

REFRAMING CAMPUS CONFLICT

Student Conduct Practice
Through a Social Justice Lens

Edited by
Jennifer Meyer Schrage
and Nancy Geist Giacomini

Foreword by Edward N. Stoner

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STERLING, VIRGINIA

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READING THE SCRIPTS

Balancing Authority and Social Support in the
Restorative Justice Conference and the
Student Conduct Hearing Board

David R. Karp

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Noddings, 1984, p. 193

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Prominent leaders in student conduct administration Ed Stoner and John Lowery (2004) present a template or Model Student Code of Conduct for colleges and universities with a model hearing script. While Stoner and Lowery recommend the use of an SCBH, they also allow that "a college or university may wish to institute either an arbitration or a mediation requirement prior to reaching the more formal Student Conduct Board Hearing stage. . . . In some cases a formal fact finding process is not required" (pp. 47-48). In this chapter, I will contrast one alternative process—restorative justice—with the SCBH. Each has its own model script, and the chapter explores how the process unfolds in each case.

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Prominent leaders in student conduct administration Ed Stoner and John Lowery (2004) present a template or Model Student Code of Conduct for colleges and universities with a model hearing script. While Stoner and Lowery recommend the use of an SCBH, they also allow that "a college or university may wish to institute either an arbitration or a mediation requirement prior to reaching the more formal Student Conduct Board Hearing stage. . . . In some cases a formal fact finding process is not required" (pp. 47-48). In this chapter, I will contrast one alternative process—restorative justice—with the SCBH. Each has its own model script, and the chapter explores how the process unfolds in each case.

Restorative justice is a popular variant of mediation and offers a variety of practice models (Barton, 2003; Karp & Allena, 2004; Van Ness & Strong, 1997; Zehr, 1990). On the college campus, two restorative practices are most common: the RJC and the accountability board. The restorative justice accountability board (sometimes called integrity boards and reparative boards) may be seen as a hybrid between the SCBH and the RJC. Rather than focus on the overlap, however, this chapter focuses on the differences in practice between the SCBH and the RJC, especially on issues of authority and social support and central concepts in sociology and criminology.

Characteristics of the SCBH and the RJC

A traditional SCBH model as advanced by Stoner and Lowery (2004) often consists of a chair who oversees the hearing, ensuring that the process is followed according to plan. Although Stoner and Lowery do not specify the membership of a conduct board, they commonly include representatives from students, faculty, and/or the administration. A hearing invites participation of the *accused student* (student accused of violating the code of conduct), *complainant* (the person submitting the charge, which may be a victim of the offending behavior or a college official), *advisors* for the accused student and/or complainant, *witnesses* to the incident, and *character witnesses* on behalf of the accused student.

By contrast, the RJC has two cofacilitators who share responsibility for overseeing the process. They meet with conference participants in advance to prepare them for the conference and to assess whether the case is appropriate for an RJC. Participants typically include the *student responsible* (a student who has admitted violating the code of conduct), *harmed parties* (people who were affected by the incident), and *support people* for both the responsible and harmed parties.

Dissecting the Scripts—Stage One

Table 10.1 presents the first stage of the RJC and the SCBH. This stage includes introductions of participants and some guidelines and expectations for the conference or hearing. The restorative script is used by Skidmore College (my institution) and is an adaptation of several published and unpublished restorative scripts (Barton, 2003; Dinnan, 2007; O'Connell, Wachtel, & Wachtel, 1998). The conduct board script is quoted verbatim from Stoner and Lowery (2004, pp. 68–76).

TABLE 10.1
Introduction and Ground Rules

<i>RJC Script</i>	<i>SCBH Script</i>
<ul style="list-style-type: none"> • Welcome everybody. Before the formal part of the conference begins, I would like us to introduce ourselves and indicate briefly our reasons for being here. I am _____ and I will be co-facilitating today's conference. • Thank you for attending. At today's conference, we will be focusing on the [<i>incidents</i>] that happened on [<i>date</i>]. We will focus on what _____ [<i>first name of student responsible</i>] did and its impact on others. Once we have learned more about what happened, we will identify what harm was caused and how it might be repaired. We will also focus on what can be done to reassure us that the behavior will not be repeated. • This conference is voluntary. We do not have to reach an agreement today, and if we do not, the issue will be referred back to the [<i>conduct administrator</i>] and handled in a different way. I am hopeful that we will reach an agreement and, if so, we will submit it to the [<i>conduct administrator</i>] for approval. It is possible, but rare, that the [<i>conduct administrator</i>] will want to make changes to the agreement. Does everybody understand this? • One goal of this conference is to create an environment in which everyone can speak freely and fully about how they feel about what happened. As facilitators, our job is to ensure that everyone here has a voice. Sometimes we will have open dialogue in which everyone can participate as they wish; at other times we will go around the circle inviting 	<p><i>Begin tape recorder.</i></p> <ul style="list-style-type: none"> • Good afternoon, my name is [_____], and I will be serving as the chair of the Student Conduct Board. My role is to oversee the Student Conduct Board Hearing that will be conducted today. Please note that today's Student Conduct Board Hearing is being tape-recorded. This recording represents the sole official verbatim record of the Student Conduct Board Hearing and is the property of this institution. At this time, I will ask the members of the Student Conduct Board to introduce themselves. • Would the Accused Student(s) introduce himself/herself (themselves)? • Would the Accused Student's advisor introduce himself/herself (<i>if present</i>)? • Would the Complainant introduce himself/herself? • Would the Complainant's advisor introduce himself/herself (<i>if present</i>)? • Would the individuals who are here today as possible witnesses introduce themselves? <p><i>If the Complainant or the Accused Student has an advisor, read the following statement:</i></p> <ul style="list-style-type: none"> • The role of the advisor during this Student Conduct Board Hearing is limited. It reflects that this process is not a courtroom proceeding, but is part of the institution's programs that are designed to provide a good living/learning environment for all members of our academic community. An advisor may not question witnesses or make statements before the Student Conduct Board. The only appropriate role for the advisor is to provide advice to the student who has requested his/her presence in a manner which does not disturb the proceedings of the Student Conduct Board. If an advisor fails to act in accordance with the procedures of the Student Conduct Board, he/she will be barred from these proceedings. • I would like to remind everyone participating in this Student Conduct Board Hearing that falsification, distortion, or misrepresentation before the Student Conduct Board is a violation of the Student Code. Any person who abuses the Student Code System in this way may face disciplinary charges for that violation. Witnesses, other than the Accused Student and the Complainant, are present in

TABLE 10.1 (Continued)

<i>RJC Script</i>	<i>SCBH Script</i>
each person to offer their perspective. When we do, a person can always pass if they do not have anything they want to say at that time.	the Student Conduct Board Hearing only while offering their information.
<ul style="list-style-type: none"> • Another job for us as facilitators is to create an environment of trust, so that we can speak honestly about the incident. To enable this, will everyone agree that what is said in this circle will stay in the circle—that we will not talk about what people have said here to others? • Does anybody have any questions about the process before we begin? Please ask at any time. 	<ul style="list-style-type: none"> • Would all witnesses, other than the Accused Student and the Complainant, please leave the Student Conduct Board Hearing room and wait outside. You will be asked to reenter the Student Conduct Board Hearing to offer your testimony. Before we proceed, are there any questions? • The Accused Student and the Complainant may challenge any member of the Student Conduct Board for bias if you believe that he or she cannot be fair in this Student Conduct Board Hearing. Does the Accused Student wish to challenge any member of the Student Conduct Board for bias? Does the Complainant wish to challenge any member of the Student Conduct Board for bias? <i>[If so, the student should be asked to explain what might prevent the member from participating fairly in the Student Conduct Board Hearing and the chair may then recess the Student Conduct Board Hearing briefly to consider and to decide the challenge.]</i>

Note. SCBH Script from Stoner and Lowery (2004, pp. 68–76).

The introduction to the process sets a tone. At the outset, it is clear that the RJC and the SCBH differ, especially in their formality. Nevertheless, every student conduct process seeks to balance two goals that are in tension—authority and social support. One goal is to convey to participants that the process is meant to be taken seriously. The administration is concerned with conduct and wants all to know that the process may have real consequences for the participants, the response will be commensurate with the severity of the incident, and the process is not arbitrary but thoughtfully conceived and implemented. This may be defined as the goal of establishing *authority*. One of the founding fathers of sociology, Max Weber examined the basis of authority, especially legal authority, and found that it is established when it is impersonal, abstract, consistent, and rational (Trevino, 1996). It is vital to establish authority in a student conduct process, otherwise it loses legitimacy.

But another goal is to create an atmosphere of *social support* conducive to honest communication, active participation, open dialogue, and personal commitment to change. While the first goal lends itself to an austere, formal

proceeding, the latter nudges toward informal and personal discussion. Social support can be defined as emotional or instrumental help that assists the person and builds relationships. One of the world's leading criminologists, Francis Cullen (1994), goes so far as to argue that "across nations and across communities, crime rates vary inversely with the level of social support" (p. 537). In other words, providing social support is an essential ingredient to responsible behavior.

The opening scripts of the RJC and SCBH offer an opportunity for participants to introduce themselves and to learn about how the process will unfold. But, the use of language here is quite important. Notice the use of nonoverlapping terms found in each of the scripts in Table 10.2.

The aggregation of these terms sets the tone for the process. Typically, conduct processes seek to avoid courtroom language; indeed Stoner and Lowery (2004) argue that "the practice of calling student discipline proceedings 'judicial' . . . [is a] 'cardinal error'" (p. 15). The SCBH reflects this ideal

TABLE 10.2
Introductory Scripted Language Contrasting Social Support and Authority

<i>RJC</i>	<i>SCBH</i>
Conference	Chair
Co-facilitator	Hearing
Incident	Tape recording
Harm	Official verbatim record
Repair	Accused
Reassure	Complainant
Behavior	Statements
Voluntary	Witnesses
Agreement	Proceedings
Issue	Procedures
Voice	Barred
Dialogue	Falsification
Circle	Distortion
Trust	Misrepresentation
Honesty	Violation
	Code system
	Disciplinary charges
	Testimony
	Challenge
	Bias

when it replaces, for example, the term *defendant* with *complainant* and the term *trial* with *hearing*. However, to establish authority, it still makes use of other terms, such as *statements*, *witnesses*, and *testimony*. The RJC avoids such language more universally to further set it apart from a quasi-courtroom experience.

One important example of the authority/social support comparison is the difference between the role of the SCBH chair and the RJC cofacilitators. The term *chair* implies a power hierarchy, that the person in the role has an important directive role. Having cofacilitators suggests that power is devolved, and that even between the two roles, emphasis is on running a process instead of determining decisions for others.

This egalitarian decision-making model is also implied in the restorative conference by assuming all participants are present voluntarily and will remain throughout the conference. Role differentiation is emphasized in the conduct board by (a) introducing and identifying participants by their position, for example, accused student; (b) narrowly prescribing the way in which various participants can speak, for example, the adviser cannot question witnesses or make statements; and (c) excluding participants from the hearing at various points depending on their role. Such differentiation establishes a carefully crafted power structure that helps ensure authority, that the process will be undertaken efficiently and fairly, participants will be constrained to ensure civility, and that the power lies primarily with those who will remain present throughout the entire process. That is, the chair and other board members who are the only ones to obtain full information, in the end will make the decisions.

In contrast, the RJC suggests a more open but uncertain or ambiguous process. Roles are not clearly defined, fewer ground rules are established, and no tape recording is made. The emphasis is on participation, with suggestions that all will have a chance to speak, that open dialogue will occur, and that finding agreement is not mandatory but is in the hands of participants. Restorative practices sacrifice some authority in favor of building an atmosphere of trust, inclusion, and empowerment.

Dissecting the Scripts—Stage Two

The next stage in both processes (Table 10.3) is focused on information gathering. In the RJC, the process includes narrative accounts by all participants, sharing from their perspective what happened and how they were affected by the incident. There is an opportunity for participants to ask questions of each other and react to statements others have made.

In the SCBH, the accused student states whether he or she is in violation, and the board evaluates presented evidence. At this stage, accused students, complainants, and others (except advisers) are treated as witnesses to the incident, all providing information about what happened. Board members are allowed to ask questions of witnesses, and accused students and complainants are able to ask questions as long as they are directed to the chair of the board.

The first spoken statement in the restorative conference illustrates the most important difference between models: The case was referred to the RJC because the student responsible has taken responsibility for what happened (and is offered an opportunity to resolve the incident via an RJC diversion program) and/or *admitted* to violating the code of conduct (therefore participating in the RJC as part of the *sanction* phase of the disciplinary process). In contrast, the conduct board is convened with the emphasis of determining whether the student is in violation. The SCBH has a *due process* focus, making sure that facts are revealed carefully and accurately. In keeping with the value of authority, the conduct board is concerned with *objectivity* and determining, through evidence, what really happened at the incident.

The RJC is less concerned with the facts, though they are not irrelevant. Instead, because the student has admitted fault, the conference is more concerned with the *subjective* experience of stakeholders in identifying how they were affected by the incident. Because of this difference, cases in which a student is professing innocence would not be referred to a restorative conference. Note again that there are hybrid models including restorative accountability boards that *are* designed to take cases that require fact finding, just like a SCBH. To avoid confusion in this chapter, I am focusing on the restorative conferencing and the conduct hearing board only to highlight the distinctions between models.

Because restorative justice focuses less on fact finding than on personal narratives, it moves proceedings in a different direction than the conduct board hearing. Often, an SCBH will be concerned not only with the question of whether the student violated the code of conduct but with which code was violated. The student might have been charged, for example, with violating code numbers 3, 8, and 11, but will argue that he or she only violated number 3. Nuanced and lengthy evidence analyses often ensue while the board investigates and then deliberates about the right assignment. The RJC is little concerned with this issue. Instead, the line of inquiry is on determining the nature of harm caused by the offending behavior. Visually, a cofacilitator tracks stated harms as they are described on a flip chart for all to view. In restorative justice, a major goal is to educate offenders about the

TABLE 10.3
Information Gathering: Harm Identification Versus Violation Identification

<i>RJC Script</i>	<i>SCBH Script</i>
<p><i>Co-facilitator takes notes. When everyone has spoken, the notes are summarized and harms are listed on a flip chart. Then the group is asked for confirmation and completeness.</i></p> <p><i>All questions below are suggested prompts. Facilitator can modify as appropriate.</i></p> <p><i>To everyone:</i></p> <p>We will start the conference by asking everyone to tell us about what happened from their perspective. We will start with the person(s) responsible and then hear from his/her supporter(s), and then hear from harmed parties and their supporters.</p> <p><i>To student responsible:</i></p> <ul style="list-style-type: none"> • [name], you have already admitted your involvement in this incident. Before you tell us about what happened, is there anything you would like to say? • Please tell us what happened. How did you get involved? • What was going through your mind at the time? • How did you feel about what happened right afterward and how do you feel now? • Who do you think has been affected by this? How? • Who do you think is responsible for this incident and its consequences? [Watch out for any victim-blaming and intervene if it occurs] • Have you been in trouble like this before? [If student responsible fails to reveal documented past incidents, facilitators are to raise them.] 	<ul style="list-style-type: none"> • The Student Conduct Board is considering charges, which have been brought against [____], the Accused Student, by [____], the Complainant in today's Student Conduct Board Hearing. Under the Student Code, [____], the Accused Student, has been charged with the following violations of the Student Code: <p><i>The Student Conduct Board Chair reads each of the violations of the Student Disciplinary Code, which the Accused Student is alleged to have violated.</i></p> <ul style="list-style-type: none"> • Would the Accused Student please respond to each of the charges, which I have just read indicating whether you accept responsibility for violating this provision of the Student Code? <p><i>If the Accused Student does not accept responsibility for violating each of the provisions of the Student Code listed above, then the Student Conduct Board Hearing shall proceed. If the Accused Student does accept responsibility for violating each of the provisions of the Student Code listed above, then the Student Conduct Board Hearing shall proceed with the presentation of information limited to that which should be considered in the imposition of sanctions.</i></p> <ul style="list-style-type: none"> • At this time, we will begin the portion of the Student Conduct Board Hearing during which information is presented for consideration in determining if the Accused Student has or has not violated the Student Code. <p><i>Witnesses may be asked to swear or affirm to tell the truth at this point if the institution wishes to follow this practice.</i></p> <ul style="list-style-type: none"> • The Complainant and Accused Student will be provided the opportunity to share introductory remarks, which should not exceed five (5) minutes. You are not required to do so. If you have prepared an Impact Statement in writing or wish to make one orally, you may do so at this time. Are there any questions before we proceed with any introductory remarks? • Would the Complainant in this case like to make introductory remarks? If so, please proceed. • Would the Accused Student in this case like to make introductory remarks? If so, please proceed. • At this time, the Student Conduct Board will hear witnesses offer testimony for consideration in determining if

TABLE 10.3 (Continued)

<i>RJC Script</i>	<i>SCBH Script</i>
<ul style="list-style-type: none"> • Is there anything else you would like to say at this point? • Thank you <p><i>To supporters of student responsible:</i></p> <ul style="list-style-type: none"> • How did you find out initially about what happened? • What did you think when you first heard? • What has happened since? • How do you feel about the incident now? • What do you see as the harmful consequences of this incident? • Is there anything else you would like to say at this point? • Thank you <p><i>To primary, then secondary harmed parties:</i></p> <ul style="list-style-type: none"> • Thank you for your patience. • Please tell us what happened from your perspective and what it has meant for you. • In what ways were you affected by this incident? • How do you feel about the incident now? • Is there anything you would like to ask [student responsible]? • Is there anything else you would like to say at this point? • Thank you <p><i>To harmed party supporters:</i></p> <ul style="list-style-type: none"> • How did you find out initially about what happened? • What did you think when you first heard? • What has happened since? 	<p>the Accused Student has or has not violated the Student Code. The Student Conduct Board will begin by calling witnesses to present testimony. After the Student Conduct Board has called all the witnesses it considers appropriate, the Complainant, followed by the Accused Student, will be afforded the opportunity to call additional witnesses.</p> <ul style="list-style-type: none"> • The members of the Student Conduct Board will have the opportunity to question each witness. Witnesses called by the Student Conduct Board may be questioned by the Complainant, followed by the Accused Student, after the Student Conduct Board has concluded its questioning. Witnesses called by the Complainant and Accused Student will be questioned initially by the Student Conduct Board. Following the conclusion of the Student Conduct Board's questioning, the individual calling the witness will have the opportunity to have questions asked of the witness. Following the conclusion of this questioning, the other individual will have the opportunity to have questions asked of the witness. Before a witness is excused, the chair will ask members of the Student Conduct Board and the Complainant and Accused Student if they have any final questions. • All questions by the Complainant and Accused Student of witnesses should be directed to the chair of the Student Conduct Board. • Are there any questions before witnesses testify? [Typically, the Complainant will be asked to testify first, followed by the Accused Student, and then other witnesses.] • At this time, the Board will hear from the Complainant. Do the members of the Student Conduct Board have any questions for this witness? <p><i>After completion of questioning by the Student Conduct Board:</i></p> <ul style="list-style-type: none"> • Does the Complainant wish to provide any additional information to the Board? • Does the Accused Student have any questions to be directed to the Complainant? Please remember to direct your questions to the chair of the Student Conduct Board. • At this time, the board will hear from the Accused Student. • Do the members of the Student Conduct Board have any questions for this witness?

TABLE 10.3 (Continued)

RJC Script	SCBH Script
<ul style="list-style-type: none"> • How do you feel about the incident now? • What do you see as the harmful consequences of this incident? • Is there anything else you would like to say at this point? • Thank you <p><i>To student responsible:</i></p> <ul style="list-style-type: none"> • _____ <p>[name], you have now had a chance to hear about how the incident has affected everyone, is there anything you would like to say at this time?</p> <p><i>To everyone:</i></p> <ul style="list-style-type: none"> • Is there anything you would like to say in response? <p><i>Facilitators may wish to shift primary leadership at this point and have the facilitator who has been listing harms lead the review of them and the brainstorming process to find solutions.</i></p> <ul style="list-style-type: none"> • We will now summarize our list of harms. • Is there anything to be changed or added? 	<p><i>After completion of questioning by the Student Conduct Board:</i></p> <ul style="list-style-type: none"> • Does the Accused Student wish to provide any additional information to the board? • Does the Complainant have any questions to be directed to the Accused Student? Please remember to direct your questions to the chair of the Student Conduct Board. <p><i>After the Complainant and the Accused Student have testified, the following procedures will be followed for additional witnesses called by the Student Conduct Board.</i></p> <ul style="list-style-type: none"> • The next witness to be called by the Student Conduct Board is _____. Do the members of the Student Conduct Board have any questions for this witness? <p><i>After the completion of the questioning by the Student Conduct Board:</i></p> <ul style="list-style-type: none"> • Does the Complainant have any questions for this witness? Please remember to direct your questions to the chair of the Student Conduct Board. <p><i>After the completion of questions suggested by the Complainant:</i></p> <ul style="list-style-type: none"> • Does the Accused Student have any questions for this witness? Please remember to direct your questions to the chair of the Student Conduct Board. <p><i>After the completion of questions suggested by the Accused Student:</i></p> <ul style="list-style-type: none"> • Are there any final questions before this witness is excused? Thank you very much for taking the time to participate in this Student Conduct Board Hearing of the Student Conduct Board. Your participation is appreciated. Please do not discuss with other potential witnesses the information you have shared with us today. <p><i>This process is repeated until the Student Conduct Board has called each witness.</i></p> <ul style="list-style-type: none"> • At this time, the Complainant and the Accused Student will be provided the opportunity to make concluding remarks. You are not required to do so. Are there any questions before we proceed? Would the Complainant in this case like to make concluding remarks? If so, please proceed. • Would the Accused Student in this case like to make concluding remarks? If so, please proceed.

TABLE 10.3 (Continued)

RJC Script	SCBH Script
	<ul style="list-style-type: none"> • At this time, we would ask that the Complainant, Accused Student, and their advisors (<i>if any</i>) leave the Student Conduct Board Hearing room so that the members of the Student Conduct Board may determine if the Accused Student is responsible for any of the violations of the Student Code with which he/she has been charged. • After the determination regarding responsibility is made, you will be asked to return to this room. The Student Conduct Board will announce its decision regarding responsibility. If the Accused Student is found not responsible concerning all charges, the Student Conduct Board Hearing will be adjourned. If the Accused Student is found responsible concerning any charges, the Student Conduct Board will consider the following additional information related to sanctioning. <ul style="list-style-type: none"> A. Character witnesses on behalf of the Accused Student; B. Any prior violations of the Student Code by the Accused Student; and C. Recommendations for sanctioning from the Complainant and the Accused Student. <p><i>Turn the tape recorder off. Once the Student Conduct Board has concluded its deliberations concerning responsibility on each alleged violation, the Complainant, and Accused Student are called back into the Student Conduct Board Hearing.</i></p>

Note. SCBH Script from Stoner and Lowery (2004, pp. 68–76).

consequences of their behavior, in large part because so few have considered them beyond their own personal concerns.

This stage continues the contrast between authority and social support. Facilitators use participants' names rather than addressing them by role (e.g., accused student). This signals that informality and personal recognition are more important than role differentiation. RJC facilitators invite participants to ask each other questions, while the conduct board chair asks that all questions be channeled through the board. As Stoner and Lowery (2004) note, the SCBH chair repeatedly reminds participants to direct their questions to the board to reduce the risk of conflict between complainant and accused, and maintain "a process that is calm rather than confrontational" (p. 65). This is a reasonable concern especially when accused students are denying responsibility, but less important when they have already made an admission.

One of the most notable distinctions between the two models in this stage is the introduction of the private deliberation process in the conduct board hearing. All other participants are excused while the board deliberates to determine if the student is in violation. (A second deliberation occurs when the board decides the nature of the sanction). This again highlights the value placed on authority by preventing all the participants from hearing all the information and having a voice in all the decisions. Restorative justice practitioners believe keeping all participants present throughout increases trust because they will have a full understanding of others' viewpoints and why each decision has been made.

Participants' roles are quite different in the two practices. The SCBH refers to *accused student*. The term *student responsible* in the RJC highlights the admission of responsibility. In the conduct board hearing, a student victimized by an incident is called a *complainant* and in the restorative conference, he or she is called a *harmed party*. Again the terms signal the emphasis in the SCBH that the victim's role is to present evidence (complaint) to determine responsibility, and in the RJC the role is to describe how he or she was affected by misconduct. This is further reinforced by the role of witnesses in the SCBH who also help verify the circumstances of the incident. Such people may or may not be invited to a restorative conference depending on whether they are viewed as harmed parties.

In the conduct board hearing, both complainants and accused can bring advisers, whose role as noted in Table 10.1, "is to provide advice to the student who has requested his/her presence in a manner which does not disturb the proceedings." In the restorative conference, responsible and harmed parties are encouraged to bring support people. Their role is *not* to offer counsel, but to help parties feel more comfortable and to offer their perspective on the impact of the incident. In sum, the information gathering stage of the SCBH is designed to present and evaluate evidence to determine responsibility. In the RJC, this stage is used to identify the harm caused by the misconduct.

Dissecting the Scripts—Stage Three

Table 10.4 introduces the final stage of the processes. Both are focused on determining appropriate sanctions and agreements. In the RJC, the decision-making process concentrates on repairing harm and rebuilding trust. In the SCBH, the decision making focuses on evaluating the character of the accused student.

TABLE 10.4
Decision Making About Sanctions and Agreements

<i>RJC Script</i>	<i>SCBH Script</i>
<p><i>Start a new flip-chart page called "repairs" or "solutions."</i></p> <p><i>To everyone:</i></p> <ul style="list-style-type: none"> • We have all spoken about the harms caused by this incident and are now at the stage of identifying what can be done to make things right. Two basic questions will guide us forward. <ol style="list-style-type: none"> 1. How can the harm be repaired? 2. How can we regain confidence in _____ [<i>student responsible</i>] so that we can trust that s/he will be a responsible member of our community? • Please remember that our focus is on finding solutions. We are not here to decide if _____ [<i>student responsible</i>] is a good or bad person, but to figure out how the harm can be repaired and trust rebuilt. • If you do not believe we can work on solutions together, we can discuss this and, perhaps, end the conference. Would you like to continue with the conference? • This next stage is about coming up with ideas. We will write all of the suggestions on the flipchart. Later we can decide to make changes and finalize an agreement that is satisfactory to everyone. • During this brainstorming process, we will post all of your ideas on the flipchart. Later, we can refine them and write up the agreement. <p><i>To student responsible:</i></p> <ul style="list-style-type: none"> • Looking at this list of harms, what do you think can be done to repair each harm? 	<p><i>Turn the tape recorder on.</i></p> <ul style="list-style-type: none"> • This Student Conduct Board Hearing of the Student Conduct Board is now back in session. The Student Conduct Board has considered the charges against [____], the Accused Student. The Student Conduct Board has evaluated all of the information shared with it and has determined which information was more credible, when the information was in conflict. • Regarding the charge of [____], the Student Conduct Board finds you [responsible] [not responsible]. <p><i>Repeat this sentence for each violation of the Student Code with which the Accused Student has been charged. If the Accused Student is found not responsible of all charges, read the following statement.</i></p> <ul style="list-style-type: none"> • This Student Conduct Board Hearing of the Student Conduct Board is now concluded. Any further questions regarding the student code system or this decision of the Student Conduct Board should be directed to [____]. Questions regarding this case should not be directed to any member of Student Conduct Board. The members of Student Conduct Board are cautioned not to discuss this matter with anyone to respect the privacy of all persons involved. Thank you very much for your participation. <p><i>If the Accused Student is found responsible of any charge, read the following statement.</i></p> <ul style="list-style-type: none"> • At this time, the Accused Student may ask the Board to call a reasonable number of character witnesses. Does the Accused Student wish to do so? • Would the character witness please state your name and tell us the nature of your acquaintance with the Accused Student and comment on the student's character? • Do the members of the Student Conduct Board have any additional questions for this character witness? • Does the Accused Student wish to have any questions asked of this character witness? Please remember to direct any questions to the chair of the Student Conduct Board. • Does the Complainant wish to have any questions asked of this character witness? Please remember to direct any questions to the chair of the Student Conduct Board.

TABLE 10.4 (Continued)

RJC Script	SCBH Script
<ul style="list-style-type: none"> • What else can you do that can demonstrate you can be a positive member of our community? <p><i>To harmed parties sequentially, then support persons:</i></p> <ul style="list-style-type: none"> • Looking at this list of harms, what do you think can be done to repair each harm? • What else would you need to see from _____ [student responsible] to restore your confidence in him/her? <p><i>To student responsible:</i></p> <ul style="list-style-type: none"> • Would you be willing to agree to these suggestions? <p><i>To everyone:</i></p> <ul style="list-style-type: none"> • What do you think of what we have come up with so far? Is this a fair and reasonable outcome? • Now that we have reached an agreement, we will write it up for you to sign. Each of you will get a copy of the agreement, and we will submit it to the [conduct administrator] for approval. • If the agreement is accepted by the [conduct administrator], then _____ [student responsible] will have to complete the various tasks by the deadline or he/she will not be able to register for next semester's classes [or will have his/her diploma held if a graduating senior]. • If after you [student responsible] leave, you believe that this process was conducted unfairly, you can appeal the agreement we have reached with the [conduct administrator]. • While we write up the agreement, we would like you to complete an 	<p><i>Repeat as necessary for each witness.</i></p> <ul style="list-style-type: none"> • Would the Complainant like to offer any comments for consideration in the imposition of sanctions? • Would the Accused Student like to offer any comments for consideration in the imposition of sanctions? • At this time, we would ask that the Complainant, Accused Student, and their advisors leave the Student Conduct Board Hearing room so that the members of the Student Conduct Board may determine the sanctions to be recommended in this case. • The Student Conduct Board will now request information regarding the Accused Student's prior violations of the Student Code, if any. Has the Accused Student been found responsible for violating the Student Code in any prior incidents? • After the Student Conduct Administrator considers the Student Conduct Board's sanctioning recommendations, and determines what sanctions to impose, the Accused Student and Complainant have the opportunity to return to this room. • The decision regarding sanctions will be announced. You may choose not to attend the announcement of the sanctions. Regardless, the Accused Student and Complainant (if a student) will receive written notification of the outcome of the Student Conduct Board Hearing. <p><i>Turn the tape recorder off. Once the Student Conduct Board has concluded its deliberations the Accused Student and Complainant are called back into the Student Conduct Board Hearing.</i></p> <p><i>Turn the tape recorder on.</i></p> <ul style="list-style-type: none"> • This Student Conduct Board Hearing of the Student Conduct Board is now back in session. The following sanction(s) will be imposed in this case: <p><i>Read each of the sanctions.</i></p> <ul style="list-style-type: none"> • This decision may be appealed within five (5) working days of receipt of written notification of the decision in this case. Appeals should be made in writing and delivered to _____. Decisions of the Student Conduct Board and/or the Student Conduct Administrator may be appealed on the following grounds only: <ol style="list-style-type: none"> A. The original Student Conduct Board Hearing was not conducted fairly in light of the charges and

TABLE 10.4 (Continued)

RJC Script	SCBH Script
<p>evaluation form. This will help us to know how well this process worked for you and how we can improve it.</p> <p><i>Pass out and collect forms. Have agreement signed and pass out copies.</i></p> <p>CLOSING THE CONFERENCE</p> <p><i>Try to end on a positive note by expressing appreciation for the hard work completed.</i></p> <ul style="list-style-type: none"> • Thank you for your hard work today. In closing this conference, I'd like to go around the circle and ask each person how he or she is feeling about how things went. I'll start by saying . . . 	<p>information presented, and not in conformity with prescribed procedures giving the Complainant a reasonable opportunity to prepare and to present information that the Student Code was violated, and giving the Accused Student a reasonable opportunity to prepare and to present a rebuttal of those allegations.</p> <ol style="list-style-type: none"> B. The decision reached in this case was not based on substantial information. C. The sanctions were not appropriate for the violation of the Student Code which the Accused Student was found to have committed. D. New information, sufficient to alter a decision, is now available which was not available to the person appealing at the time of the original Student Conduct Board Hearing. For more information, please refer to the Student Code which is published in the {_____}. <ul style="list-style-type: none"> • Are there any final questions at this time? • Any further questions regarding the student code system or this decision of the Student Conduct Board should be directed to [_____], the Student Conduct Administrator. Questions regarding this case should not be directed to any member of Student Conduct Board. The members of Student Conduct Board are cautioned not to discuss this matter with anyone, to respect the privacy of all persons involved. • This Student Conduct Board Hearing of the Student Conduct Board is now concluded. Thank you very much for your participation. <p><i>Turn tape recorder off.</i></p>

Note. SCBH Script from Stoner and Lowery (2004, pp. 68–76).

The RJC begins this stage with a reminder of the twin purposes of the conference: to identify and repair harm and to restore trust in the community. The facilitator specifically discourages the group from passing judgment about the character of the student responsible. Restorative practitioners often say that the facilitators place the incident, not the student, in the center of the circle. This means that all parties consider the harm that was caused and from their particular vantage point share how they were affected and what they believe needs to happen to make things right.

The restorative justice facilitator also asks if participants wish to proceed with the conference. This is done to emphasize the voluntary nature of the conference and reaffirm the commitment of the student in taking responsibility for the misconduct. Because the decision-making process is collaborative and inclusive, it is important that all parties agree to continue. If not, then the conference will end and the case will be referred to a more formal decision-making process, such as the SCBH.

The conduct board hearing begins this stage with the introduction of character witnesses invited to speak on the accused student's behalf. The board is thus allowed to make an evaluation of the student's character and use that to inform sanctioning. Presumably, the board is expected to sort out whether the misbehavior is characteristic of the person or if the violation was out of character and not likely to be repeated.

In the RJC, concerns about the risk of reoffense are directed toward identifying how the student can demonstrate prosocial behavior rather than determining the student's character. Nevertheless, past misbehavior is revealed, the student responsible and support people share their perspectives, and participants do draw conclusions about risk. Students who pose a high risk will need to do more to restore confidence than those who pose less of a risk.

This final stage in the proceedings recapitulates the contrast between authority and social support. In the SCBH, a second private board deliberation is introduced. The accused student and complainant are excluded, and thus may not understand the rationale behind the sanctioning decision. When they are invited to return, the script does not require that any rationale be provided. Again, the board exerts authority and may undermine a sense of trust, fairness, or legitimacy. Research in criminal justice has demonstrated that restorative practices succeed better than courts in achieving this sense of trust, fairness, and legitimacy in a process or decision reached, although we do not have controlled studies comparing such outcomes between RJCs and SCBHs (Tyler, Sherman, Strang, Barnes, & Woods, 2007). We can expect, however, that parties who collaborate on an agreement are more likely to view it as fair than parties who have little to no control over the outcome.

Sanctioning

The Model Code (Stoner & Lowery, 2004) provides a list of sanctions that reflect a variety of punishment philosophies. Table 10.5 enumerates these sanctions and their descriptions. I have added a third column which associates each sanction with a punishment philosophy (Braithwaite & Pettit,

TABLE 10.5
Model Code Sanctions

<i>Sanction</i>	<i>Description</i>	<i>Philosophy^a</i>
Warning	A notice in writing to the student that the student is violating or has violated institutional regulations.	Retribution
Probation	A written reprimand for violation of specified regulations. Probation is for a designated period of time and includes the probability of more severe disciplinary sanctions if the student is found to violate any institutional regulation(s) during the probationary period.	Deterrence
Loss of Privileges	Denial of specified privileges for a designated period of time.	Incapacitation Retribution
Fines	Previously established and published fines may be imposed.	Deterrence Retribution
Restitution	Compensation for loss, damage, or injury. This may take the form of appropriate service and/or monetary or material replacement.	Restorative Justice
Discretionary Sanctions	Work assignments, essays, service to the [College] [University], or other related discretionary assignments.	Restorative Justice
Residence Hall Suspension	Separation of the student from the residence halls for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.	Deterrence Incapacitation Retribution
Residence Hall Expulsion	Permanent separation of the student from the residence halls.	Deterrence Incapacitation Retribution
[College] [University] Suspension	Separation of the student from the [College] [University] for a definite period of time, after which the student is eligible to return. Conditions for readmission may be specified.	Deterrence Incapacitation Retribution
[College] [University] Expulsion	Permanent separation of the student from the [College] [University].	Deterrence Incapacitation Retribution
Revocation of Admission and/or Degree	Admission to or a degree awarded from the [College][University] may be revoked for fraud, misrepresentation, or other violation of [College][University] standards in obtaining the degree, or for other serious violations committed by a student prior to graduation.	Deterrence Incapacitation Retribution

TABLE 10.5 (Continued)

Sanction	Description	Philosophy ^a
Withholding Degree	The [College][University] may withhold awarding a degree otherwise earned until the completion of the process set forth in this Student Conduct Code, including the completion of all sanctions imposed, if any.	Deterrence Incapacitation Retribution

^a Punishment philosophy statements by Braithwaite and Pettit (1990).

Note. SCBH Script from Stoner and Lowery (2008).

1990). Deterrence requires that the punishment should be swift, certain, and severe or painful enough to the student responsible, that it deters him or her as well as others from repeating the violation. Retribution specifies that punishment should reassure the community that the violation will not be tolerated and should be proportionately harsh to offset any benefit accrued by the offending behavior (e.g., an eye for an eye). Incapacitation directs that punishment should limit the student's ability to repeat the offense. Restorative justice practitioners shy away from using the term *punishment* but specify that agreements should repair the harm and rebuild trust.

Clearly, most sanctions in the Model Code focus on deterrence, retribution, and/or incapacitation. Often, one sanction can serve multiple ends. For example, paying a fine is painful enough that it can reassure the community that the student responsible is not getting away with anything and make him or her think twice about repeating the violation. Even though it involves money, however, it does not repair harm to a harmed party like restitution.

The Model Student Conduct Code (Stoner & Lowery, 2004) does not espouse any particular punishment philosophy nor does the script offer guidance to board members, except that they take into consideration comments by the accused student and the complainant in sanctioning. The model code further provides the board with options that can support their personal values, though weighted toward deterrence and retribution.

In contrast, restorative justice facilitators specifically encourage restorative outcomes and discourage other sanctions. Still, a restorative conference may arrive at deterrence or incapacitation-focused outcomes (e.g., residence hall suspension) if conference participants cannot identify actions the responsible student can take to restore trust. In this case, though, the framing of the decision is different. In the SCBH, the question for the board is: Is the misconduct severe enough to warrant suspension? In the RJC, the question to harmed parties is: What would it take for you to feel OK about the

student responsible remaining on campus? Though framed differently, each may lead to suspension, but the nature of the discussion will be quite different.

In a restorative justice model, all efforts are made to avoid suspension from the institution, and the burden of responsibility to avoid suspension shifts to the student responsible. For instance, the facilitator may state that the student cannot register for the following semester's classes until all reparative tasks are completed. Thus, the student may self-suspend by failing to live up to an agreement he or she made, but the institution has not suspended the student.

Conclusion

The restorative conference and student conduct board share a goal of creating a process that is "educational, not adversarial" (Stoner & Lowery, 2004, p. 16) and one that treats "all students with equal care, concern, honor, fairness, and dignity" (p. 15). The SCBH must be able to handle cases where accused students are denying responsibility and must make a recommendation about sanctions. The RJC is specifically designed to create a collaborative decision-making process that meets the needs of harmed parties and is limited to cases where an admission is made. In such cases, the process seeks to provide greater opportunity for learning and reflection by student offenders.

A study in the *Journal of College Student Development* by Cooper and Schwartz (2007) suggests that students tend to have difficulty with moral judgment, and argues that conduct professionals should develop practices "that would help students understand their responsibilities for living in an academic community, e.g., critical reflection" (p. 606). Given that a large number of students admit responsibility for their misconduct, restorative justice rather than adjudication through conduct boards holds great opportunity as an alternative pathway in that it aspires to the noble mission of higher education to further self-reflection and moral development in our students.

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