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Restorative Student Judicial Circles: A Way to Strengthen
Traditional Student Judicial Board Practices

Kevin J. Derajtys
University of North Carolina Wilmington

Lana A. McDowell
Georgia Gwinnett College

Abstract

This article describes a way to strengthen traditional student judicial board processes. The proposed judicial option, *Restorative Student Judicial Circles* (RSJC), incorporates principles of restorative justice to address issues of higher education student misconduct through inclusive student practices. Topics reviewed consist of the definition of effectiveness within student judicial processes, including recidivism rates and personal development, procedural rights within such processes as well as innovative student judicial boards. Lastly, this article provides a detailed description of the proposed *Restorative Student Judicial Circles* and outlines how such processes may operate upon implementation within higher education settings.

Introduction

As time progresses, ideas and philosophies within higher educational settings tend to evolve. Such theoretical advancements often become embedded within the foundational values found in the mission statements of higher education institutions. Student judicial systems are a necessary component of institutions of higher education; therefore, one can assume the goals of such boards coincide with the general purpose of a larger institution in which the board resides. A further assumption is that institutions of higher education are dedicated to student learning. Given the aforementioned assumptions, it can be inferred that because institutions of higher education focus on student learning, so too would the various departments and organizations within the overall institution. One form of learning that has been infused by administrators within institutional missions includes student personal development. One method of strengthening personal development may be through student judicial systems that serve all participants and interested parties involved or affected by an action.

It has been suggested that three critical questions need to be considered when establishing foundations for student conduct (Bracewell, 1997). The first question posed considers why student conduct should be regulated within institutional settings. The prevailing answer suggests the purpose of conduct regulation is to preserve the values of the institution. The second question, "why do students violate published regulations?" is left open to be answered by each institution individually (Bracewell, 1997, p. 48). The final question, "what is the proper response to student misconduct?" is answered by asking another question, "what is the purpose of the disciplinary penalty?" (Bracewell, 1997, p. 49). It is important to consider the answers to the noted questions to determine the definition of effectiveness of a specific student conduct program. Bracewell (1997) contends the answers to the above questions will determine how effectiveness of student conduct processes will be evaluated. Therefore, the most appropriate measurement of student judicial board effectiveness depends on the goals of the student conduct process as well as the overall mission of a given institution of higher learning. When an institution adopts a mission focused on the personal development of students, the definition of student judicial board effectiveness should also be revisited and tweaked to align with such values. Previous research focused on effectiveness as defined through recidivism and personal development is explored below.

Defining Student Judicial Board Effectiveness

In recent years, greater attention has been focused on determining how to define and measure the effectiveness of student judicial programs (Janosik & Stimpson, 2009). While there is not a standard definition of effectiveness utilized by all student affairs personnel, the most commonly cited method for determining effectiveness is the rate of recidivism of student offenders (Fitch & Murry, 2001; Karp & Conrad, 2005; Kompalla & McCarthy, 2001; O'Reilly & Evans, 2007). Kompalla and McCarthy (2001) considered the effects of various judicial sanctions on recidivism and retention. The authors divided sanctions into two types, active sanctions and passive sanctions. *Active sanctions* are defined as sanctions that require active participation on the part of the offender, such as community service or students being required to take an educational class. *Passive sanctions* do not necessarily require active participation, and include a warning or academic probation. Findings suggest there is no difference in recidivism rates for the two types of sanctions; however, retention rates were higher for passive sanctions.

Fitch and Murry (2001) contend that there are three different types of student judicial systems including formal, informal, and mixed boards. The researchers believe the *formal system* tends to mimic the traditional criminal justice system in its use of courtroom jargon and attire while the *informal system* has less of a focus on legalistic matters and refrains from utilizing justice system language. The *mixed system* combines parts of both formal and informal systems to create a type of hybrid judicial system (Fitch & Murry, 2001). Within the above study, effectiveness was defined through the consideration of the total cases adjudicated,

number of appeals, number of sanctions modified due to appeal, number of repeat offenders, and the number of lawsuits filed as a result of disciplinary action (Fitch & Murry, 2001). Results indicate that formal judicial systems were the most effective of the three identified systems; however, it should be noted that the prongs of effectiveness are more legalistic in nature than focused on student personal development.

In line with the previously noted study, O'Reilly and Evans (2007) considered the recidivism rates among three different types of judicial processes utilized within Catholic higher education settings including administrative boards, majority-peer boards, and minority-peer boards. *Administrative boards* involve a campus administrator adjudicating cases individually while *majority-peer boards* decide cases by a tribunal made up of mostly students and a few campus employees. Other cases are heard by a board consisting of mainly campus student affairs professionals and a few student representatives, known as *minority-peer boards* (O'Reilly & Evans, 2007). The researchers found *minority-peer boards* to be the most effective type of judicial board based on recidivism rates.

While effectiveness of institutional judicial boards has primarily focused on recidivism rates, reconsideration of how to measure the effectiveness of student conduct programs using personal development as the metric has also been highlighted in previous literature (Howell, 2005; Janosik & Stimpson, 2009; Karp & Sacks, 2014). Karp and Sacks (2014) focus on effectiveness as personal development of different types of student judicial systems in place at higher education institutions across the country. Personal development is defined by the authors using the indicators of "just community/self-authorship, active accountability, interpersonal competence, social ties to institution, procedural fairness and closure" (Karp & Sacks, 2014). The authors found that students perceived a greater sense of personal learning from the judicial practice when restorative processes were utilized than when traditional boards were implemented.

The connection between an institution's values, mission and student personal development has also previously been considered by King and Baxter-Magolda (1996). The authors reviewed the *Student Learning Imperative* (SLI) which indicates that higher education experiences, as influenced by student affairs personnel, should be connected to the overall mission statement of the institution (American College Personnel Association, 1996). Some of the developmental characteristics mentioned include "effective conflict resolution skills, an appreciation for working with others, willingness to accept personal responsibility for one's actions and a desire to make positive impacts on the community" (King & Baxter-Magolda, 1996, p. 163). Based on the aforementioned characteristics, the authors contend that "... a successful educational experience simultaneously increases cognitive understanding and sense of self, personal maturity, and interpersonal effectiveness" (King & Baxter-Magolda, 1996, pp. 163-164). It is explained that student development is comprised of how students learn, how they create meaning for what they learn and a deeper understanding of their sense of self, all of which are interlinked and should be understood by student affairs personnel in order for student development to occur.

Student Judicial Boards and Due Process

While student development is important, administrators must also consider each student's procedural rights during the implementation of student judicial practices. According to Baldizan (1998), higher education institutions have traditionally focused on students' moral and ethical development, but in recent years the focus has shifted to a more legalistic framework in dealing with student misconduct. Supreme Court cases such as *Dixon v. Alabama State Board of Education* (1961) require due process of law in order to remove students from any state-supported institution of higher learning. This requirement has led many higher education institutions to adopt legalistic codes of conduct and sanctioning bodies to enforce such requirements (Baldizan, 1998).

Due process helps to ensure student rights are not violated or abridged during the judicial process (Wood & Wood, 1996). The most common elements of due process in student conduct affairs include "notice of the charges, notice of the evidence to be used against the student, and a hearing" (*Alcorn v. Vaksman*, 1994). Another important element is that the administrator of the student conduct hearing must not be biased in any way towards the case or the persons involved with the case (Wood & Wood, 1996). In general, more serious potential sanctions require more legal steps in order to ensure students' rights are not diminished (Wood & Wood, 1996). A study conducted by Bostic and Gonzalez (1999) surveyed administrators associated with student judicial practices in public higher education. Findings indicate that the majority of respondents

identified nine student rights that satisfy the needs of due process including: “hearing with explicit charges, written notice of hearing, awareness of opposing testimony, opportunity to present defense, opportunity to present witnesses, opportunity to have counsel (not attorney), choice to testify, written notice of decision, and opportunity to appeal” (Bostic & Gonzalez, 1999, p. 168). Due to the legalistic language utilized in reporting student rights, the results may indicate the increasingly legalistic policies higher education institutions have adopted to address student misconduct. On the other hand, Gehring (2001) believes meaningful student conduct programs are not fully compatible with the requirements of due process, and some legalistic aspects of student conduct processes should be reconsidered. Previous research suggests a need to balance the focus on effectiveness in terms of recidivism and personal development while keeping in mind due process rights of students. The following section provides examples of innovative institutional student judicial boards which seek to provide synthesis of the above noted aspects.

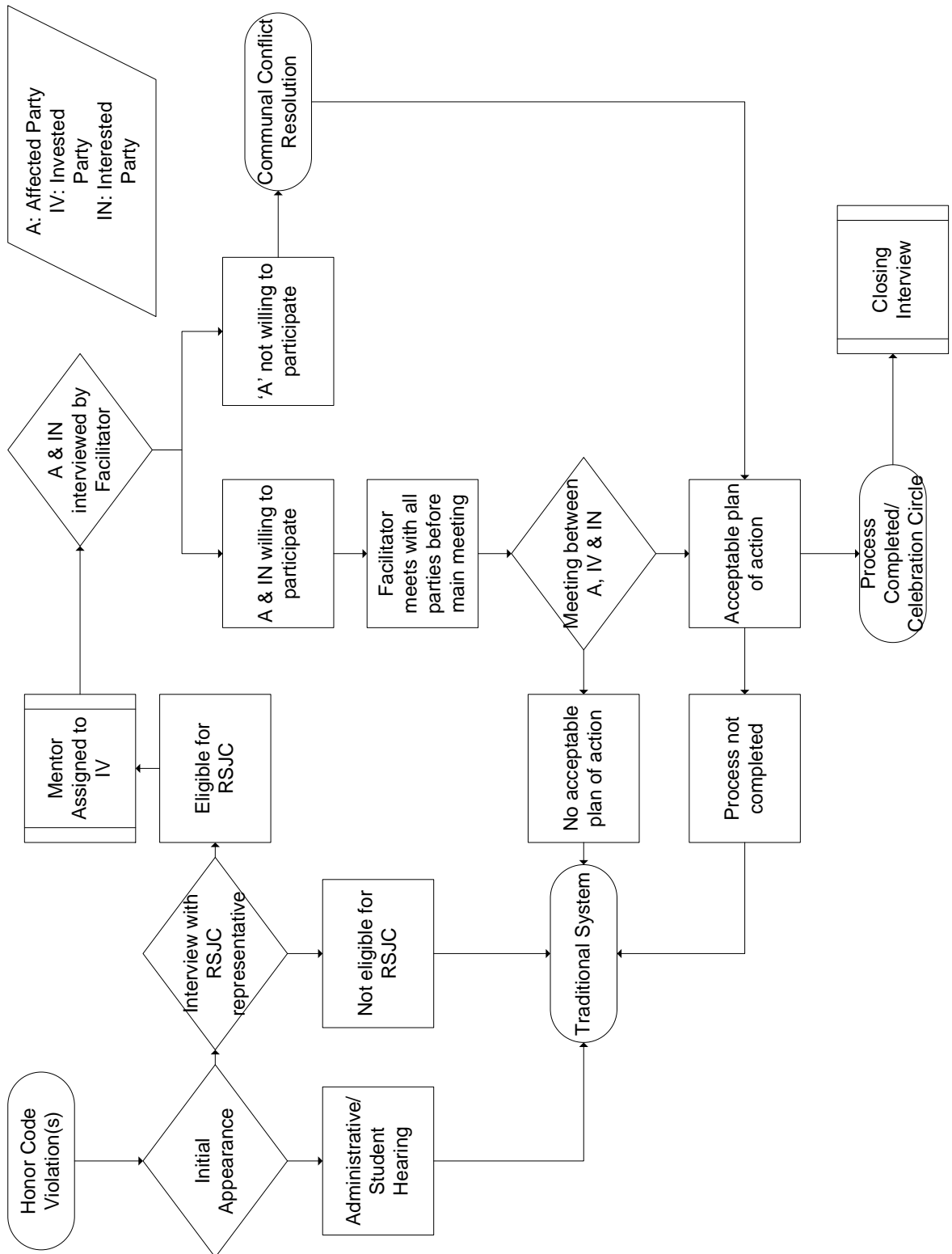
Innovative Student Judicial Boards

While the majority of previous research focuses on effectiveness in terms of traditional recidivism rates, institutions of higher education have implemented student judicial boards that may be conceived as entailing a more restorative approach. One such institutional disciplinary program is the integrity board at Skidmore College (Karp & Conrad, 2005). This board consists of students that are “particularly concerned with a process that encourages trust, emotional expression, and community building ... and seek creative outcomes that seek to repair harm and reintegrate offenders and victims” (Karp & Conrad, 2005 p. 321). Some examples of the principles of restorative justice used by members of the integrity board include a strong sense of community, dialogue between victims and offenders, and personal accountability (Karp & Conrad, 2005). While aspects of restorative justice have been implemented, the integrity board still considers recidivism rates in measuring effectiveness. In terms of recidivism, approximately one-tenth of student offenders exposed to the integrity board recidivated over a three year period. Karp and Conrad (2005) also point out the importance of future processes and research that consider more than just the offender when determining effectiveness as well as the importance of implementing restorative justice principles within institutional judicial systems that have had a positive impact on the members of Skidmore College.

Additionally, a Colorado higher education institution sought to implement and measure the effectiveness of a new drug court constructed to reduce the rate of students being dismissed for violating the school's alcohol and other drugs policy. The drug court was designed with similar goals as drug courts utilized by criminal courts, which focus on treatment and cooperation from all parties to ensure the goal of healing for the offender (Goldkamp, White & Robinson, 2001). Asmus (2002) found that all of the students who violated the alcohol and other drugs policy prior to the new program being implemented were dismissed; however, only approximately one-tenth of students who violated the policy were dismissed two years after implementation of the drug court. The results of the study indicate the need for inclusion and care of all parties in order to address the causes of violations. The following section provides a proposed innovative method of implementing restorative values within traditional student judicial processes in higher education.

A Proposed Addition to Traditional Student Judicial Practices

Restorative Student Judicial Circles (RSJC), were designed with restorative practices in mind. Elements of this board may encompass inclusion, connectedness, mindfulness, caring, and consensus. Inclusion requires all affected and interested parties to be involved and to participate in the circle process. Connectedness suggests everyone is connected and that one's actions have the potential to affect others (Braswell & Gold, 2012). Mindfulness encourages those who have harmed others to consider how their actions have affected individuals they have harmed, as well as a general awareness of how any action can affect others (Braswell & Gold, 2012). Caring is an understanding of the idea of connectedness and being able to empathize with others (Braswell & Gold, 2012). Circle processes utilizing RSJC should strive for consensus among the participants in all aspects of the circle, including the best course of action to remedy the harms which have resulted. Figure 1 provides a pictorial representation of the proposed Restorative Student Judicial Circles.



[Figure 1]

[Restorative Student Judicial Circles (RSJC)] *Restorative Student Judicial Circle Participants*

One aspect of Restorative Student Judicial Circles that separates such a process from traditional student judicial practices is the difference in labels utilized to refer to participants. The offender in Restorative Student Judicial Circles is known as the *invested party*, since they should be viewed as having a great deal invested in the process, part of which could be their ability to continue being a student at an institution. The victim is referred to as the *affected party*, as noted by Van Ness and Strong (2014), because they are most directly impacted by the actions of the invested party. Stakeholders are known as the *interested parties*, and include anyone who is indirectly affected or harmed by the actions of the invested party. Restorative Student Judicial Circle leaders shall be referred to as *RSJC facilitators* or *RSJC representatives* and should possess an understanding of restorative practices. In order to become a RSJC representative, students must first develop an understanding of concepts through restorative justice course offerings at a given institution or through a restorative values training program offered at a higher education setting. In order for Restorative Student Judicial Circles to reach full potential, it is imperative that facilitators of the RSJC also complete application of restorative justice coursework or complete a restorative application training program offered by an institution, that focuses on preparing students for facilitating circle processes, prior to joining the board. The development of such courses and/or programs shall be institution specific which is in line with Bracewell's (1997) ideals that every institution must design judicial processes based on their own situations and characteristics.

RSJC representatives are responsible for interviewing invested student parties who are interested in pursuing RSJC as a means of resolving student judicial issues. Interviewers shall consider certain qualities of the invested party that indicate their candidacy for the RSJC process. Such qualities may include remorsefulness, acceptance of personal responsibility for the harms done, a willingness or desire to "make things right", a willingness to meet face to face with affected and interested parties and the ability to identify some potential harms that may have resulted from his or her actions (Zehr, 1990, p. 181). The same RSJC representatives shall also interview affected parties to determine if RSJC processes are appropriate. Questions regarding the affected parties' readiness for RSJC may include the following: How is the affected party coping with the situation? What are their needs? Would the traditional system better suit their needs? Are they willing to meet face to face with the invested party? What outcomes do they hope will be achieved as a result of the process? Through restorative values and application training, RSJC representatives shall be able to determine if affected parties are prepared for the RSJC process.

Restorative Student Judicial Circle Processes

Within the proposed process, the first step after a violation results in a student being referred to the student judicial board is the same as the traditional system, the initial appearance. In the initial appearance, the charges against the student are read and the student is asked to choose the type of hearing they would most desire. While a number of institutions utilize traditional student judicial boards that mostly consist of students, and/or administrative boards that mostly consist of faculty and staff members, Restorative Student Judicial Circles add another type of hearing for students accused of misconduct. Furthermore, there should be no direct benefits for students who choose the RSJC option such as dismissal of charges and/or any academic benefits or favorable treatment.

If a student chooses the RSJC hearing option, they are interviewed by an RSJC representative who is present for the initial appearance. If the student is determined as ineligible for RSJC by the representative, the student proceeds with one of the traditional judicial board options available at a given institution. If the student is eligible for RSJC, they proceed to the next step of the process. At this point, the student is also given the opportunity to be assigned a student restorative justice mentor who will explain the process and answer any questions the student may have. A student may voluntarily waive his/her right to have a mentor during the process.

The next step in the process involves separate RSJC meetings with the affected and interested parties to determine if they have a desire to participate in the RSJC proceedings. If the affected party is willing to participate, the RSJC process continues. If the affected and interested parties agree to participate in the

process, RSJC facilitators will meet with each party to inform them of how the meeting between all the parties will proceed and to determine if they are ready for the face-to-face meeting, as well as to set up a time and place that will accommodate all parties. The circle process involving all parties will then take place.

In the circle process, the group will discuss the harms that have been done, the causes of those harms, and potential solutions to address the harms and causes of the action in question. A plan of action to address the harms and causes will be designed by the group as a whole and every aspect of the plan will be agreed to by each party involved in the process. If the group cannot reach a consensus on the best course of action, then the RSJC facilitators should use their discretion in determining whether to continue with the RSJC process, attempt to resolve the situation through Communal Conflict Resolution, or turn the case over to student affairs officials for reconsideration of traditional judicial hearing processes.

If during the follow-up circle the invested party has completed every aspect of the action plan created by the group, the process is finished, a celebration circle will occur, and the case is closed. If the invested party does not complete the action plan, the case is returned to personnel in student affairs to be processed through traditional hearing practices. After an RSJC is complete, all included parties will have a closing interview with an RSJC representative to discuss their experience(s) with the process.

Communal Conflict Resolution

In cases where the affected party decides not to participate in the RSJC process, the case may proceed to a Communal Conflict Resolution process. *Communal Conflict Resolution (CCR)* is a process utilized when the affected party does not want to participate in the RSJC program, or when a case does not have an affected party. The CCR process outlined below is loosely based on Participatory Communal Conflict Resolution as explained by Chimaraoke (2002). CCR calls for the invested party to meet with RSJC facilitators and any interested parties who wish to attend. The group discusses the harms done by the invested party and then separates the harms into two different categories, specific and communal. *Specific harms* are harms done to a specific individual or group and are difficult, if not impossible, to address or even be aware of without the participation of the affected party. *Communal harms* are harms done to the community at large or stakeholders in general, and can be addressed without the participation of an affected party. After the communal harms have been identified, the group discusses how to address the harms that have been done and creates a plan of action agreed upon by all parties involved within the process. If the invested party does not complete the plan of action, the case is turned over to the office of student affairs for reconsideration. If the invested party completes the plan of action, they have completed their part of the process and will have the opportunity to take part in a celebration circle as well as a closing interview. However, if the affected party is ready to participate in a RSJC during the CCR process, the case is turned over to an RSJC representative for further evaluation of eligibility of all parties.

Through the innovative processes of Restorative Student Judicial Circles (RSJC) and Communal Conflict Resolution (CCR), student affairs personnel may achieve a more synthesized form of effectiveness within student judicial processes. Through the incorporation of restorative values and processes, such effectiveness may include lower recidivism rates and greater student personal development, while respecting student due process rights within institutional judicial systems.

Conclusions

One of the goals of Restorative Student Judicial Circles is to provide a way to strengthen student judicial systems of institutions that include student personal development within the overarching mission statement. As posited by King and Baxter-Magolda (1996) as well as Karp and Sacks (2014), personal development provides an insightful measurement of effectiveness in addition to the traditional method of recidivism rates. Another goal of Restorative Student Judicial Circles is to provide students who wish to explore the harms and causes of their actions the opportunity to do so in a safe and supportive environment. A final goal of the proposed Restorative Student Judicial Circles is to increase the involvement of the affected party in the judicial proceedings. In most cases, traditional institutional judicial systems only allow the affected party to provide a confidential statement during the formal judicial board hearing. Restorative Student Judicial Circle processes seek to give the victim a voice and a role in the decision-making process, if they are ready and willing to participate.

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