Why More Colleges Are Trying Restorative Justice in Sex-Assault Cases

By Katherine Mangan  |  SEPTEMBER 17, 2018  |  PREMIUM

It started, like so many dorm parties, with a group of friends drinking in someone’s room. She was pretty drunk by the time the room cleared and she and the other student were alone together. She remembers them kissing and then waking up, her clothes off, underneath him.

Talking about it later to the Title IX officer at the College of New Jersey, she doesn’t understand why she was joking around with him afterward as if it was no big deal. She wanted to tell him how uncomfortable she felt, but she didn’t know how. He lived in her dorm; they shared friends. It was her freshman year, and she was still getting to know people.

If her only choice had been to file a formal complaint and cooperate in a Title IX investigation, she might not have done it. Instead, she opted for an alternative process in which she helped draft a contract that spelled out steps to help him realize the harm he’d caused and that required him to make amends.

The College of New Jersey is among a small but growing number of institutions that now...
offer alternatives to trial-like investigations that critics say can be traumatic for everyone involved. The U.S. education secretary, Betsy DeVos, has indicated, through Title IX guidance issued in 2017 and then in draft regulations obtained and reported last month by The New York Times, that the Trump administration welcomes alternative ways of handling sexual-misconduct disputes.

Approaches that start with the offender admitting responsibility and agreeing to repair the harm appeal to some students who aren’t interested in seeing someone suspended or expelled. Proponents see alternative resolution agreements as a way to cut down on Title IX investigations, save colleges money, and potentially be fairer to the accused.

But skeptics worry students will feel pressured to bypass a formal investigation and will regret it later on if offenders get off too easily. And asking a student to sit down with an assailant and work out an agreement is not only unrealistic, they argue, but possibly retraumatizing.

The agreement reached by the two students at the New Jersey college didn’t require face-to-face conversations, but they did have to agree on certain stipulations. He would attend a workshop on consent and alcohol-education classes. She wanted him to know how different people’s bodies react to alcohol and how it affects their ability to consent to sex. He would view an online seminar on the neurobiology of sexual assault. The seminar, by Rebecca Campbell, a professor of psychology at Michigan State University, had helped her make sense of her confusing emotional reaction to what she later considered an assault.

Both students had a few days to view and suggest changes in the two-page agreement.

"We don’t want this to be seen as a get-out-of-jail-free card," said Jordan L. Draper, dean of students and Title IX coordinator. "It’s an educational opportunity."

**Healing, Not Punishing**

Draper is a proponent of what’s known as restorative justice, an umbrella term that covers a variety of interventions aimed at healing rather than assessing blame and punishing.
It's one of several approaches the College of New Jersey offers, many of which don't require students to meet directly with their alleged offenders.

Although the intervention Draper described for *The Chronicle* isn’t restorative justice in its purest sense, since the students didn’t talk directly to each other, it does share similar goals, she said.

Next week she’ll be participating in an online course about restorative justice that is being offered by Naspa: Student Affairs Administrators in Higher Education.

In a restorative-justice approach, the victim and the offender, and in some cases other people affected by the misconduct, participate in active and often brutally honest discussions about how someone was harmed and what it would take to heal. They also discuss steps that the offender and others can take to ensure it doesn’t happen again.

The approach has been widely used for a variety of student-disciplinary cases involving relatively minor misconduct, such as underage drinking, vandalism, and loud music. It’s also a popular alternative, in the criminal-justice system, to prison or steep fines. High schools often find it works better than suspensions to handle bullying or fighting.

But when it comes to sexual harassment or assault, few colleges have been willing to promote it as an option.

That’s largely because federal guidelines, at least until now, discourage or even prohibit the use of mediation in such cases, and restorative justice is often lumped — incorrectly, proponents argue — into the same category as mediation.

That is likely to change under new sexual-misconduct regulations that are expected to be released soon. Draft regulations would allow colleges to use an informal resolution process, instead of an investigation, to resolve some cases. Both accuser and accused would have to agree, and the college would have to determine that the case was appropriate for such an intervention.

Mary P. Koss, a veteran sexual-assault researcher and professor of public health at the University of Arizona, believes restorative justice is not only permitted under current Title IX guidelines, but is a better way to handle many complaints.
Koss, who ran a restorative-justice program for sex offenders in the county surrounding Tucson, says most colleges shy away from restorative-justice programs because officials are afraid the programs won’t comply with federal law. Obama-era guidance said mediation was not appropriate, "even on a voluntary basis," in cases involving alleged sexual assault.

In cases involving sexual harassment, the Education Department’s Office for Civil Rights said that a student complainant should not have to work out the problem directly with the alleged harasser, at least without a trained counselor or mediator present.

**A Search for Validation**

But restorative justice isn’t the same thing as mediation, Koss argues. The main difference, she co-wrote in a paper, is "the requirement that the responsible person accepts responsibility as a precondition of participation as opposed to neutrality toward the parties."

People who opt for a restorative-justice approach "want to be validated as legitimate victims," Koss said in an interview with *The Chronicle*. "They don’t want to hear any more about what they were wearing, what they were drinking. They want to focus on the responsible person and what that person did."

David R. Karp, a professor of sociology and director of the Project on Restorative Justice at Skidmore College, is part of a project, called Campus Prism, that promotes the use of restorative justice for sexual and gender-based misconduct on college campuses. The approach, Karp said, "is really about gathering students in smaller circles to have dialogues about Title IX topics in a way that’s not just lecturing to them about what the rules are."

It’s more focused, he said, "on their understanding of consent, setting their own sexual standards with each other around sexual communication, around alcohol and sex, around hookup culture, all of these issues that all converge to create an unsafe environment for students."

Some colleges, including Bucknell and Rutgers Universities and the University of Notre...
Dame, have already updated their sexual-misconduct policies to allow for informal resolution. Rutgers has had such a policy in place since 2015, but has had only one case resolved in that way. Notre Dame has had students — a spokesman wouldn’t say how many — opt for the approach since its policy was updated over the summer, and the initial feedback has been positive.

Amy Foerster, general counsel at Bucknell, said she’s glad victims will have options beyond a Title IX investigation.

"I’ve heard enough stories of students who would have come forward if there was something available short of a formal investigative process," she said. It will be important, she added, to make sure complainants know that they have the right to pursue a formal investigation if they prefer, so they don’t feel pressured — by the college or the defendant — to bypass that process.

Since last October, nine students at the College of New Jersey have requested an alternative resolution process, and of the nine, four have completed them and two are in process, Draper said. One was not eligible because the accused person had been reported to her office before and was considered a repeat offender.

Last fall a woman came into Draper’s office saying another student had kissed her against her will and touched her inappropriately. Draper and the student sat down and drafted a proposed contract to let the alleged offender know how his actions had affected her. That evening the woman ran into the male student and told him directly
what she had written in her impact statement.

"She said he was shocked," Draper said. "There was some cultural component to it. He didn’t understand that she was so uncomfortable, but it resulted in a good conversation about boundaries and consent." The next day she told Draper they could scrap the contract because the act of writing it up had empowered her to talk to him directly.

**A Cathartic Approach**

Brett A. Sokolow, president of Atixa, the Association of Title IX Administrators, expects more colleges will now look at alternative ways to resolve disputes, especially in light of the signals coming from DeVos. Restorative justice might be a cathartic approach that works for some victims, but it’s not the panacea some hope for, he said.

Restorative justice "lends itself to much more warm and fuzzy and kind and gentle sanctions," Sokolow said, and it’s unclear how people will feel about it if it becomes widespread.

In his consulting work, he said he often hears from middle-age women who were victimized in college and who wish they had taken stronger action.

In such cases, he said, "The fear of an 18-year-old thinking ‘I don’t want to make too much out of it’ becomes the regret of a 45-year-old saying ‘I wish I’d taken it more seriously.’"

Carly N. Mee, a lawyer who serves as interim executive director of SurvJustice, a victim-advocacy group, said restorative justice makes sense in resolving some conflicts, but not those involving sexual violence.
them in a room and force them to listen to their voice is inappropriate."

introduced as an option, a survivor of sexual abuse may feel pressured by the college, or by the alleged offender, to "make things quietly go away" by taking the restorative-justice approach, Mee said. It may be cheaper and less publicly damaging for the college than a full-blown Title IX investigation. But the result could be an inadequate penalty for the accused and a less-satisfying outcome for the accuser, she said.

Advocates of restorative justice say it could appeal to someone in a dating-violence case, for instance, when the accuser doesn’t want a former boyfriend kicked out of school, but wants to make sure he understands the impact of what he did. Mee calls that argument a "red herring."

"I represent survivors every day," she said, "and I haven’t had people ask, ‘Is there another way I can just sit down and talk it out with them?’"

Colby Bruno, a lawyer for the Victim Rights Law Center, is skeptical about restorative justice in cases involving sexual assault. Her center has helped a handful of people sign contracts in which alleged abusers agree to leave the college and not return, a restraining order helps ensure they stay away, and the college tells his friends they can’t harass her either.

"It almost never works," Bruno said. "The apology from the perpetrator is never sincere. The victim never feels safe, and the friends can never stop torturing the victim."

Draper understands the skepticism, but said the statements participating students have shared with each other speak volumes.

"I am not out to ruin your life," one wrote. "Rather, I hope you learn from this experience because no other person should have to experience what you put me through."

Marc Parry contributed reporting to this article. Katherine Mangan writes about community colleges, completion efforts, and job training, as well as other topics in daily
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