops in places where settlers permanently reside and assert sovereignty.”<sup>1</sup> As we occupy these territories, we must ask ourselves, “What we can do to right the historic wrongs of colonization and state violence, and support Indigenous communities’ struggles for self-determination and sovereignty?”<sup>2</sup>

<sup>1</sup> Settler Colonial City Project, 2022. Retrieved from <https://settlercolonialcityproject.org/Unceded-Land>

<sup>2</sup> University of Illinois at Chicago, University Library, 2022. Retrieved from <https://researchguides.uic.edu/NAS>

# Privilege Acknowledgment

As a session facilitator, I acknowledge that I enter the NACRJ Conference as a White, cisgender heterosexual able-bodied man and permanent settler who holds several identities in dominant groups and has benefitted from an oppressive system that has given me unearned privileges based on these identities.

As I join this diverse community of Black, Indigenous, and People of Color (BIPOC), LGBTQ+, people with disabilities, and other minoritized groups, I acknowledge my privileges and I commit to fostering a learning environment that is inclusive of all people. I will actively interrogate my implicit biases, welcome feedback throughout the session, take responsibility when I make mistakes or cause harm, and do my best to uphold the community norms and agreements of NACRJ.

# Special Thanks & Dedication

I want to thank my partner, Yulina, my parents, grandparents, siblings, and friends for their unconditional love and support.

I want to recognize and give gratitude to my Dissertation Committee:

Jonathan O'Brien, Ed.D. (Chair)

Anna Ortiz, Ph.D.

David R. Karp, Ph.D.

Special thanks to the 20 RJ scholar-practitioners who participated in this study, and to my colleagues and classmates who supported me throughout this process.

I dedicate today's presentation to my father, Vito N. Cirioni.

# Trigger Warning & Key Terms

- Campus sexual misconduct (CSM) is the umbrella term for several types of sex and gender discrimination, including but not limited to sexual assault, rape, sexual harassment, intimate partner violence, and stalking.
- Victims/Survivors
  - Mercer and Madsen (2011) found “Victims often speak of their need to **re-narrate their life stories as ‘survivors’** of [sexual violence] rather than ‘rape victims” (p. 12).
- Offender
  - In RJ, we use “the person who caused harm.”

# About the Researcher

## **Personal**

- Multigenerational Immigrant Family
- First-Generation College Student
- Personal Experience with School Discipline and CSM

## **Academic**

- B.F.A., Visual Arts Education, New York Institute of Technology, 2007
- M.A., College Student Personnel, Bowling Green State University, 2009
- Ed.D., Educational Leadership, California State University, 2021

## **Professional**

- 15 years of experience in Higher Education Student Affairs
- Introduced to Restorative Justice (RJ) in 2010
  - Facilitated an RJ process for a CSM case in 2016

# Introduction

- Title IX of the Education Amendments of 1972
- Prohibits sex and gender discrimination in all programs which receive funding from the federal government, including colleges & universities
- “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance.”

# Introduction

- RJ is a victim/survivor-centered and community-based approach to repairing harm, rebuilding trust, and restoring relationships.
- Although RJ has been used by colleges and universities for student misconduct, applications of RJ for addressing CSM remains elusive.
- On May 6, 2020, the U.S. Department of Education (ED) released new Title IX regulations permitting the use of RJ in CSM as long as all parties involved participate voluntarily and provide informed written consent to the institution.



# Background

- In the United States, **1 in 5 women** and **1 in 16 men** experience sexual assault while in college (Krebs et al., 2016)
- U.S. colleges and universities respond to allegations of sexual misconduct with retributive justice processes, including
  - Title IX investigations
  - Formal hearings
  - Exclusionary discipline (e.g. suspension and expulsion)
- There is a growing interest in restorative justice practices
- New Title IX regulations allow restorative justice as an informal resolution option with mutual consent (ED, 2020b)

# Problem Statement

- Retributive justice responses to CSM has created a plethora of issues for institutions of higher education:
  - Victims/survivors experience revictimization
  - Offenders are more likely to recidivate
  - Exclusionary discipline simply moves an offender from one campus and community to another
- RJ can alleviate these problems of practice related to CSM in higher education

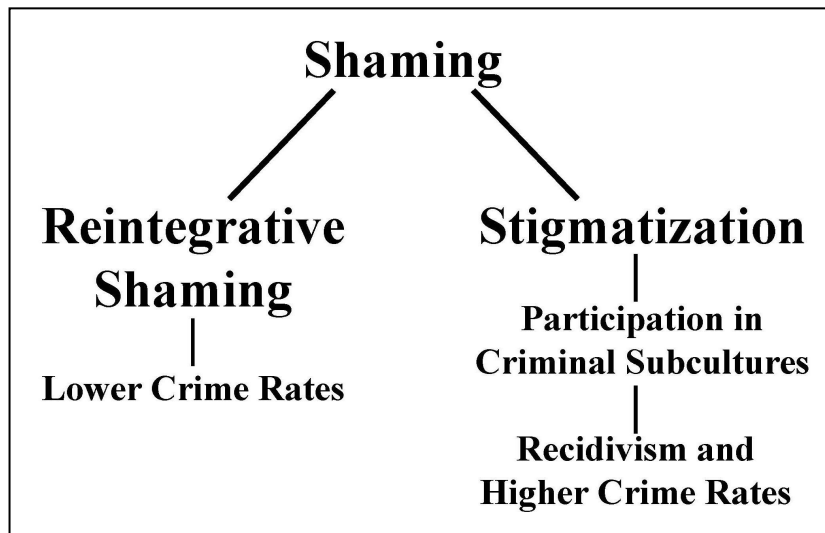
# Purpose of the Study

To explore how an existing RJ curriculum designed for student affairs practitioners in higher education can be expanded to promote an alternative approach to retributive justice in CSM cases at postsecondary institutions in the United States.

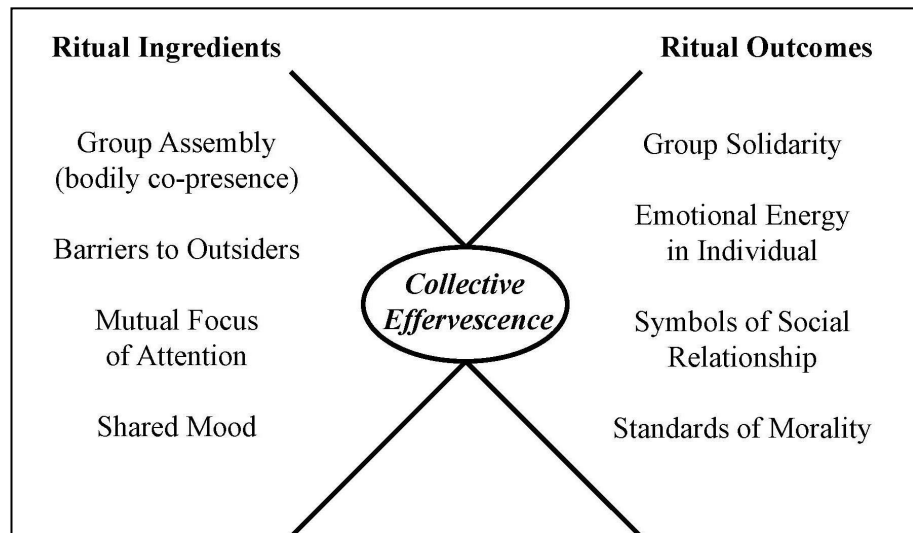
# Research Questions

1. How do RJ practitioners perceive the benefits and limitations of utilizing RJ in CSM cases in contrast to the current system of retributive justice in CSM cases?
2. What aspects of the curriculum do practitioners endorse as essential for implementation of RJ in CSM cases?
3. What aspects of the RJ curriculum need further development for application to CSM cases?

# Conceptual Framework



Reintegrative Shaming Theory  
(Braithwaite, 1989)



Interaction Ritual Chains  
(Collins, 2004)

# Review of the Literature

- Research on sexual misconduct in Higher Ed dates back to the 1950s
  - Male sexual aggression against women (Kirkpatrick & Kanin, 1957)
  - Dating violence (Makepeace, 1981; Sellers and Bromley, 1996)
  - Intimate partner violence (Hall Smith, White, and Holland, 2004)
  - Sexual assault and rape (Gross, Winslett, Roberts, and Gohm, 2006)
  - Lack of reporting to authorities (Fisher, Daigle, Cullen, and Turner, 2003)
  - Non-reporting of known offenders (Rennison, 2002)
- **First national study on rape in U.S. Higher Ed** (Koss, Gidycz, and Wisniewski, 1987)
- **National Intimate Partner and Sexual Violence Survey** (Black et al., 2011)
- **National Crime Victimization Survey** (Rennison, 1999)

# Review of the Literature

- **Restorative Justice (RJ) as a philosophy and practice** (Bonta et al., 2002; Goldblum, 2009; Karp, 2015; Maxwell & Morris, 1993, 2001; Zehr, 2015)
- **RJ in Elementary and Secondary Education** (Armour, 2013; Ashworth et al., 2008; Blood & Thorsborne, 2005; Cameron & Thorsborne, 1999; High, 2017; Lewis, 2009; McCluskey et al., 2008; Riestenberg, 2003; Sumner et al., 2010; Suvall, 2009)
- **RJ in Higher Education** (Gallagher Dahl, Meagher, & Vander Velde, 2014; Karp & Conrad, 2005; Karp & Sacks, 2014; Karp, Shackford-Bradley, Wilson, & Williamsen, 2016; Llewellyn, Macisaac, & Mackay, 2015)
- **RJ in Criminal and Juvenile Justice Systems** (Angel et al., 2014; Braithwaite, 2002; Chatterjee & Elliot, 2003; Latimer, Dowden, & Muise, 2005; Maxwell & Morris, 1993, 2001; McCold & Wachtel, 1998; McGarrell et al., 2000; Ruge & Cormier, 2005; Sherman & Strang, 2007; Strang, 2000; Trimboli, 2000; Umbreit & Coates, 1992)

# Methodology

Qualitative case study research (Glesne 2016, Yin, 2018) with three data sources:

- Documents: 212 documents collected
- Interviews: Twenty 90-minute semi-structured interviews via Zoom
- Observations: 12-hours of online observations

## Sample

- 20 participants
  - 17 affiliated with the Center for RJ at University of San Diego
  - 3 non-affiliated from snowball sampling



# Participants

Pseudonym	Gender	Sexual Orientation	Race	Age	Highest Level of Education	No. Years in RJ
Alice	Woman	Heterosexual	African American	53	Doctorate	10-15
Angel	Woman	Heterosexual	White	62	Masters	4-9
Carol	Woman	Bisexual	White	47	Doctorate	10-15
Charlie	Male	Heterosexual	White	56	Bachelors	15+
Danica	Woman	Heterosexual	Black	38	Doctorate	4-9
Darcy	Woman	Pansexual	Black	51	Masters	4-9
Dominic	Gender Queer	Heterosexual	White	42	Professional	4-9
Eric	Man	Heterosexual	White	30	Masters	4-9
Jacinda	Woman	Heterosexual	White	58	Doctorate	10-15
James	Man	Heterosexual	White	56	Masters	10-15
Liam	Man	Heterosexual	White	41	Doctorate	10-15
Maggie	Woman	-	White	-	Masters	10-15
Matthew	Man	Gay	White	50	Doctorate	4-9
Miranda	Woman	Heterosexual	Multiracial	46	Masters	15+
Olivia	Woman	Heterosexual	White	44	Doctorate	4-9
Pamela	Woman	Pansexual	African American	48	Doctorate	4-9
Peter	Male	Heterosexual	White	26	Masters	1-3
Randi	Woman	Queer	White	38	Doctorate	4-9
Ruth	Woman	Bisexual	White	49	Bachelors	10-15
Sophia	Woman	Heterosexual	White	35	Masters	10-15

# Participants

- Most participants identified as
  - White (n = 15)
  - Heterosexual (n = 13)
  - Cisgender (n = 19)
  - Woman (n = 13)
  - The sample had a mean age of 45
- Highest Level of Education
  - 9 participants had a doctorate
  - 8 had a master's degree
  - 2 had a bachelor's degree
  - 1 had a professional certificate

# Data Analysis

- Transcriptions were generated automatically by Otter.ai
  - Manually cleaned 20 interviews for filler words and repetitive phrases
- First cycle coding (Saldaña, 2016) resulted in 62 codes
  - Developed an initial codebook using NVivo
- Second cycle coding reduced to 20 codes
  - 5 themes and 7 sub-themes emerged to answer the research questions
- Identified corroborating and opposing evidence in documents and observations for triangulation of data sources (Yin, 2018)

# Credibility and Trustworthiness

- Triangulation (Lincoln & Guba, 1985; Yin, 2018)
  - Data triangulation (Carlson, 2010; Krefting, 1990)
  - Prolonged engagement & observations (Glesne, 2016; Lincoln & Guba, 1985)
- Provided a “rich, thick description” (Glesne, 2016, p. 53)
- Conducted member checking (Lincoln & Guba, 1985; Stake, 1995)
  - 3 participants reviewed polished sections of the findings
- Engaged in peer debriefing (Creswell, 2013; Lincoln & Guba, 1985)
  - 3 professional colleagues reviewed the findings and discussion
  - 2 doctoral students – 1 from K-12 and 1 from Higher Education

# Themes and Sub-Themes

## Themes

Walking Out of Shame

A Way of Life

The Facilitator Matters

Experiential Training

3 Days Is Not Enough

Ripples of Harm

## Sub-Themes

I Am a Survivor

Trauma-Informed  
Practices

Agency, Voice,  
and Choice

Diversity, Equity, Inclusion,  
and Antiracism

Apprenticeships

Certification

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# Theme: Walking Out of Shame

## **RQ #1: What Are the Benefits and Limitations of Using RJ in CSM?**

Carol described her first meeting with a student:

“She started school with these long dreads. I met with her in my office, and it was immediate. She is full of shame and [I] could just see it in her body. And she’s like, “I was afraid I was going to get kicked out of school.” She was part of the [scholarship] program. “I thought I was gonna mess this up for [them]. I thought my parents are going to disown me.” I thought, “I’m never going to come back to school. I’m making a bad name for students of color here,” and just the shame, shame, shame.”

# Theme: Walking Out of Shame

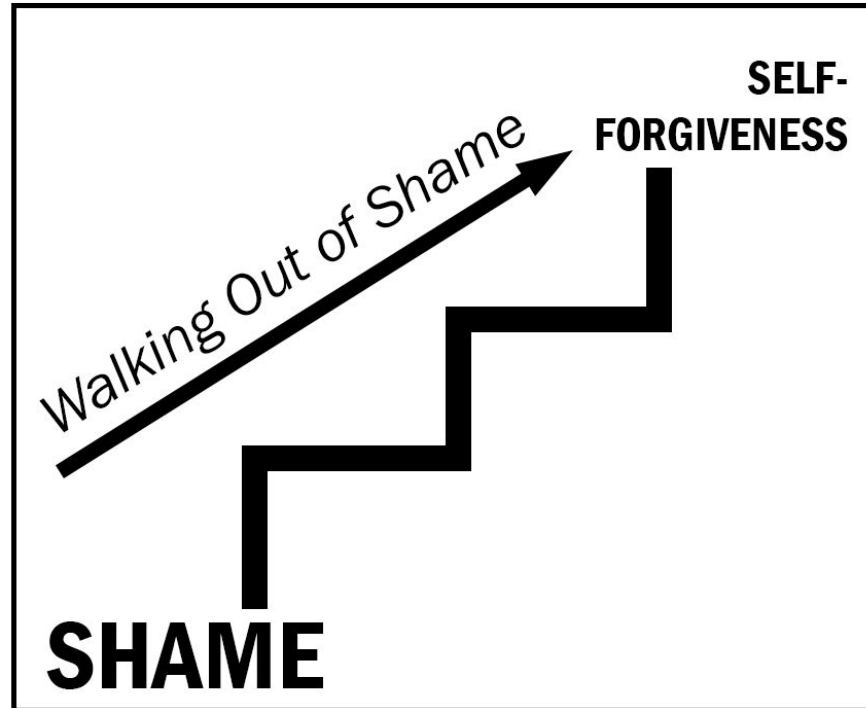
## RQ #1: What Are the Benefits and Limitations of Using RJ in CSM?

“**I saw her walk out of shame**, and that was the one where it was really palpable for me of the power of letting the participants do it and I ran a conference. . . When I think about shame, that’s what I think about. I gave her an opportunity. I didn’t do it for her. She had to do it. But **I think about there being a stair step out of shame** in that room, in that conference, and everybody agreed. There was a power of the group agreement that “You can walk out of here. Here are the things you can do. Here’s this step. Here’s this step.” (Carol)



# Theme: Walking Out of Shame

RQ #1: What Are the Benefits and Limitations of Using RJ in CSM?



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# Theme: A Way of Life

**RQ #2: What is Essential for the Implementation of RJ in CSM?**

“RJ is not something you put on, because you’re not going to really do it effectively if it’s something that you can turn on and off. **It is a philosophy; it’s a way of existing in the world.** What you really need people to understand is . . . how this should manifest in your everyday life.” (Danica)

# Theme: A Way of Life

## RQ #2: What is Essential for the Implementation of RJ in CSM?

“I’m trying to bring people together with shared values and community agreements and intentions into an intentional community to be able to create stronger relationships and foundations, so that as we are together in the spaces — whether it’s classrooms or workplaces or living places— that we have this foundation so that **when conflict or harm inevitably occurs, we have a foundation to repair [and] for coming together.**” (Jacinda)

# Sub-Theme: Ripples of Harm

RQ #2: What is Essential for the Implementation of RJ in CSM?

“[Harm] affects the victim, of course, **but that victim is tagged to somebody else.** So, while the victim has been impacted, maybe that victim’s parent or that victim’s spouse, whether [that] victim’s child has also been impacted.” (Darcy)

# Sub-Theme: Ripples of Harm

RQ #2: What is Essential for the Implementation of RJ in CSM?

“The larger the harm, the more it’s rippled through campus, the more likely that you’re going to have **very different expectations around the harm.**”

(Dominic)

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# Theme: The Facilitator Matters

RQ #2: What is Essential for the Implementation of RJ in CSM?

**“Not everyone’s meant to facilitate these types of cases.** Maybe it’s because of their own triggers and self-care. Maybe it’s because of their skill sets and experience.” (Liam)



# Theme: The Facilitator Matters

RQ #2: What is Essential for the Implementation of RJ in CSM?

“We, as facilitators, are not outside of that frame of reference. We’re not the invisible hand. **We are part and parcel of the process.** We’re going to continually commit to acknowledging our harms and our needs.” (Olivia)

## Sub-Theme: I Am A Survivor

**RQ #2: What is Essential for the Implementation of RJ in CSM?**

“I experienced sexual assault multiple times in university and . . . the only thing that I could do was toughen up and move forward and not make a big deal out of it.” (Ruth)

## Sub-Theme: I Am A Survivor

RQ #2: What is Essential for the Implementation of RJ in CSM?

“I had been in this field of study for going on 16 years, and I always did that work with the [identity] ‘I’m the professor. I’m the researcher,’ and I never really talked about being a survivor . . . **[I] realized that it had to be part of the work, that I couldn’t bring my whole self to this without owning the fact that I was also a survivor.**” (Randi)

# Sub-Theme: Trauma-Informed Practices

RQ #2: What is Essential for the Implementation of RJ in CSM?

“If it’s not trauma-informed, it’s not restorative justice.” (Liam)

## Sub-Theme: Trauma-Informed Practices

RQ #2: What is Essential for the Implementation of RJ in CSM?

“Trauma-informed means something around both **the pace and the sequencing of topics and questions. . . . It means being very open about what the process can and cannot do.** There’s a lot of information. There’s a lot of personalizing it, exploring it. There’s very little pressure to proceed any further than once, or with any particular rush.” (Dominic)

# Sub-Theme: Agency, Voice, and Choice

**RQ #2: What is Essential for the Implementation of RJ in CSM?**

“One of the things we know about trauma is people feel like at this moment in their life, their choices, their freedom was taken away.” (James)

# Sub-Theme: Agency, Voice, and Choice

RQ #2: What is Essential for the Implementation of RJ in CSM?

“[I am] always centering the victim/survivor’s voice and ensuring that **you’re giving them back the power to choose what they want to do next.**” (Sophia)

# Sub-Theme: DEI and Antiracism

## RQ #2: What is Essential for the Implementation of RJ in CSM?

“Early on, I was the voice for restorative justice at my institution. I’m a White guy, and **I was going into spaces where the harm had been caused by people who look very much like me** and, even when the proximate cause of the harm wasn’t somebody who looked like me, **there was ongoing and systemic harm that had [affected] them.** So, it was hard. There was some trust building that needed to happen. But there was also just some credibility in those spaces that I didn’t necessarily have, and I think over time we have built relationships with students who can voice that because it is their lived experience.” (Matthew)



# Sub-Theme: DEI and Antiracism

## RQ #2: What is Essential for the Implementation of RJ in CSM?

“I’m a facilitator. I’m a guide. I’m driving the car, but everybody in the room is telling me how to get where we’re going. **So, I don’t have to be an expert in what people are experiencing. I need to be an expert in the process** and hold space and create a container that can allow everyone’s voices and everyone’s experiences to come forth. I would prefer [to] be in a space where I understand what everybody in the circle is going through. But at the end of the day, it’s not about me being an expert on them. It’s about me being an expert on the process and knowing how to hold that space.” (Ruth)

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# Theme: Experiential Training

## RQ #3: What Needs Further Development for the Application of RJ in CSM?

“It’s like teaching someone to swim, but your fear of the water keeps you out of the pool. How [are you] fucking supposed to learn to swim if at some point, you don’t get in the water? Right? And I’m afraid that some of the academic purists around this **want to do it in a safe way where you never get off the bleachers, and you need to at some point get in the water**, recognizing that people have been harmed by the water in the past or they have true fears about water.” (Charlie)

# Sub-Theme: Apprenticeships

RQ #3: What Needs Further Development for the Application of RJ in CSM?

“Apprenticeships are **opportunities to work with a more experienced practitioner**, to work together planning each process, each meeting, each communication together, and then also reflecting on it afterwards. [Apprenticeships allow] co-facilitating and in ways that makes sense **[and] being observed, sharing feedback.**” (Dominic)

## Sub-Theme: Who Certifies Whom?

RQ #3: What Needs Further Development for the Application of RJ in CSM?

“You can pay this money, go through these trainings, and then the next time they offer a [train-the-trainer], **you can pay the money** and take the [course] **and you may not have ever kept circle.**” (Darcy)

# Sub-Theme: Who Certifies Whom?

## RQ #3: What Needs Further Development for the Application of RJ in CSM?

“Standards are often made by others, not by the people who actually developed and kept practices and principles over centuries and use them as part of their culture. Certification can be seen as a form of privilege and expropriation. Out of respect, **I encourage people to put experience above formal learning, apprenticeship above a single training,** and offer humility to the people who have shared their knowledge.”<sup>1</sup>

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# Theme: Three Days is Not Enough

RQ #3: What Needs Further Development for the Application of RJ in CSM?

“[Just] 3 days [is] inappropriate for; it’s not enough. And I’ve asked [the Center] to stop using sexual misconduct examples in the 3-day [training] for that reason. . . . When you use examples, you give people permission to then go use these things for those examples, and **I don’t think we prepared people enough in that training for that.**” (Carol)



# Findings

## **RQ #1: What Are the Benefits and Limitations of Using RJ in Campus Sexual Misconduct?**

### Benefits

- RJ is a victim/survivor-centered approach to CSM.
- RJ can help victims/survivors, offenders, and their respective community members relinquish internalized shame and move toward healing and restoration.
- RJ is a community-based approach to preventing campus sexual misconduct before it occurs.

# Findings

## **RQ #1: What Are the Benefits and Limitations of Using RJ in Campus Sexual Misconduct?**

### Limitations

- RJ is time-intensive.
- RJ poses a liability risk for institutions.

# Findings

## **RQ #2: What is Essential for the Implementation of RJ in Campus Sexual Misconduct?**

The top two recommendations from the participants included:

1. Developing fully restorative campuses
  - *The Whole Campus Approach*
  - Shift campus power dynamics from “power over” to “power with”
2. Advanced facilitator training
  - Deep understanding of sexual violence and trauma-informed practices
  - Dedication to DEI+Antiracism and representation matters in facilitation

# Findings

## **RQ #3: What Needs Further Development for the Application of RJ in Campus Sexual Misconduct?**

### Three Days Is Not Enough

- Additional time is needed for experiential training, including apprenticeships, role plays, observations, and feedback.
- Certification was a controversial topic for some RJ practitioners, however certification programs may provide the necessary time and skill-building needed for the use RJ for CSM.
- Specialized training in sexual violence, trauma and trauma-informed practices, and DEI and antiracism.

# Limitations

- Sample limited to 20 RJ scholar-practitioners with homogenous demographics.
- This case study focused on individuals affiliated with one Center at USD.
- This case study was bound by a specific timeframe—October, 2020, to April, 2021—which limited the data collection process.
- This case study was conducted during a global pandemic.

# Recommendations for Practice

- A three-phase approach to RJ training for Higher Education:
  - ✓ **Phase 1:** Introduction to RJ (3-Day)
  - ✓ **Phase 2:** RJ for Student Misconduct (2-Day)
  - ✓ **Phase 3:** RJ for CSM (2-Day)
- The Center should invite Native, Indigenous, and First Nations people into the Certification program as faculty or advisors.
- The Center should create a national registry of postsecondary institutions that are using RJ for CSM and include an updated list of RJ facilitators who have received specialized training or certification to practice RJ for CSM.

# Recommendations for Policy

- Educational leaders should establish an alternative or adaptable resolution process for their campus community.
  - Capture students' experiences through case studies, vignettes, and testimonials, and publish institutional data and annual reports online.
- State lawmakers should eliminate retributive laws and policies in state education codes and create financial incentives institutions to pursue RJ for student misconduct.
- Reauthorize the Higher Education Opportunity Act (HEOA) and establish new rules and regulations for the implementation of RJ in postsecondary institutions.

# Recommendations for Future Research

- Quantitative research studies on RJ in higher education and RJ curricula in the U.S. and worldwide to contribute data to a national database or clearinghouse.
- Qualitative studies that explore the experiences of student participants, including victims and offenders, regarding their participation, satisfaction, and restoration.
- Research on the application of RJ in specific functional areas, such as residence life, fraternity/sorority life, athletics, and spiritual life.
- Respect and preserve the Indigenous origins of RJ in research.



# Reflection Circles

- **Convening:** Share your name, pronouns, and describe what you do for work without sharing your title/role.
- **Connecting:** What brought you to this session today? Why are you interested in RJ and Title IX?
- **Concern:** Reflecting on research questions #2, what aspects of an RJ training curriculum do you believe are essential for the implementation of RJ in CSM cases?
- **Collaboration:** What can we do as an RJ community to ensure more college and university students have access to restorative processes in Title IX?
- **Closing:** Share one thing that you are taking away from this session and/or circle.

# Thank You!

Stay in touch with me via e-mail at

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or

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