

IS THERE A PLACE FOR RESTORATIVE PRACTICES IN SPECIAL EDUCATION DISPUTES?

John English, Oregon Department of Education

Candace Hawkins, Colorado Department of Education

Chip Coker, Center for Dialogue and Resolution

James Belshe, Linn County Circuit Court

Cristian Belshe, High School Student

Session Objectives

- Explore promising traits of current restorative practices
- Explore how those might be applied in the context of IDEA disputes between parents/districts.

Caveat

This session is designed to be an *exploratory* discussion, and may raise more questions than answers!



What is Restorative Justice?



Contrasting Paradigms

Traditional Modern/Western Justice System	Restorative Justice
What rules or laws were broken?	Who has been hurt?
Who broke them?	What are their needs?
What do they deserve?	Who has the obligation to address the needs and put right the harm?

Where Did Restorative Justice Originate?

“Restorative Justice . . . is not new. It is based on ancient values and practices that have been at the core of justice, religious, and ethical traditions in virtually all societies world-wide.”



Historical Examples

In New Zealand, prior to European contact, the Maori had a well-developed system that protected individuals, social stability and the integrity of the group.



Historical Examples

In Native American and First Nation justice philosophy and practice, *healing, along with reintegrating individuals into their community, is more important than punishment.*

“I’ve been a judge all my life. I’ve handled cases; I’ve been a chief justice; I’ve written opinions; but my emphasis was peacemaking.”

--Robert Yazzie, Chief Justice
Navajo Nation Supreme Court--



Howard Zehr

- An American criminologist, considered to be a pioneer of the modern concept of restorative justice.
- Distinguished Professor of Restorative Justice at Eastern Mennonite University's Center for Justice and Peacebuilding; co-director of the Zehr Institute for Restorative Justice
- Author, *Changing Lenses* (1990); *The Little Book of Restorative Justice*(2002)



What is Restorative *Justice*?

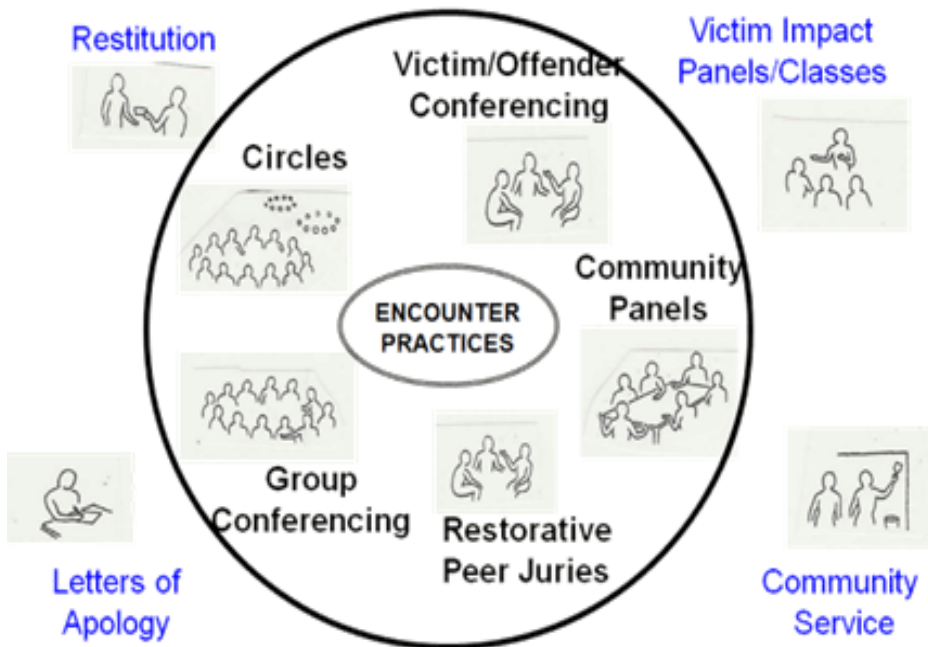
"Restorative justice is a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible."

Six Guiding Questions

- Who has been hurt?
- What are their needs?
- Whose obligations are these?
- What are the causes?
- Who has a stake in the situation?
- What is the appropriate process to involve stakeholders in an effort to address causes and put things right?

Multiple Forms, One Commonality: The Circle

This diagram describes restorative justice practices. Those within the large circle are encounter practices requiring specific training.



What are Restorative *Practices*?

“One area of controversy has been the terminology to the overall field: should it be restorative *justice* or restorative *practices*? Restorative approaches are being used in many situations such as in schools or for problem-solving where the terminology of “justice” may not seem appropriate. I am pleased to see these applications and readily acknowledge the limits of the “justice” language.”

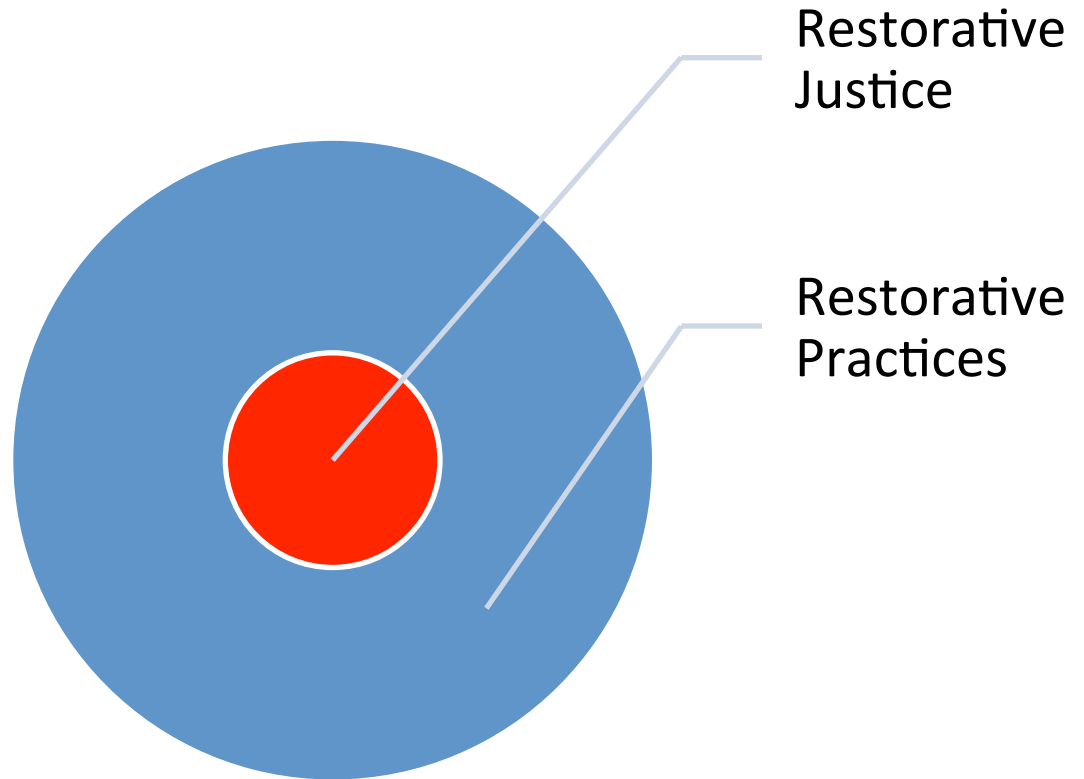
Zehr (2015). *The Little Book of Restorative Justice*

Defining our terms

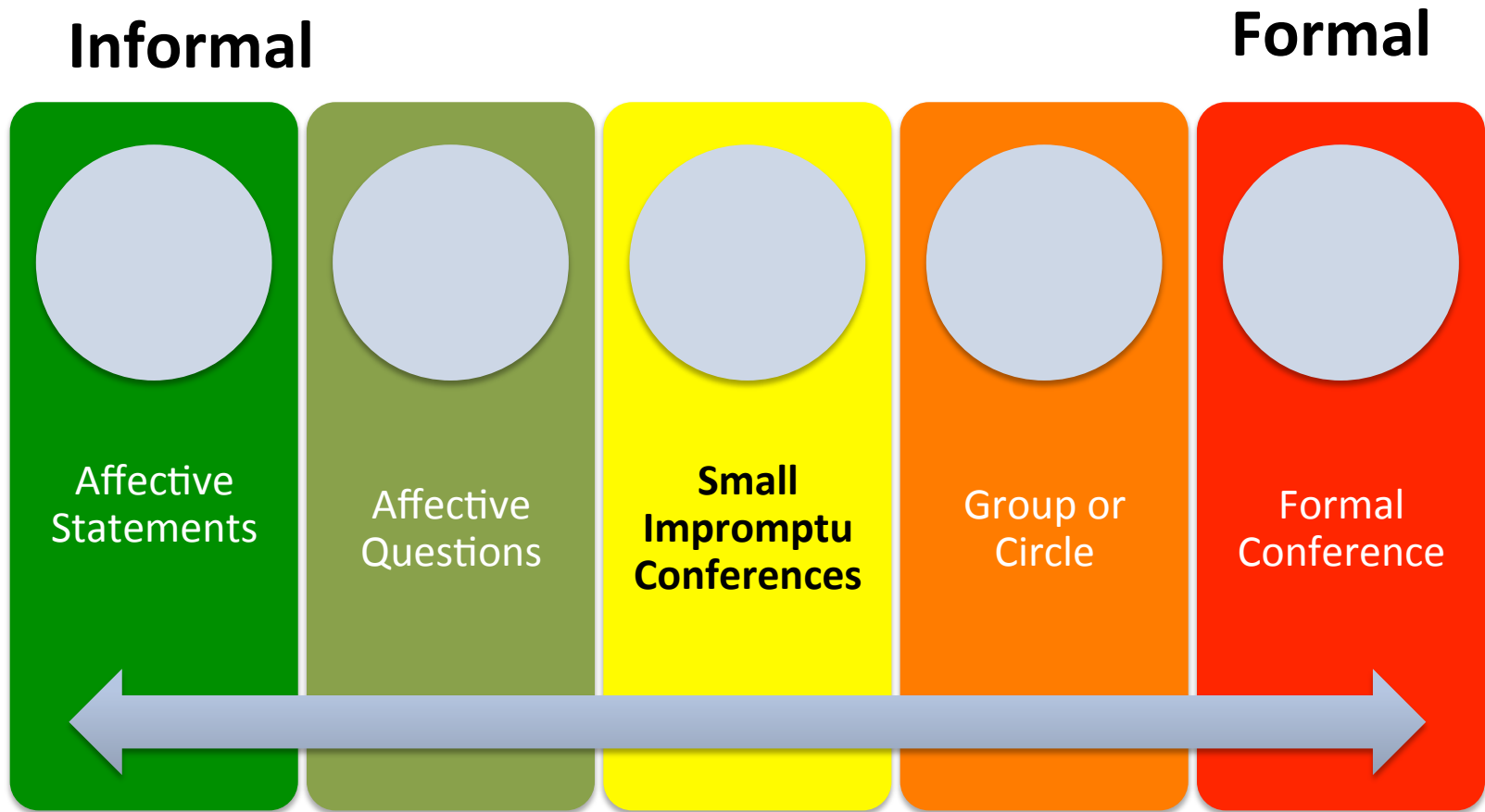
Restorative justice is a subset of restorative practices.

- **Restorative Justice: a responsive intervention (e.g., after a rule infraction, harm has been done.)**
- **Restorative Practices: informal and formal processes that seek to proactively build culture, community, and relationships.**

(Wachtel 2013; Amstutz & Mullet 2005; Pranis 2005; Clifford 2013)



A Restorative Practice Continuum



Source: Costello, Wachtel and Wachtel, 2010

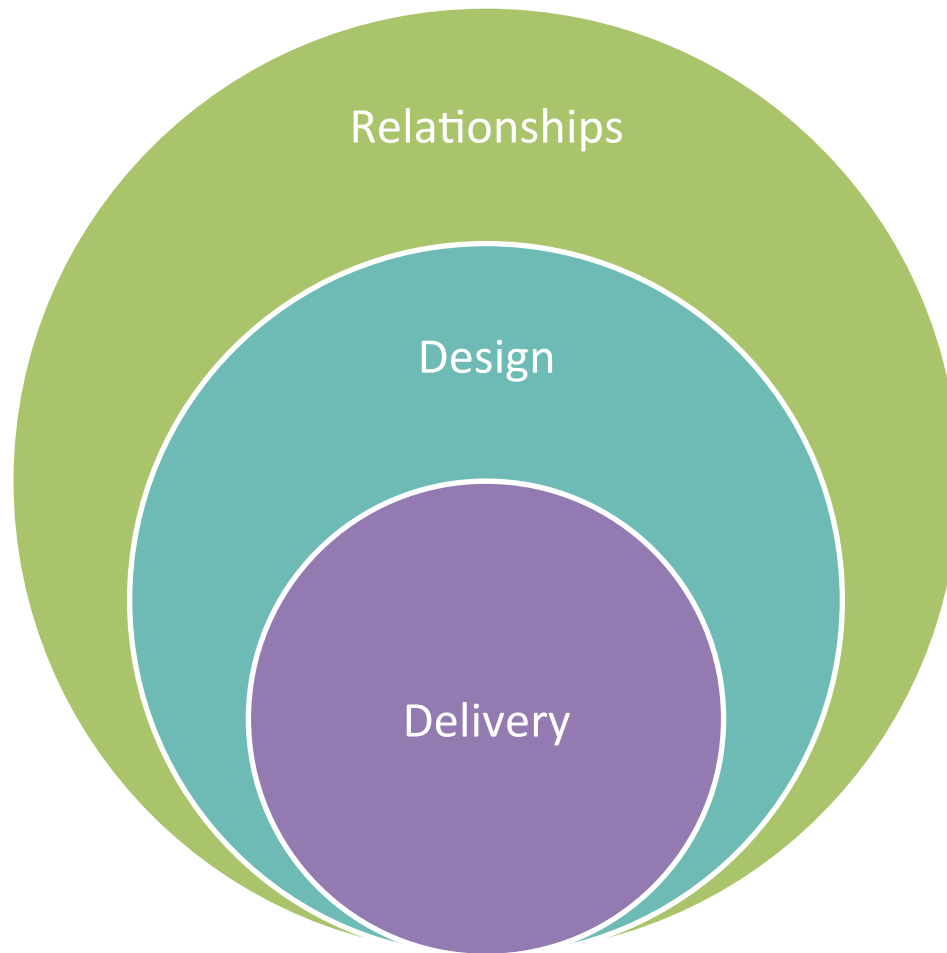
Is there a Place for Restorative Practices in Resolving Special Education Disputes?

- At the heart of every dispute is a child with a disability.
- Importance of positive family and school relationship.
- Potential length of the family/school relationship.
- Impact of conflict on relationships.
- Application of Restorative Justice/Practices in restoring/rebuilding damaged relationships.

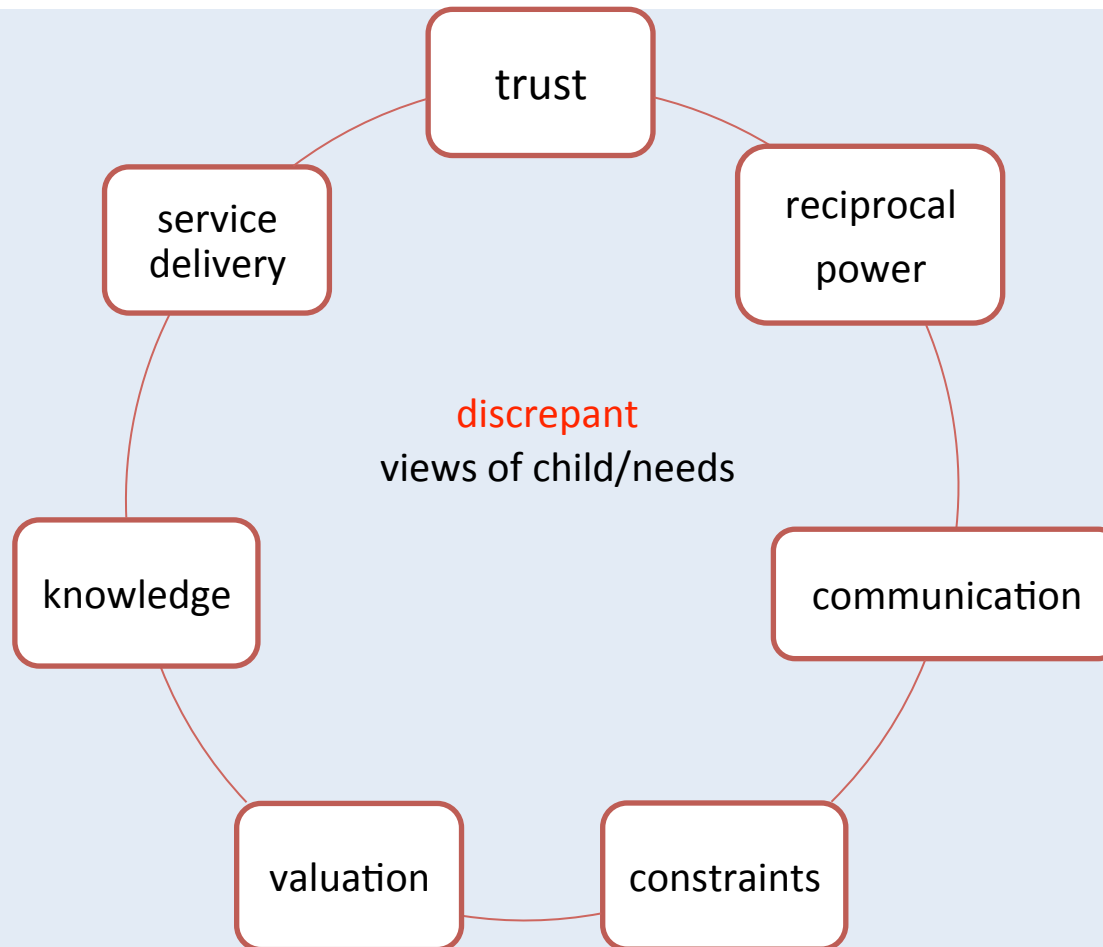
Conflict as a Resource

- Conflict and collaboration are two faces of the same coin of community. *Lenore Knudtson and Stephanie Weaver, Pingora Consulting, LLC.*
- Although avoiding conflict may be a good short term strategy, it is destructive in the long term, especially if the relationship is significant. *Teaching Peace, Beverly Title (2011).*
- Conflict done well strengthens relationships. *Teaching Peace, Beverly B. Title (2011).*

Sources of Conflict in Special Education



Factors that escalate or deescalate conflict in special education: Lake & Billingsley (2000)

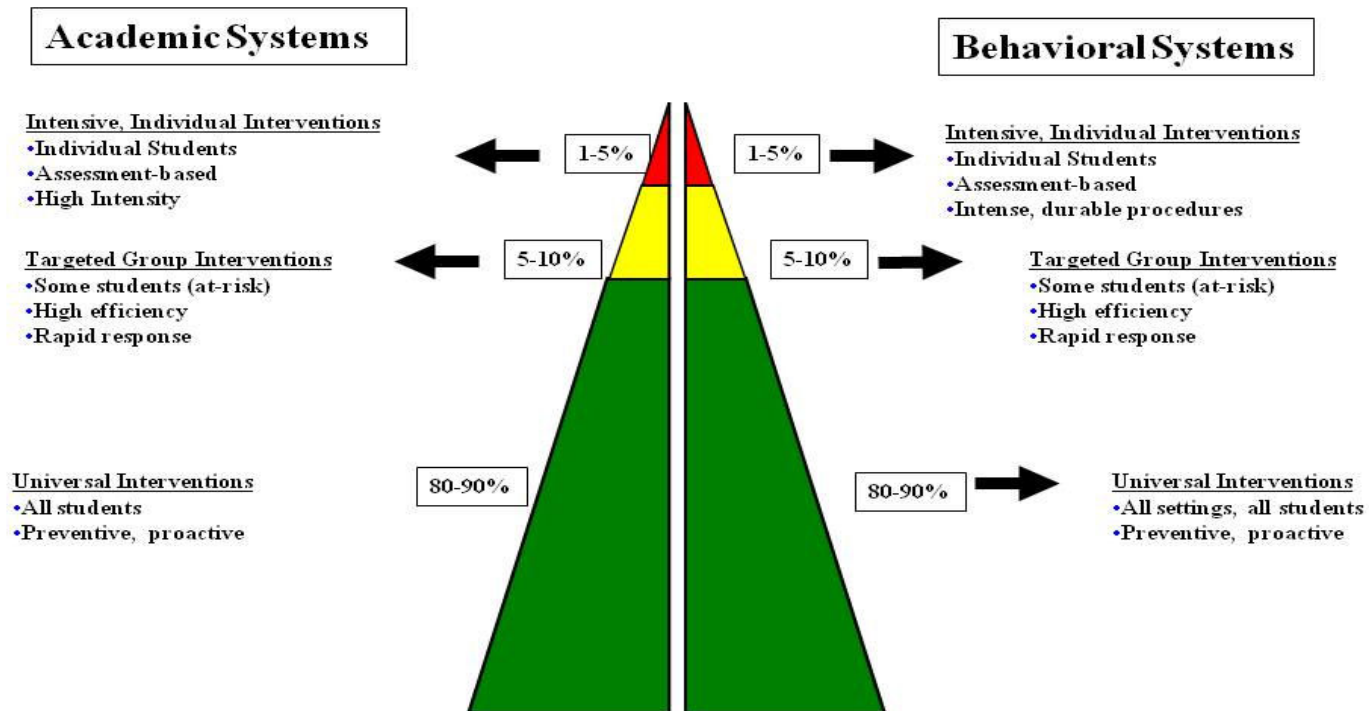


Exploring Possibilities for RP in Special Education Dispute Resolution

- Restorative *Chats*: a conflict prevention tool for positively framing conversations between educators and parents.
- Restorative *Dialogue*: a conflict intervention tool to add to the mediator/facilitator toolkit.
- Restorative *Remedy*: An option in formal dispute resolution process—state complaint remedy.

Multi-Tiered Systems of Support have become a fundamental part of instructional design-for both academics and behavior

Designing School-Wide Systems for Student Success

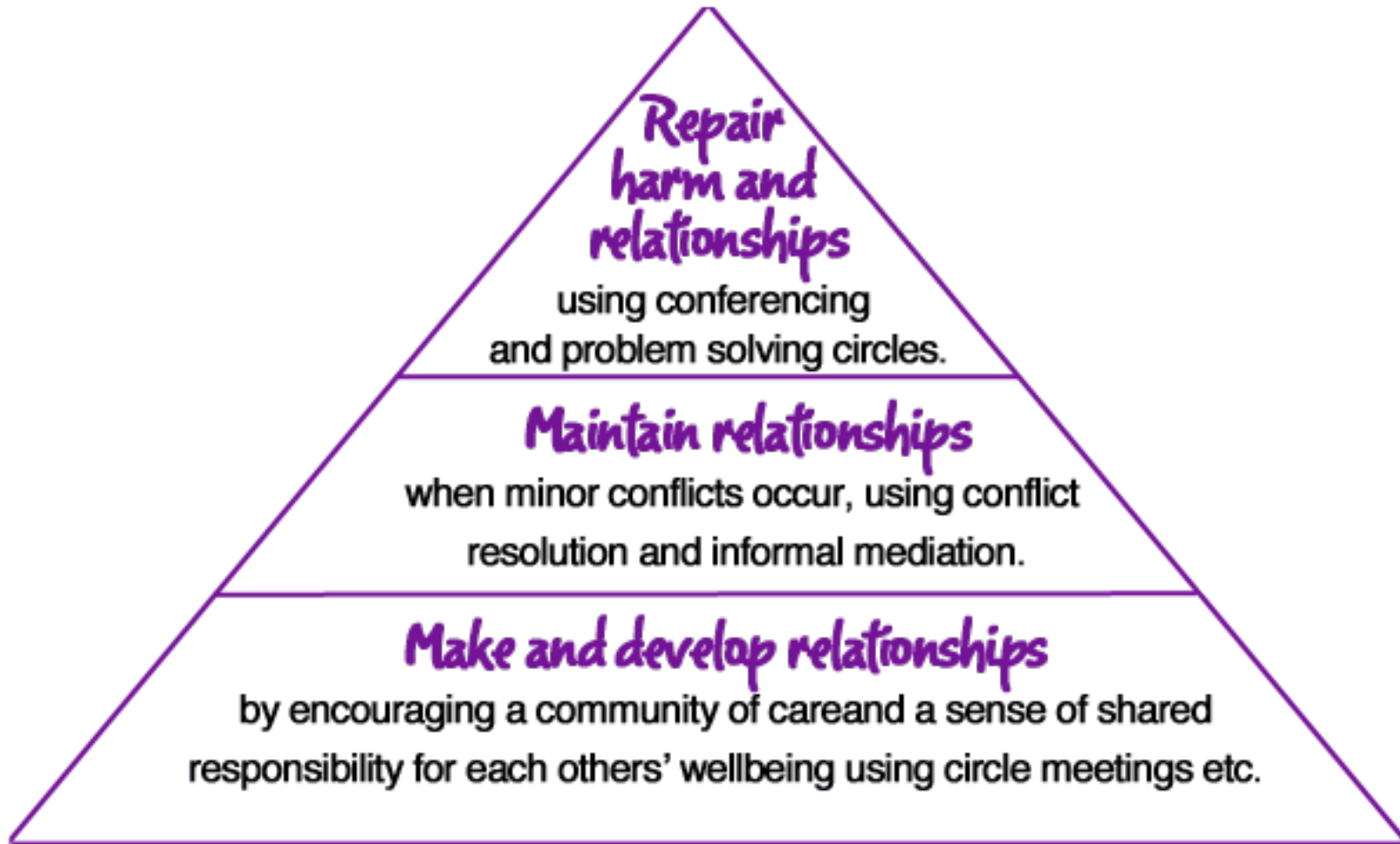


So

It makes sense to apply it to RP



Another way of thinking about it



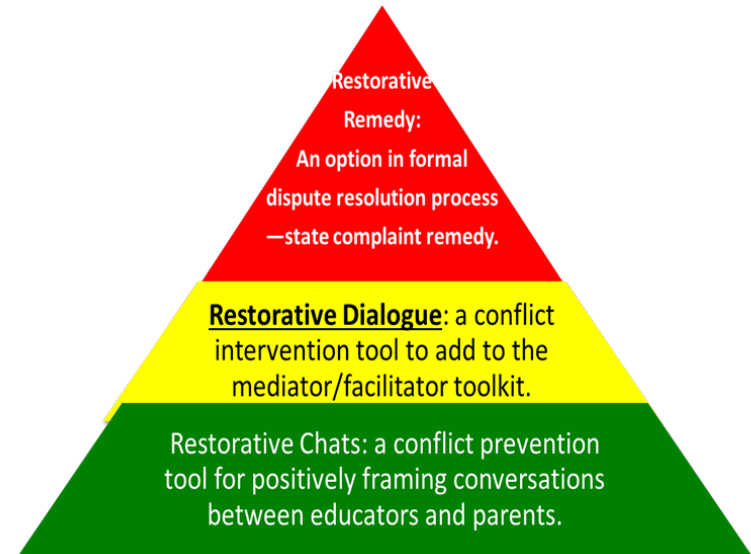
Restorative Practices as a Method for Strengthening Family Engagement

- Parent involvement at home and at school has a measurable impact on student performance in school, and is particularly important for English learners and students from low-income families.
- Improved communication between teachers and parents increases student engagement as measured by homework completion rates, on-task behavior and class participation.
- At-risk behaviors such as alcohol use, violence and other anti-social behaviors decrease as parent involvement increases.

CASE STUDY

Restorative listening dialogue

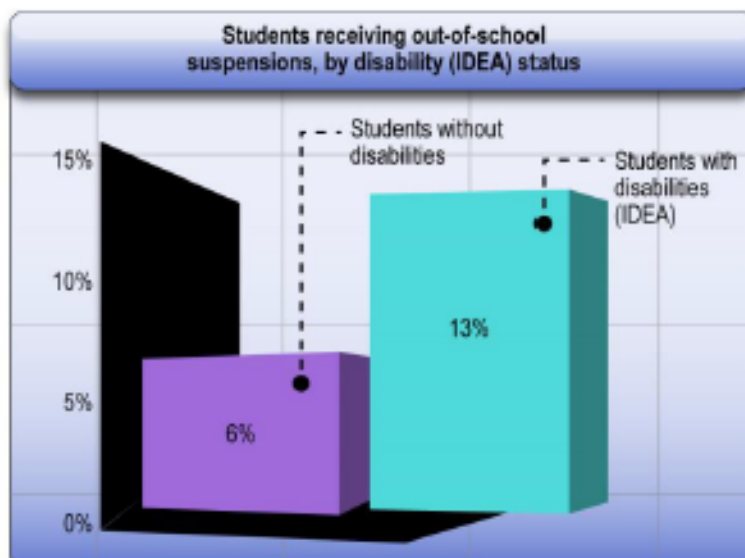
Portland, OR



**Restorative Practices as an
Alternative to Zero Tolerance School
Discipline**

Students with disabilities suspended out-of-school

Students with disabilities served by IDEA are more than twice as likely to receive one or more out-of-school suspension as students without disabilities.

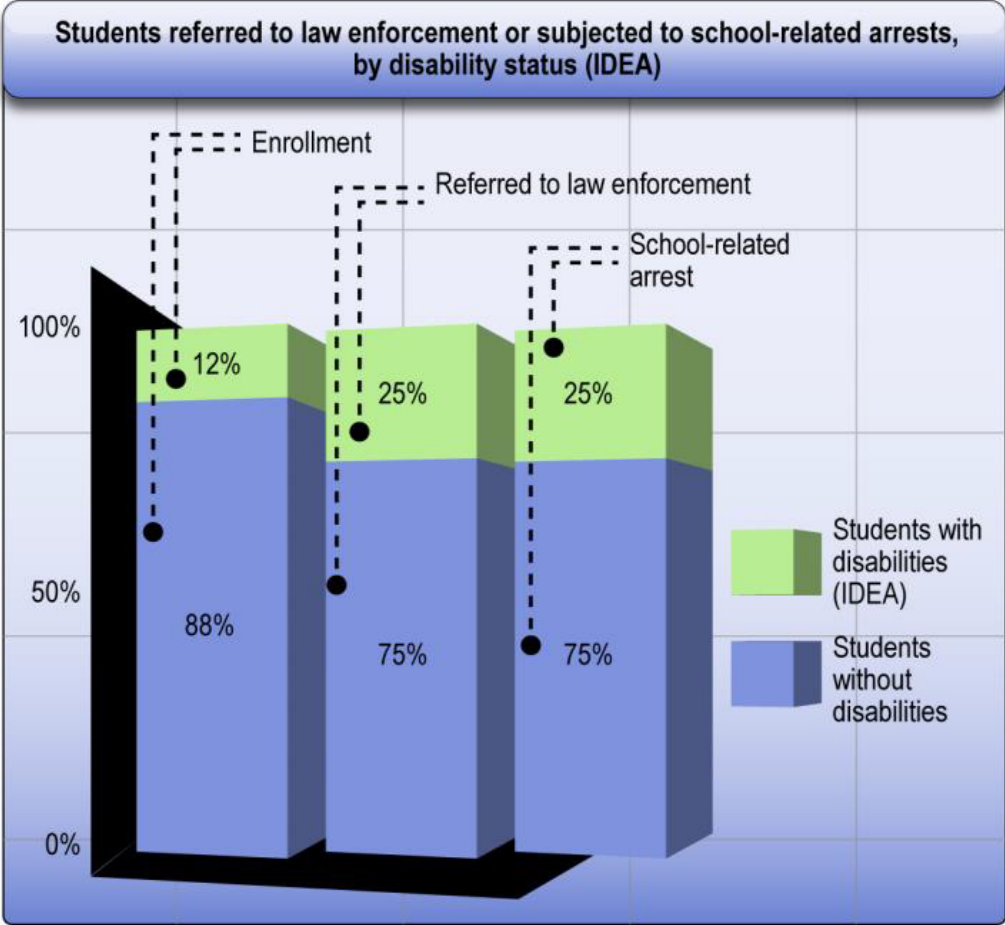


NOTE: Data reflects 99% of CRDC schools, including 43.5 million students without disabilities and 6 million students with disabilities.

SOURCE: U.S. Department of Education, Office for Civil Rights, Civil Rights Data Collection, 2011-12.

U.S. Department of Education Office for Civil Rights
Civil Rights Data Collection: Data Snapshot (School Discipline)
March 21, 2014

Students referred to law enforcement or subjected to school-related arrests by disability status (IDEA)

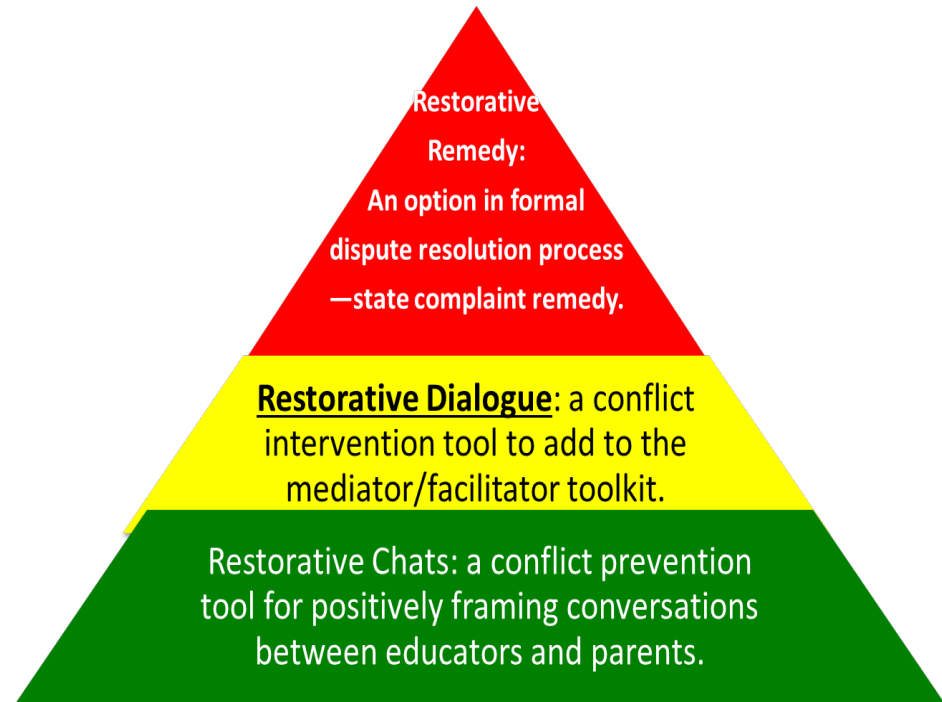


Restorative Remedy in State Complaints

RJ in Formal Dispute Resolution
Options: State Complaint

Case Study: recent CO state
complaint decision

- Overview of Colorado school discipline law eliminating zero tolerance and emphasizing alternatives to suspension
- State complaint decision and remedy ordered



2012 CO School Discipline Law

KEY FEATURES

- Elimination of Zero Tolerance. C.R.S 22-33-106
- Encourage consideration of specific factors prior to suspension, including age, disciplinary history, disability, seriousness of the offense and whether a lesser intervention would be appropriate.
- Encourage use of positive approaches designed to minimize exposure to juvenile justice system in creating discipline codes, including RJ. C.R.S 22-32-109.1

RJ Practices: CO Legislative Declaration

C.R.S. 22-32-144

- The general assembly supports and encourages the use of restorative justice as a school's *first* consideration to remediate offenses such as interpersonal conflicts, bullying, verbal and physical conflicts, theft, damage to property, class disruption, harassment, and attendance issues.
- The general assembly encourages each school district to implement training and education in the principles and practices of restorative justice to ensure that capable personnel and resources are available to successfully facilitate all steps of the restorative justice process.

RJ in SC Remedy

Larimer County SD (SEA CO 2015)

- Failure to timely conduct manifestation determination and properly determine placement in the LRE.
- Remedies included training for school administration in the area school discipline, including alternatives to suspension, i.e. restorative justice.

Case Study: School-wide Positive and Restorative Discipline (SWPRD)

- **An approach to blending SWPBIS with practices derived from research on disciplinary fairness and restorative justice to:**
 - Promote school climates perceived as fair by students, parents and educators
 - Decrease overall use of exclusionary discipline (referrals, suspension, expulsion)
 - Decrease disparities in discipline outcomes
 - Strengthen relationships between administrators, teachers, families, and students

PILOT PROJECT-Lane County, Oregon



Schoolwide Positive Restorative Discipline (SWPRD)

Development work funded by the
Research to Practice Collaborative
on Discipline Disparities

[http://
rtpcollaborative.indiana.edu/
briefing-papers/](http://rtpcollaborative.indiana.edu/briefing-papers/)

and the University of Oregon
Office on Research, Innovation,
and Graduate Education

Partners:

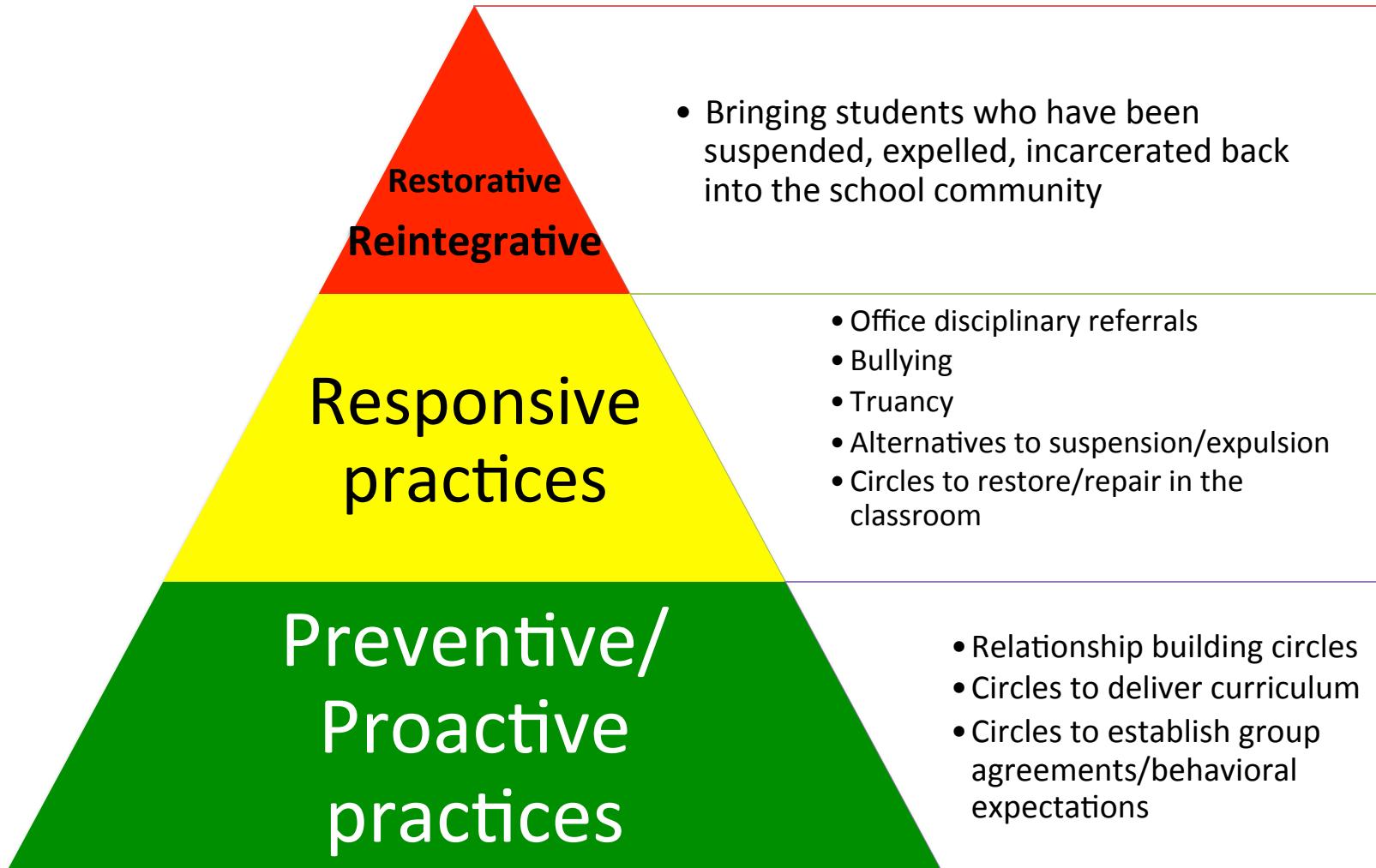
The University of Oregon College
of Education

The University of Oregon School
of Law

Center for Dialog and Resolution
in Eugene, OR

Fern Ridge School District

SWPRD



A Restorative Story

Chip Coker, Jim and Cristian Belshe

Thinking Systemically

Stages of Conflict	Stage I		Stage II		Stage III		Stage IV		Stage V									
Levels of Intervention	Prevention		Disagreement		Conflict		Procedural Safeguards		Legal Review									
Assistance/ Intervention Options	Parent Engagement	Participant & Stakeholder Training	Stakeholder Council	Collaborative Rule Making	Parent to Parent Assistance	Case Manager	Telephone Intermediary	Facilitation	Mediation Models	Ombudsperson	Third-Party Opinion/Consultation	Resolution Meeting	Mediation under IDEA	Written State Complaints	Due Process Hearing	Hearing Appeal (Two-Tier Systems)	Litigation	Legislation
Dimensions that help clarify placement of the options along the	Third-Party Assistance										Third-Party Intervention							
	Decision Making by Parties										Decision Making by Third-Party							
	Interest-Based										Rights-Based							

Socratic Discussion

How might RP be applied within the IDEA dispute resolution framework?

- Informal parent meetings?
- Facilitated IEPs?
- Mediations?
- Reintegration/Reentry? (from suspension, expulsion, incarceration)
- Where might RP work well?
- Where might it not work well?



RP in Schools: “Hot Spots”

- Denver, CO
 - <http://www.rjcolorado.org/>
- Minnesota
 - <https://education.state.mn.us/MDE/SchSup/SchSafety/RestorativePractices/index.html>
- Oakland, CA
 - <http://www.ousd.org/restorativejustice>
- San Francisco, CA
 - <http://www.healthiersf.org/RestorativePractices/>
- Portland & Eugene, OR
 - <https://resolutionsnorthwest.org/services/personal-professional-development/restorative-practices/>
 - <http://www.lanecdr.org/pg19.cfm>

Major RJ Sites

- [International Institute for Restorative Practices: http://www.iirp.edu/](http://www.iirp.edu/) Training, articles, world news and peace
- [Real Justice: http://www.realjustice.org/](http://www.realjustice.org/) Get the latest in RJ News, trainings and resources
- [Restorative Justice Online: http://www.restorativejustice.org/](http://www.restorativejustice.org/) Global RJ activity and policy issues
- [Center for Restorative Justice Peacemaking: http://www.cehd.umn.edu/ssw/rjp/](http://www.cehd.umn.edu/ssw/rjp/) of the University of Minnesota Promoting restorative dialogue worldwide
- [Center for Peacemaking and Conflict Studies of Fresno Pacific University: http://peace.fresno.edu/](http://peace.fresno.edu/) Job and career opportunities, continuing education
- [Eastern Mennonite University Conflict Transformation Program: http://www.emu.edu/cjp/grad/](http://www.emu.edu/cjp/grad/) One of the first North American programs to offer an MA in the conflict and peace building fields.
- [Restorative Justice Initiative, Marquette University Law School: http://law.marquette.edu/rji/](http://law.marquette.edu/rji/) One of the most integrated restorative justice programs among the American Bar Association
- [United Methodist Church Restorative Justice Video resources: http://justpeaceumc.org/](http://justpeaceumc.org/) information for church-related programming

Major RJ Sites

- [The Centre of Restorative Justice, British Columbia: http://www.rjbc.ca/](http://www.rjbc.ca/) Good search library, Canadian news
- [Restorative Justice Society: http://www.restorativejusticesociety.net/](http://www.restorativejusticesociety.net/) Connecting RJ professionals worldwide

Government Sites about Restorative Justice

- [Balanced and Restorative Justice in the Office of Juvenile Justice and Delinquency Prevention \(OJJDP\): http://www.ojjdp.gov/pubs/implementing/balanced.html](http://www.ojjdp.gov/pubs/implementing/balanced.html)
- [National Institute of Corrections: http://nicic.gov/](http://nicic.gov/) Library section: # 017207 article on restorative justice principles and practices
- Parallel Justice for victims of crime

Articles about Barron County Restorative Justice

- [Barron County Restorative Justice Programs: Partnership Model of Government and Community Resources http://bcryp.org/wp-content/uploads/2011/10/OJJDP_Journal_Chapter5.pdf](http://bcryp.org/wp-content/uploads/2011/10/OJJDP_Journal_Chapter5.pdf) by Ted Lewis (in Journal of Juvenile Justice with OJJDP, Fall, 2011):
- [Barron County Restorative Justice: the Role One Program Played in Reducing Juvenile Crime and Restoring Lives http://www.americanhumane.org/assets/pdfs/children/protecting-children-journal/pc-24-4.pdf](http://www.americanhumane.org/assets/pdfs/children/protecting-children-journal/pc-24-4.pdf) (in *American Humane*, by Eric Kasper, PhD, JD, and Mary Hoeft, MAT Statistics and case narratives: