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INCORPORATING PRINCIPLES OF CONFLICT RESOLUTION AND SOCIAL JUSTICE INTO FORMAL STUDENT CONDUCT CODE PATHWAYS

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If the only tool you have is a hammer, you tend to see every problem as a nail.

Abraham Maslow

At the 2008 Donald D. Gehring Academy for Student Conduct Administration, several visionary colleagues brought themes of conflict resolution, restorative justice, and social justice together in one room for what may be the first intentional effort to join these practices and theories in a shared resolution model. The inclusive Spectrum Model produced by Jennifer Meyer Schrage and Monita C. Thompson (2008) visually expanded the existing Model Student Conduct Code (Stoner & Lowery, 2004) long embraced by the Association for Student Conduct Administration (ASCA), and student conduct administration as a whole, to allow students and administrators more process options for resolving conflict and campus "misconduct" than those detailed in the model code.

Ed Stoner, coauthor of the 1990 Model Student Disciplinary Code and the subsequent 2004 Model Student Conduct Code, joined 2008 Academy participants over lunch one day for the program "Is There Room in Student Judicial Affairs for Social Justice: Reframing the Model Student Conduct Code." Stoner entertained questions and talked about ways to build from the good work he produced with his publication partners Kathryn Cerminara and John Wesley Lowery and that of our fellow judicial colleagues to further transform the educational language and developmental emphasis of conduct codes (Stoner & Cerminara, 1990; Stoner & Lowery, 2004).

Taken together, what began as a four-day collaborative exchange within and between Academy program tracks has brought us to this national platform. Here we may consider together how to honor our best student development and social justice ideals while still supported by the solid and considered foundation provided by Stoner, Cerminara, and Lowery in crafting the 1990 and 2004 model student codes. This chapter reflects upon the most formal pathways for managing student conduct and conflict as found in Schrage and Thompson's (2008) Spectrum of Resolution Options visual model and begs the original question, "Is there room in student judicial affairs for social justice?"

In the context of this book, I favor exploring present language and legalese in our traditional campus code processes as a means to transform existing systems into better and best inclusive practices. My interest and expertise rests more on advancing this lens we call social justice as a means to inform change in student conduct administration, particularly when layered on top of what we might consider our existing lenses of student rights, student development ,and restorative principals. I do not revisit the historic and important reference points found in laws, policies, and mandates that have shaped student conduct practice today, as these can be found elsewhere in this volume. Rather, I hope to help colleagues reflect upon their present codes and "adjudication" practices in an effort to reclaim developmental, restorative, educational, and socially just values and principles in sound and meaningful ways.

This chapter respects the need for community standards and codes of conduct and honors them as an expression of the values, ideals, and expectations in unique communities of learners. It further values the nature, intent, and practical application of formal code pathways for managing the most egregious or pervasive student misconduct. But equally important, this chapter tests the ability of our most formal resolution processes to rise to the occasion of change in light of current campus trends, demographics, climate, diversity, and needs of the individual and the community.

Building Up From the Model Code

Stoner shares my appreciation for the wisdom in Maslow's epigraph at the beginning of this chapter: "If the only tool you have is a hammer, you tend to see every problem as a nail." He would also be the first to admit that the pioneering Model Student Disciplinary Code (Stoner & Cerminara, 1990) was never meant to be the broad hammer it has become for nailing down

every case of misconduct on campus. Many thorny campus issues do not fit neatly into the traditional adjudication models that campus administrators, informed by the courts over the past several decades, have carefully crafted. These thorny issues are treated as nails nevertheless.

This is not to say that the most formal code processes are not fully appropriate and sound as model pathways for handling certain campus cases of misconduct. Such cases may well include acts of violence, and/or threats to the health and safety of the institution's community. Cases also include those situations that may result in the most serious of sanctions because of the severity of a single incident or a pattern of inability or unwillingness on the part of a student to respect community standards. My assertion here, aligned with that of Stoner's and ASCA's, is that an *adjudication* model simply is not required to stand alone or be overly legalistic for each and every case of campus misconduct. Neither is it the best practice to develop codes that are detailed to the detriment of appropriately tailored responses that reflect a level of care for a student's individual circumstances, stage of development, educational needs, or the restoration of a community.

Just as we would not call a meeting of a behavioral review committee, mental health assessment team, or risk management group to consider every student, neither must we initiate our most formal conduct processes when each referral comes to our desk. While our codes are intended to offer a clearly outlined, formal pathway designed to protect the student and the institution, to overly formalize the management of every incident overtaxes the administrative system; moderates the significance and attention given the most serious reports; keeps students from alternative, viable resolution pathways; and inaccurately models adjudication as the best and only means of resolution.

Authors throughout this volume make the case that what we have come to call an adjudication model is asked to do too much, grounded in the wisdom that one clear and due institutionalized process ensures fairness and equity for every student. The resounding assertion is that one process cannot be made to fit every incident of conduct and conflict on campus. We get the job done, but at what and at whose expense?

Agreement or Adjudication as Formal Pathways for Conduct Management

A great many things have been written about campus adjudication models and codes of conduct templates over the years. Stoner and Cerminara's

(1990) original Model Student Disciplinary Code established well-documented case law together with practical applications that support the inclusion of certain necessary steps in our campus processes for them to be deemed fair to individuals and balanced against administrative efficiency and community considerations. Historical reference points in the field are outlined in chapters 2 and 8 of this book as well.

Before considering the finer points of how creators of conduct codes today might further develop the two most formal resolution pathways as conceptualized in the Schrage and Thompson Spectrum Model (2008), let's look first at the common forums developed in higher education to administer reports of code violations. Most reports of alleged misconduct are received in writing (hard copy or electronic) by the staff charged with responding to such complaints. These complaints can typically be raised by any member of the institution's community.

Students are informed of the reported infraction in what is to be a timely fashion and are typically required to attend an individual meeting to share their side of the story, review their rights, and consider their resolution options. These meetings are also opportunities for a staff member to check in with the student about his or her fuller college experience, problems the student is experiencing, academic success, and so on. But, as with any administrative system, individual meetings can be as cursory, administratively rigorous, or developmental as time and the individual staff member allows (Zdziarski & Wood, 2008).

This one-on-one meeting is the responding student's entry point into the system as provided by the institution. More likely than not, the student is provided with two well-established pathways to resolve the complaint. As depicted in Schrage and Thompson's (2008) Spectrum Model, the student may generally agree with the report, accept the formal conduct charges, and waive the option for a more formal process through adjudication (informal resolution). Students choosing this pathway accept responsibility for the incident in question and leave the meeting either with sanction in hand or one that is forthcoming. Some systems allow the administrator at this level to apply sanctions only up to a certain point of severity, perhaps excluding suspension and expulsion. If this is the case, the system may require a more formal process or a supervisory review or application of the sanction. In cases of agreement, students largely waive their right to further challenges specific to conduct charges and perhaps sanctions. Many systems leave open the option of an appeal for procedural concerns to protect the student and the institution.

On the other hand, a student may opt to have the incident heard more fully in a meeting or hearing attended by other stakeholders, and facilitated by an individual or panel that in turn will determine responsibility and any subsequent institutional action. This is conceptualized in the Spectrum Model (Schrage & Thompson, 2008) visual as adjudication (formal resolution). Case law and legal precedent have helped shape these administrative systems to provide a student at this resolution level with a timely written notice of the hearing, an opportunity to hear and answer to conduct charges, to hear the statements of witnesses, and to receive a written outcome based on the information presented. Outcomes are based on whether a code violation "more likely than not" occurred or on the higher standard of whether the information shared was deemed "clear and convincing" by the individual or panel facilitating the procedure. Procedures at this level also provide the student with some manner of appeal. Among the most fundamental of guiding principles is that processes and sanctions must not be arbitrary or discriminatory (Stoner & Lowery, 2004).

Sanctions arising from these two formal code pathways range from a limited term warning such as a period of disciplinary probation or deferred suspension through permanent expulsion from the institution. Often lesser sanctions are paired with educational referrals to programs that include substance abuse education and assessment, anger and conflict management, and the like. Community service hours may be applied, and students may be asked to write reflection exercises. Subsequent meetings with the adjudication staff may be set up, and the students may also be provided at a handful of institutions with the institutionalized option of participating further in mediation or restorative circles. But given the nature of the more formal code processes, these developmental options are still frequently considered sanctions.

Variations or companion processes can be found on campuses that are administered by or for graduate programs, academic departments, off-campus crimes, violations by Greek organizations, and so forth. In addition, all campuses can and should provide an expedited process for the most serious of incidents that allows for the institution to take immediate action (i.e., removal from a residence hall or campus community and/or suspension of classes) pending a full process.

What's In a Name?

The aim of this chapter beyond introducing the formal code processes is to consider how best to infuse these existing pathways with a fuller expression

of core values including student development, individual rights, educational missions, social justice, and community restoration. A good starting point is in the language used within and about the processes themselves.

The Spectrum Model (Schrage & Thompson, 2008) aside, *adjudication* and *arbitration* as terms are imperfectly applied to student code processes. This language represents vestiges of familiar but dated codes that incorrectly model themselves after the legal profession. That said we could discuss to infinity the best words available to communicate policies and procedures in student communities. Ultimately what is important is not that we all choose the same language, but that our institutionalized language expresses our intent and values when addressing student misconduct and conflict. Taking adjudication and arbitration, for instance, we might weigh those legal concepts against more developmental expressions. In so doing, one campus might finally settle on *administrative hearing* as the expression of choice, while another prefers simply *conference* or *meeting*. In fact, Stoner says: ''If it fits your campus culture and allows you to achieve your goals, I do not care if you call it a cantaloupe!'' (E. Stoner, personal communication, January 21, 2009).

While considering the importance of language, I find myself returning to the concept of *structural determinism* as described by Delgado and Stefancic (2001). In their work on critical race theory, the authors define structural determinism as ''the idea that our system, by reason of its structure and vocabulary, cannot redress certain types of wrong'' (p. 26). Though this definition reaches far beyond the context it is used here, to me it begs the question of whether and why colleges and universities structurally limit their own ability to redress student misconduct most effectively and developmentally by virtue of our own chosen language.

If structure and vocabulary go hand in hand, as Delgado and Stefancic (2001) suggest, then the good news is that the way is already paved for change in how we administer student conduct codes in higher education. This movement is revealed in the language found in the new model code (Stoner & Lowery, 2004) that takes ''judicial'' out of ''judicial affairs,'' expressed in related codes and office name changes across the country, and notable even in the name change of the premier association devoted to student conduct work—what was once the Association for Student Judicial Affairs (ASJA) is, after 20 years now, the Association for Student Conduct Administration (ASCA).

Building Up From Common Ground

So how then do we best embody our history; student developmental, social, and restorative justice theories; student rights; community responsibility;

and conflict resolution practice all within our most formal conduct processes and language? In fact, that groundwork has been laid by Stoner and Lowery (2004).

Under the revised Model Code (Stoner & Lowery, 2004), consider that the language is consistently respectful of students as individuals while honoring rights, nondiscrimination, fairness, evenhandedness, and dignity, together with protecting and respecting the rights of the community and the rights of the college to promote high educational standards. This core value continues, "Whatever process it adopts, the institution will want to remember the basic student affairs precept that it is important to treat all students with equal care, concern, honor, fairness, and dignity" (p. 15).

In addition, there are several nods to conflict resolution including mediation and restorative justice practices. The code allows for the system to pursue or not pursue a referral upon investigation (Stoner & Lowery, 2004), and offers

> an arbitration or a mediation requirement prior to reaching a more formal Student Conduct Board Hearing stage. Such an option is acceptable because the concept of due process is flexible, requiring no more than is necessary to provide fair notice and an opportunity to be heard. In other words, in some cases a formal fact finding process is not required; an informal meeting between the students involved and college or university administrators suffices, as long as accused students are informed of the charges and given an opportunity to tell their side of the story. Other schools may not want to require such an initial meeting because such meetings could consume all of the administrator's time with little benefit. Local experience will dictate whether it is effective to attempt to resolve alleged Student Code violations through such a meeting, although the most common practice is to emphasize efforts at mediation or other informal resolution. (pp. 47–48)

The code endorses language that sets the expectation for students to be responsible to their campus communities and to demonstrate good citizenship (Stoner & Lowery, 2004, pp. 33–34). Further, the code recognizes the demands of small offices and small budgets in that the authors allow for one administrator to wear several hats, with the caution that an institution is wise to separate the "functions of informal investigating and/or mediating . . . from that of determining whether a violation has occurred and setting the sanction" (p. 21).

Still further, the model allows for total sanctioning flexibility, which again makes room for blending a formal process with educational and developmental sanctions, including those that address conflict resolution, social justice, and restoring community (Stoner & Lowery, 2004).

The irony of the original question posed at the 2008 Gehring Academy, "Is there room in student judicial affairs for social justice?" is that the better question might just be, "Is there room in student judicial for student *judicial*?!" The point is that there is much to draw from in the new model code (Stoner & Lowery, 2004) and companion script as templates for tailoring efforts to include conflict resolution processes grounded in social justice principles at individual institutions.

Building from the common ground provided in the model code (Stoner & Lowery, 2004), let's then consider how we might address omissions or shortcomings when crafting future institutional codes, practices, and language. For one, not much attention is paid to issues of victimization and community restoration as might be provided within a code. Neither is there a mention of how a community might be cared for and restored even while a criminal proceeding is pending and perhaps standing in the way of completing a campus process.

The language of the new code also reflects familiar ethnocentric trappings not uncommon in many of our country's formal adjudication systems. For instance, a hearing officer or board chair is empowered to set a calm rather than confrontational tone for the hearing, and all questions are directed by or through the hearing officer or student conduct board (Stoner & Lowery, 2004, p. 65). This is not to argue that it is outside the rights of an institution to create an appropriate setting for important dialogue only to challenge the definition of *appropriate* through different sets of lenses. Most of us might agree, for example, that participants in a formal process might not be allowed to swear, raise their voices, become physical, and so on, but how then do we also honor and account for the marked differences between people and between social groups when it comes to expressing oneself when faced with conflict or placed in a defensive position? If not accounted for in the language of an institution's code or set of expectations in preparation for a hearing/meeting, at least it might be accounted for in the training of the facilitators and chairs who help guide the dialogue. Better still, accounting for differences in conflict management styles between individuals and social groups in general can be accomplished by offering alternative pathways that provide a less adversarial process in favor of dialogue and restoration.

The code opts out of mentioning or defining the perhaps sticky concepts of neutrality or impartiality, instead favoring the importance of avoiding bias. Authors of institutional codes might research and consider the newer attention being given to terms like *multipartiality* and *multicultural competencies* as the ideal to work toward in a discovery process in which all parties are honored, fully heard, and respected through their stories.

Overall, the Model Code (Stoner & Lowery, 2004) provides a standard disclaimer that each college or university must collaborate with its own legal counsel to consider special needs or legal precedents relevant to that community while shaping its own codes and hearing scripts. With this sound legal advice, let's also add a requirement that codes be consistently reviewed in a collaborative forum of many diverse stakeholders including students, practitioners, and educators where new perspectives can be fully invited, heard, and reflected in our best practices.

Finally, with due respect to Thomas Jefferson as cited in Stoner and Lowery (2004), and to the authors themselves, the concept of framing the issue of discipline as "the most difficult in American education" (pp. 1, 3) establishes a troubling and dated lens to view the real issues found on college and university campuses today. Contextually perhaps, this was true in Jefferson's time, but is this true in today's campus climate? Stoner and I had some fun with this, a reminder of the importance of keeping a sense of humor and perspective mixed with equal parts of strategic planning and deep thought (E. Stoner, personal communication, January 21, 2009).

> Me: Is the issue of discipline more important than meeting the growing needs of our multicultural student body?
> Ed: Well, actually, Mr. Jefferson was teaching all white males.
> Me: More important than helping students afford college in the first place?
> Ed: I would venture to guess they were all sons of wealthy planters.

Moving Away From the Lens of Insubordination

Ron Miller, a leading pioneer in holistic education, once observed that "to control and sort young people for the sake of institutional efficiency is to crush the human spirit" (http://www.lightafire.net/quotations/authors/ron-miller/). Student conduct administrators clearly do not set out to crush the spirit of students. But we have been raised professionally to view our efforts in the context of "harnessing the spirit of insubordination" (Stoner & Cerminara, 1990). Instead, the lens of social justice suggests that we continue to move beyond the framing of discipline as "difficult" and a means for "harnessing insubordination" and instead embrace language that is respectful and inclusive of all members of our changing student communities without bridling their spirit.

Similar to the comparison of language and scripts by David Karp in chapter 10, consider how this reframing plays out in the language of student conduct work in letters, conversations, policies, and formal procedures. The

model code (Stoner & Lowery, 2004) today actively discourages much of the original legalistic language used in the original code (Stoner & Cerminara, 1990) to reflect changes in the field over time, yet words like *judicial*, *hearings*, *evidence*, *guilty*, and so on still remain a part of our vernacular as practitioners of this work. The point of reframing our shared language is to balance the administrative tone that may need to be set in a disciplinary context with language that also expresses a concern for individual welfare and community values as well. Table 12.1 provides but one example of how some of our traditional judicial language is beginning to change in favor of language that more directly communicates our shared values as educators in campus communities that aspire to be inclusive, just, and developmentally sound. It is up to each individual institution to evaluate and reframe its own code language to best express the mission, values, and procedures of its campus culture in a clear and concise manner.

If it sounds like so much semantics, think of a personal situation in which the way a message is delivered has made a difference in your own perception of system fairness and openness to your personal story. Examples might include being stopped and ticketed for a minor traffic violation, a stern truancy notice after taking your child out of school to visit Disneyland for a week, or a call from the hospital that places a recitation of Medicare rights over an expression of concern for the patient and family. The point is, there are many ways to communicate information, but the delivery governs

TABLE 12.1
Reframing Language Found in Traditional Campus Judicial Affairs Programs

Existing Language	*Reframed Language*
Judicial Affairs	Student Conduct Administration, Conduct and Conflict Resolution Process
Charge	Conflict, referral, conduct question
Prehearing	Administrative meeting, conference
Evidence	Sharing of information
Guilty/not guilty	Responsible/not responsible
Sanctions	Restorative or educational measures or community actions
Appeals	Individual and process safeguards
Hearing officer	Facilitator
Legal counsel	Adviser/advocate
Accused	Respondent
Victim	Complainant, harmed party

how that information will be perceived and evaluated for system care, values, and fairness.

From Language to Systemic Change

The value of including alternative pathways and inclusive language in managing student conduct and conflict is that it shows the community that even a large administrative system can be tailored in a personal and thoughtful way to best meet the needs of a diverse population. It does not do away with formal processes as a significant and fair option. Instead, once conflict resolution and social justice are understood and embraced by an institution, that shift becomes reflected in the language of the code by balancing fair play with the core values of student conduct administration. And, a change in language often heralds a change in vision. From vision comes action. Systems change takes time, but while germinating, it pays to give voice to the vision.

Finally, broadening the process menu under the spectrum and shaping balanced codes also makes fair and transparent what many educators already do when presented with student situations that do not quite fit the mold. In chapter 2, the authors cite Harwood (2008), who said that

> there are times when an assessment team finds that the subject is simply enraged about being charged administratively with a minor violation of a university rule. The situation then escalates because a campus bureaucrat holds strong and says he or she can't overlook the subject's infraction. "Sometimes," says Martin, "we have to say 'Break the rule. Make the exception. . . . if that's what it takes to defuse a volatile situation.'" (p. 76)

That resonates on an individual level, but let's take the example one step further. Cases in which we are most tempted to break our own rules prove to be the best indicators of weaknesses in our systems or in our interpretation of these systems. If we do a good job establishing and communicating fair community standards, then we are well within our rights to create alternative resolutions when a traditional response does not fit the situation or the student. As Stoner points out, this is not breaking the rules but rather an expression of "complying most fully with the rules" (E. Stoner, personal communication, January 21, 2009). These are the cases that we must consistently sit down with and dissect as lessons in refining systems and personal response plans in anticipation of the next case that may present itself in a similarly unique way. This elevates a good system to a great one by taking a

willingness to do the right thing for one and lifting it to a systemic opportunity to do the thing right for all.

Conclusion

The intent of this chapter is to respect and value traditional pathways of managing student conduct and conflict and further help the reader consider ways to support and work within campus-tailored models to nurture educational, developmental, and socially just opportunities in student conduct work. Formal conduct pathways including the less-formal agreement process and the more-formal hearing-type process are well established in managing campus misconduct. These pathways have clearly stood as the favored approaches to campus conduct issues even as other pathways, including mediation, have fallen away as well-intended but lesser or alternative options in the past.

Yet, we have also become accustomed to relying on a judicial hammer as a large and burdensome tool in student conduct work. When situations arise that don't fit the model just right, we force them to fit. We take roommate quarrels and label them *disruptive conduct* so that they can enter established systems. We charge student groups for hosting racially divisive parties that play out cultural stereotypes in Black face or immigrant garb. We counsel an assault survivor into a process that is not equipped to restore the harm that has been done. Very educational things may happen as a referral gets channeled through the process, but it is a formalized conduct process nonetheless. As such, it is structurally predetermined that someone other than the student will be empowered to make a decision about how to manage the incident, and the case may result in sanctions more punitive in nature than educational or restorative.

As Stoner was wise to remind me, Jefferson celebrated the spirit of insubordination without intending to subordinate a student's spirit. In honoring this, I invite the reader to remember that we are all empowered to fill our own administrative tool boxes with more than just a disciplinary "hammer." But even in the event that an institution is equipped with just that hammer, consider that we are still in control of how to use it as a meaningful tool in the educational and developmental process. Hammers can be hard headed or pliable, swung with grace or carelessness, kindness or malice, precision or reckless abandon. They can be leveled evenhandedly or used to exact advantage or subordination. When provided with only one tool, the holder of that tool still has a lot of decisions to make on what the impact will be.

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