

RESTORATIVE JUSTICE

Reshaping School Discipline

CLARK HILL

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A NEW APPROACH TO STUDENT DISCIPLINE

- New legislation passed at the end of 2016 requires schools to develop restorative justice practices and incorporate them into the student disciplinary process
- The legislation creates opportunities for students to challenge the discipline they receive if certain procedural benchmarks are not met

PROCEDURAL BENCHMARKS

- Under the new bills, there is a rebuttable presumption that suspension over ten days or expulsion are not warranted unless the school can justify that it considered several mitigating factors:
 - pupils age; disciplinary history; whether the pupil had a disability; the seriousness of the violation; whether the violation threatened the safety of any pupil or staff member; whether Restorative Practices will be used to address the violation; and whether a lesser intervention would properly address the behavior

DOCUMENTATION

- Assuming that the school has documented consideration of the mitigating factors, it may proceed with the appropriate discipline
- Documenting the mitigating factors should begin with the initial disciplinary referral and carry through to the ultimate outcome

RESTORATIVE PRACTICES

- If a school adopts Restorative Practices for serious infractions, it broadens the discipline options for addressing suspension or expulsion. Each restorative intervention will involve voluntary participants who help determine the consequence. The bill calls this group of participants--which includes the victim, the offender, their parents or adult advocates, and affected community-members--"the Restorative Practices Team."
- The legislation says the Restorative Practices Team may require the pupil to do one or more of a number of things, such as apologize, perform community service, engage in counseling or pay restitution. And allows the team's solution to apply in addition to, or in place of, suspension or expulsion. It goes on to say "Restorative Practices should be the first consideration to remediate offenses such as interpersonal conflicts, bullying, verbal and physical conflicts, theft, damage to property, class disruption and harassment and cyberbullying."

RESTORATIVE PRACTICES

- It is one thing to understand what the law requires, but to ensure that discipline can be undertaken efficiently and with efficacy, it is important to understand the larger context of restorative justice and how faithful adherence to its practices encourages an environment where the need for disciplinary interventions may actually diminish

RESTORATIVE JUSTICE (RJ) IS . . .

- . . . an approach to addressing conflict and misconduct that focuses on healing rather than punishment and engages those directly affected in addressing the misconduct
- RJ assumes that misconduct and conflict injure those directly involved (victims and offenders) as well as the broader community to which they belong
- Rather than relying on punishment, RJ expects those who cause injuries to make things right with those they've harmed and with their community

Howard Zehr, (2002) *The Little Book of Restorative Justice*

Mark Umbreit and Marilyn Armour (2011)
Restorative Justice Dialogue: An Essential Guide for Research and Practice

DIFFERENT

Traditional Discipline Asks:

- What rules have been broken?
- Who did it?
- What do they deserve?

Restorative Justice Asks:

- Who has been hurt?
- What are their needs?
- Who has the responsibility to make things right to restore relationships?

Howard Zehr, Keynote Address to the 12th World Conference of the International Institute for Restorative Practices, October 2009

NATURAL

- Story-telling and listening
- Engaging all those affected by the conflict or misconduct
- Respect for all participants
- Consensus-based process for determining appropriate consequences
- Accountability defined by healing harm rather than serving punishment or being excluded from community
- Community supports and values all affected parties throughout healing process

Kay Pranis (2005) *The Little Book of Circles Processes: A New/Old Approach to Peacemaking*

Mark Umbreit and Marilyn Armour (2011)

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GROUNDED

- “Restorative justice is respect. Respect for all, even those who are different from us; even those who seem to be our enemies. Respect reminds us of our interconnectedness, but also of our differences. Respect insists we balance concerns for all parties. If we pursue justice as respect, we will do justice restoratively.”

Howard Zehr (2002) *The Little Book of Restorative Justice*

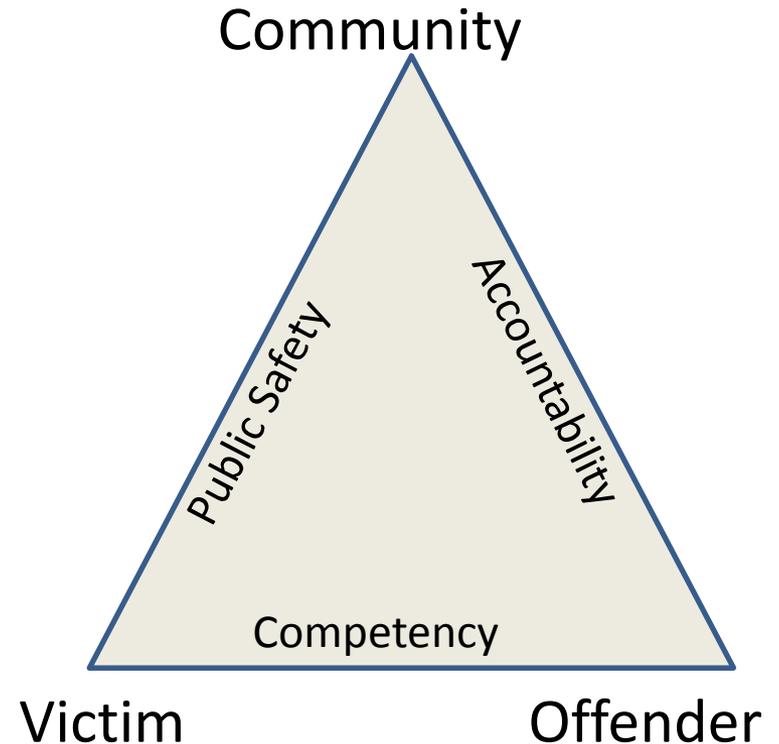
- RJ’s foundational concepts of **healing, respect, accountability, and engagement**, build empathy and speak to fundamental human values, ethics and practices common in ancient cultures from First Nations in Canada to Maori of New Zealand

Kay Pranis (2005) *The Little Book of Circles Processes: A New/Old Approach to Peacemaking*

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BALANCED

- In an atmosphere of respect, Restorative Justice brings together the person who has been harmed (victim) with the person who caused the harm (offender) and others affected more broadly (community) by the situation of misconduct or crime
- Together, those affected by the incident develop a solution which builds accountability and competency while enhancing public safety



BARJ Triangle, based on design by US Dept. of Justice, Office of Juvenile Justice and Delinquency Prevention Division (OJJPD)

INSIGHTFUL

Unlike traditional discipline where consequences are assigned, RJ engages all affected parties in a facilitated discussion that follows stages generally defined by these three questions

What happened?

All participants share their perspective so the group can come to a common understanding

Who has been affected, and how?

Each participant identifies who s/he thinks has been affected, including him- or herself, and explains how

How do we make things right?

Each participant offers ideas of what should be done to heal the harm or address the issue so all can move forward

ENDORSED

US Dept. of Education

“The widespread overuse of suspensions and expulsions has tremendous costs . . . Suspended students are less likely to graduate on time and more likely to be suspended again, repeat a grade, drop out of school, and become involved in the juvenile justice system . . .

These costs are too high. . . . I encourage America’s educators to proactively redesign discipline policies and practices to more effectively foster supportive and safe school climates. [and] reexamine school discipline.”

Arne Duncan, Former United States Secretary of Education,
Guiding Principles: a Resource Guide for Improving School Climate and Discipline, US Dept. of Education

MI Dept. of Education

“Administered well and appropriately, positive discipline can become a powerful tool for teaching students to succeed. The SBE strongly urges Michigan school districts to review existing zero tolerance policies, reserving exclusion for only the most serious offenses, and to adopt practices . . . such as PBIS and Restorative Practices. It urges school districts to integrate these practices into their culture to support and sustain them as vital elements of school operations.”

Michigan State Board of Education (SBE) Policy on Reducing Student Suspensions and Expulsions (May, 2014)

Results

“In 2013, Colorado lawmakers passed the Smart Schools Discipline Law, restricting the use of suspensions and expulsions and requiring the use of other strategies, including restorative practices. Since then, the number of suspensions has fallen by 25 percent—from 108,000 in 2007 to 80,000 last year. Meanwhile, school attendance and punctuality have improved by 30% . . .

“A restorative justice program reduced suspensions at one Oakland, Calif., middle school by 87 percent in its first year, according to a UC Berkeley School of Law evaluation. Now, nearly two dozen Oakland schools have similar programs.”

NEA Today, 2014, Sowing Empathy and Justice in Schools through Restorative Practices

DEVELOPMENTAL

- This [Restorative Resources video](#) offers a great introduction to restorative justice philosophy and practice. It also illustrates a number of ways school communities in California have benefitted from adopting a restorative justice paradigm for discipline.
- As you watch, think about how these schools have changed their approach to discipline by adopting a paradigm of restorative (instead of punitive) discipline

PERSONAL

- What does restorative justice mean to you?
 - Please share your thoughts and/or questions
- What is one way you can put RJ to work in:
 - your classroom?
 - your school?
 - your life?
- There is a wealth of restorative justice information available from studies to videos to trainings! To learn more, visit www.schertzingcommunications.com or e-mail Nancy Schertzing at schertzingcommunications@gmail.com.

TRAINING

- To learn more about restorative justice and how to put it to work in your learning community, register for Restorative Circles training January 31 – February 1, 2017 at http://schertzingcommunications.com/event/two-day-restorative-circles-training-law-offices-of-clark-hill/?instance_id=2.
- To maximize learning and mastery of the skills registration is limited to 20 attendees so register today!

THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.

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