FROM THE THEORETICAL TO THE PRACTICAL: NAVAJO PEACEMAKING AS AN ALTERNATIVE TO PUNITIVE SCHOOL DISCIPLINE

A Thesis
submitted to the Faculty of
The School of Continuing Studies
and of
The Graduate School of Arts and Sciences
in partial fulfillment of the requirements for the
degree of
Doctor of Liberal Studies

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Washington, D.C.
October, 2011
ABSTRACT

Traditional punitive school discipline focuses on codes of conduct which emphasize the offensive behavior, who violated the proscriptive behavior, and what punishment should be rendered. This “swift justice” tends not to address the underlying causes of the misbehavior or the resulting harm to others.

In the school setting, students are victims of harassment, bullying, hazing, threats, and other aggressive behaviors. Some offended students have been emotionally and physically harmed so severely that they commit suicide, while others who claim victimization have brought weapons to school and have injured or killed fellow students and school administrators and teachers. The school environment should be civil and respectful, and the dignity of each individual must be acknowledged.

The philosophical foundation of my research concerns the core value and the rights of every child to personal safety and bodily integrity and its ancillary values of mutual respect, understanding, and harmony. This Thesis is an interdisciplinary approach focused on justice and children’s rights. Philosophical theories of Plato, Immanuel Kant, Simone Weil, Albert Camus, and Hans-Georg Gadamer serve as the backdrop for theoretical concepts on justice. These views progress to legal precedents in American jurisprudence, to contemporary thoughts on restorative justice practices, to moral reform in our schools,
and conclude with justice from the practical point of view and application of traditional Navajo Peacemaking in the school setting through school policy and disciplinary procedures to instruction through an age-graded, six unit curriculum template. Philosophy, law, and education bridge the interdisciplinarity of each chapter in this Thesis. The end result is the implementation in the schools of an ancient restorative justice practice of the Navajo People known as Diné Peacemaking. The term Diné is a traditional name for the Navajo People and is interchangeably used throughout this narrative with the term Navajo.

Through an examination of the legal precedents established by Federal and State courts, the rights of children in the public school setting are addressed pursuant to the United States Constitution and Federal legislation. The philosophical and legal bases of children’s rights are conjoined with their practical application in the school setting through school policy adopting a curriculum based on the principles and values of Navajo Peacemaking, as well as policy authorizing the use of Navajo Peacemaking in schools as an option to punitive discipline. Diné Peacemaking as a restorative justice practice looks to the offending behavior, accountability on the part of the offender, the resulting harm to the offended, the duty to repair the harm, and the resolution of the underlying conflict so as to prevent recidivism. It reinforces the values of harmony, understanding, and mutual respect. This is accomplished through dialogue, understanding, “making things right,” atonement, reparation, and, hopefully, forgiveness. Peacemaking can be utilized along with traditional discipline of expulsion or suspension. Peacemaking is also a valuable process for a student’s re-entry into the school setting after completing a suspension, expulsion, or court order in the juvenile justice system. This approach is an interdisciplinary one which involves philosophical views on justice and education, dialogue and communication,
contemporary restorative justice practices in the criminal justice system and education, as well as incorporating the values of compassion, justice, truth, understanding, civility, kindness, respect, and the duty to repair harm and restore relationships.

The theoretical concepts form the foundation for the practical application of these concepts and values in the school setting by creating school board policy and a curriculum focused on the development and reinforcement of moral values which support the rights of every child to personal safety, respect, and bodily integrity. Children are reminded that they are to take responsibility for their actions and the duty to repair harm resulting from bad decisions. Through the adoption of a classroom Navajo Peacemaking curriculum and school district policy by individual school boards, paradigmatic change is possible.

Plato envisions the ideal political state which would focus on the education of the young when they are impressionable. Educated youth would develop into leaders who would enforce principles of justice and understanding. Kant recognizes the obligation that individuals have not only to themselves, but to others as well. He believes that the rights of human beings are paramount. Camus, although often considered a philosopher of the absurd, reaffirms the value of human existence and the dignity of life. He teaches us that we cannot rationalize the victimization of others and emphatically rejects violence toward one another. Weil possesses empathy for the mistreated and a deep sensitivity regarding the suffering of others. Her sense of justice focuses upon avoiding harm to any person, as well as the dignity and significance of each individual’s life. While Kant takes an emphatic view of obligations and understanding, Simone Weil infuses a personal awareness and genuine empathy and compassion for the needs of others. The views of these philosophers are a replication of the principles, values, and philosophy of Navajo Peacemaking.
Gadamerian hermeneutics emphasizes dialogue and the importance of openness in the questioning process in the quest for truth and understanding. Dialogue and discussion are integral to the Navajo Peacemaking process. Gadamer stresses the need to recognize and overcome biases and prejudices which interfere with the search for truth. Although he does not disregard or deny the importance of methodology, Gadamer focuses on the phenomenology of understanding, another key value of Peacemaking. Dr. Ori Z. Soltes and Dr. Francis J. Ambrosio address the ontology of language as being central to meaningful dialogue and understanding.

Contemporary restorative justice practices are addressed through the writings of Daniel Van Ness, Lode Walgrave, Howard Zehr, and others. Restorative justice is a general term used to describe multiple processes which aim to repair harm resulting from wrongdoing and urge the acceptance of responsibility for one’s actions. They mirror in many ways the principles and values of Diné Peacemaking.

The case study method is also used as a source of research. It involves Diné Peacemaking currently in use in the Navajo Nation where it has been utilized for centuries as the conflict resolution process. My original contribution includes the development of templates of school district policy and an age-graded curriculum essential to the implementation of horizontal decision-making restorative justice Navajo Peacemaking in the school setting. These templates are to be adopted by a school board for use in its schools. This combination is a vertical top-down adoption of policy and curriculum and a bottom-up administrator and teacher implementation of the policy and curriculum as valuable tools in resolving bullying, harassment, threats, hazing, arguments, humiliation of others, disrespect of staff and/or fellow students, verbal and physical aggression, disruption
of the classroom and/or school environment, vandalism, and theft. Children are affected by what they observe and experience, and they react accordingly. Restorative justice Navajo Peacemaking, by centering upon dialogue, understanding, harmony, balance, and peace, enables transformation and healing to take place, as well as the development or restoration of interpersonal relationships, repair of harm which has occurred, and the resolution of underlying causes of the offensive and harmful behaviors.

The perfect storm of youth violence and aggression that has filtered into the school community makes the present the right time for the introduction of Diné Peacemaking into our nation’s schools through each school district board of education’s adoption of enabling policy and curriculum.
ACKNOWLEDGMENTS

It is with grateful appreciation I thank my professors in the Liberal Studies Program at Georgetown University and especially to my Thesis Chair and Advisor, Dr. Ori Z. Soltes, and to Thesis Committee Members, Dr. Francis J. Ambrosio and Daniel W. Van Ness, Esquire.

My special thanks, gratitude, and appreciation to Dr. Ori Z. Soltes, who has so generously given his time and expertise to every aspect of this Thesis to make it an interdisciplinary approach dedicated to the rights of children and the justice they so richly deserve.

A special thanks also to Assistant Dean Anne Ridder whose direction, counsel, and guidance will always be deeply appreciated, to the Navajo Nation Supreme Court Chief Justice Yazzie, Associate Attorney Josephine Foo of the Office of the Chief Justice of the Navajo Nation, and Gloria Benally, Coordinator of the Navajo Peacemaking Program, Roger Begay, Bi-cultural Training Manager, and Ellamae Betsoi of the Navajo Peacemaking Program.

Special appreciation goes to Maureen McCaulley who typed my research and the final document for presentation to the Thesis Committee.

The opportunity to meet and work with each has been an unexpected gift. Their individual talents, skills, expertise, competence, dedication, generosity, and kindness have made the research for this Thesis an unprecedented opportunity. This became an incredible journey from Georgetown to the Navajo Nation, a journey that has melded two careers – one as educator and the other as attorney.
# CONTENTS

ACKNOWLEDGMENTS ........................................................................................................... viii  

INTRODUCTION ................................................................................................................. 1  

CHAPTER 1. MORAL AND ETHICAL RIGHTS OF CHILDREN TO PERSONAL SAFETY AND BODILY INTEGRITY: THE PHILOSOPHICAL BASIS ................................................................. 36  

CHAPTER 2. THE LEGAL RIGHTS OF CHILDREN TO PERSONAL SAFETY AND BODILY INTEGRITY ................................................................. 112  

CHAPTER 3. RESTORATIVE JUSTICE: DEFINITIONS, PRINCIPLES, AND GOALS ................................................................. 165  

CHAPTER 4. SCHOOLS AND MORAL REFORM ................................................................. 233  

CHAPTER 5. THE IMPORTANCE OF DIALOGUE IN THE RESTORATIVE JUSTICE PROCESS ................................................................. 255  

CHAPTER 6. RESTORATIVE JUSTICE DINÉ PEACEMAKING: ORIGINS, METHODS, AND PROCESS ................................................................. 266  

CHAPTER 7. RESTORATIVE JUSTICE NAVAJO PEACEMAKING CURRICULUM: RESPECTING ONE ANOTHER, RECOGNIZING THE DIGNITY OWED TO EACH PERSON, RESOLVING DIFFERENCES, AND REPAIRING HARM .................................................................................. 300  

APPENDIX A. COMPARISON OF THE SIMILAR AND DIFFERING VALUES OF BOTH WESTERN EDUCATION AND DINÉ TRADITIONAL EDUCATION ................................................................. 313  

APPENDIX B. EMPOWERING VALUES OF THE DINÉ INDIVIDUAL ................................................................................................. 315  

APPENDIX C. RESTORATIVE JUSTICE NAVAJO PEACEMAKING PROCESS FOR USE IN THE SCHOOL SETTING ................................................................. 318  

APPENDIX D. TEMPLATE - SCHOOL POLICY VISION ................................................................................................. 320  

APPENDIX E. TEMPLATE - SAMPLE RESTORATIVE JUSTICE POLICY OF THE PEACEABLE SCHOOL DISTRICT ................................................................. 321
APPENDIX F.  TEMPLATE - SCHOOL POLICY CODE OF STUDENT CONDUCT  .................................................. 324

APPENDIX G.  CASE STUDY INTERVIEW QUESTIONNAIRE .......... 326

APPENDIX H.  RESPECTING ONE ANOTHER, RECOGNIZING THE DIGNITY OWED TO EACH PERSON, RESOLVING DIFFERENCES, AND REPAIRING HARM RESTORATIVE JUSTICE NAVAJO PEACEMAKING TEACHER RESOURCE GUIDE AND AGE-GRADED CURRICULUM .............................................................. 338

APPENDIX I.  PERMISSION TO INTERVIEW ................................. 404

APPENDIX J.  COPYRIGHT PERMISSION  .................................. 405

GLOSSARY ................................................................................. 406

REFERENCE LIST ........................................................................ 410
INTRODUCTION

Daily news accounts and commentaries amplify the disregard for an individual’s rights to respect and dignity, and children are not by any means exempted from these egregious violations and abusive behaviors, even in the school setting. We read of suicide by child victims of harassment and bullying, and the media reports of sexually and physically abused children, including those who have been kidnapped, murdered, and left in dumpsters and shallow roadside makeshift graves. Sexual abuse and exploitation of children appear to be almost of epidemic proportions.

The educational setting is not free of abuse. Reports of peer-peer sexual and physical harassment and abuse include a gang rape of a teenage female student on school property outside the school building during a school-sponsored dance where teachers and law enforcement were present at the dance. Numerous students “participated” as onlookers as the young girl screamed for help. No one helped, and no one responded to her screams. Surprisingly, too many is the number of sexual abuse offenses that occur in the school setting where children are vulnerable to the authority of staff. School children rely upon school officials and teachers to protect them from harm in the school setting.

This Thesis is about justice and injustice. It is about the philosophy of both and the implementation of theory into practical application in the real world. This Thesis begins with the philosophical theories on justice espoused by Plato, Immanuel Kant, Albert Camus, and Simone Weil, plus the dialogical hermeneutical process of Hans-Georg Gadamer as these views concern justice, understanding, healing, and the rights of each person to dignity and respect. It then progresses to the process known as restorative justice, which is centered on respect, civility, understanding, repair of harm resulting
from wrongdoing, and the transformation of persons and their behavior. Emphasis is placed upon the Diné Peacemaking process which has been used by the Navajo since time immemorial as a horizontal decision-making process that focuses on respect, harmony, civility, understanding, repair of harm, and complete resolution of conflicts and disputes.

Interdisciplinarity is the spine of this Thesis which is focused on justice and, in particular, justice for children and the recognition of their rights. This philosophical backdrop on the theories of justice sets an attitude all too often not visible in the world and especially not always visible in the world of children and youth in schools. It is an attitude and a failure to recognize the rights of children. It is an attitude in general towards children and their status as persons entitled to personal integrity and protection.

Once the moral, ethical, and legal foundations of the rights of children to personal safety and bodily integrity are set forth in this Thesis, the thrust then progresses to the acknowledgement and enforcement of those rights through the restorative justice practice of Navajo Peacemaking. Since these rights are too frequently ignored and often with deliberate indifference in the educational setting, both prevention of harm and repair of harm should not only be critical and essential goals of our school officials, but mandatory accomplishments. This Thesis applies philosophical theories on justice and individual rights along with legal determination of the foundation of those rights in law for children to the practical implementation of a dialogical process which emphasizes those rights. The generic term for the process is restorative justice, and the specific process is Navajo Peacemaking or Diné Peacemaking.
Authors on the contemporary concept of restorative justice practices differ on the meaning of the term, its definition, and its principles. Although no direct reference is given to the Navajo as having developed and used the restorative justice practice of Peacemaking, the differing views on restorative justice practices always pivot on the unnamed Navajo Peacemaking process in use by the Navajo for centuries. The majority of books and writings reference the use of restorative justice practices in the criminal justice system. The few publications recommending the use of restorative justice practices in the school setting rarely get beyond the theoretical.

This Thesis takes the process of restorative justice conflict resolution to the practical step of implementation. This is accomplished through template policies for school boards to adopt as an alternative to punitive school discipline procedures. The policies authorize the use of Navajo Peacemaking as such an alternative and also adopt a school district-wide age-graded curriculum for the teaching of Navajo Peacemaking skills and principles. It is the intent that as a result of a top-down adoption of policy and curriculum and the bottom-up implementation of both, Peacemaking skills, principles, and values will be developed in the classroom of every elementary, middle, and high school within school districts nationwide. Another major goal is that empathy, compassion, respect, dignity, and civility will permeate our school systems. In return, children will respect not only themselves, but others and will practice kindness and justice towards one another. A residual but significant effect will also be the reduction and, hopefully, the elimination of bullying and harassment, aggressive behavior, truancy, tardiness, drop-out rates, and suspensions/expulsions among our school-aged youth.
The ultimate goal of this Thesis is twofold: first, to give credit to the Navajo People for Diné Peacemaking dating back to time immemorial and still in use today which is the foundation of contemporary restorative justice practices, and second, to provide school policy and age-graded curriculum templates for the implementation of Navajo Peacemaking into school systems nationwide, especially those schools and school districts where children of the Navajo Nation attend. This Thesis spans the philosophical and theoretical aspects of justice, injustice, and personal dignity to practical application of these theories into real world situations through the education of impressionable youth in moral values and principles which are immediately applicable to daily life. This practical application serves as the foundation for just and moral living in the family, the school, and society as a whole.

CHAPTER 1

The philosophical theory of Plato on justice as expressed particularly in *The Republic* is of profound significance. We readily see that the issue of children’s rights and moral development is not a contemporary one. Plato’s first book stresses that a format of education for the young, or a curriculum, be established to instruct children in the basics when they are young and impressionable. He can be credited with the foundation of education as we know it today. He recognizes the importance of children and youth as the future leaders of a republic formed on justice. Plato does not marginalize the young but celebrates their future as hope for a sound, ideal, and flourishing self-governing entity he called *The Republic*. He chooses to build its foundation on the educated “guardians” who would become the leaders or “fathers” of
this enlightened state. Through the proper education of youth, Plato sees future governments as the protectors of their constituencies.

Plato as the author of *The Republic* envisions the ideal state. He believes in dialogue as the medium for understanding. *The Republic* as envisioned by Plato would focus on the education of the young when they are malleable, impressionable, and educable for leadership as “guardians” of the ideal state. The educated youth would develop into leaders who would enforce principles of justice, understanding, civility, and compassion. In Plato’s allegory of *The Cave*, he compares the darkness of the cave to a state of the uneducated and the light of day outside the cave to education and enlightenment where learning has no limitations.

In *Gorgias*, Plato utilizes a type of dialogue of sorts used to impart his views on justice. His concept of dialogue as evidenced in *Gorgias* is unique in the sense that Plato not only asks the questions, but he answers them as well. It is a controlled discursive where he teaches his philosophical principles by reinforcing them through a “didactic dialogue.” A strong message in *Gorgias* is that the person who causes harm to another is worse off than the person who suffers the harm.

The dialogical component of Plato’s discourses is similar to both restorative justice practices in general and to Navajo Peacemaking. All three include a strong interdisciplinary approach to justice and to the rights of children. Plato believes there could be a better world through the education of the young. His strong views on the potential of educated youth as leaders of the ideal political state parallel the traditional Navajo views that family is central and that morality must be instilled in the young.
The word “school” has its origin in *scolia*, which means leisure. In Plato’s time, few had the time to attend formal schooling. With *The Republic*, Plato was breaking new ground in espousing the education of youth as the hope of the future. Plato’s guardians or leaders are today’s Peacemakers. As a result of education from their early years, guardians possess the ability to listen, to be respectful of self and others, and to foster positive rapport among individuals through civil and open dialogue.

Immanuel Kant, an influential writer during the Enlightenment period, takes an inflexible philosophical view on the rights of all persons with his emphasis on obligations that individuals have not only to themselves, but toward others as well. His Categorical Imperative maintains that moral behavior occurs only when an individual acts from a sense of duty. Kant maintains that respect and love are the feelings that accompany the practice of duties to others. Kant recognizes the right of humanity to respect and dignity. Children, as possessing moral standing, are recipients of Kant’s philosophy of imperatives, propositions, and maxims. Respect and dignity owed to human beings are key philosophical tenets of Kant’s philosophy. He exalts the integrity of each rational being above all other values.

Kant’s concept of dignity of the individual is particularly applicable to children. It is a moral source of a child’s rights. Not only do we owe a duty of respect and dignity to children, but we are further duty-bound to protect them from harm. Chapter 1 sets the groundwork for the dignity and respect owed to every human being and serves as the foundation for children’s rights to personal safety and bodily integrity in the educational setting. It is the school setting where children of school age spend the majority of their
day and where school officials act in *loco parentis* to each child and serve as surrogate parents.

Kant, whose philosophical views are representative of the Enlightenment era, emphasizes the rights and dignity of persons through his Categorical Imperative. I depart from Kant’s moral philosophy at the point where he becomes a proponent of retribution as a response to the violation of perfect duties. There is no place in restorative justice for retributive and revenge or degrading of offenders in response to harm, although a few authors of restorative justice in the criminal justice field do support it. It is counterproductive to the healing, repair, and forgiveness components of restorative justice. As for Navajo Peacemaking, retribution is contrary to the principles and values of the process itself. Instead, Peacemaking places all participants in the process on equal footing.

Albert Camus’ philosophy of justice is refreshingly unique, as well. His concern for justice and disaffection with the hypocrisy of the criminal justice system is reflected in his novels. He is also a peacemaker as expressed through his writings. Camus understands the need for harmony and respect. His works revolve around the values of justice and truth. He is an advocate for moral rehabilitation of those who harmed others through their offending behavior and believes that everyone deserves a second chance to transform deviant behavior into an acceptable norm.

Camus becomes involved in a dogged struggle against the degradation of others, especially the vulnerable among us. His principles of justice involving the worth and dignity of the individual and the harm resulting from injustice are mirrored in restorative justice practices. These views are also consistent with the principles and values of
Navajo Peacemaking and its implementation of traditional Diné justice which respects life and person, seeks to repair harm, and restores harmony in personal relationships.

Camus denounces violence. Peace and civility are certainly cornerstones of restorative justice practices and especially Navajo Peacemaking. School systems today can no longer ignore the aggressive behavior which is so damaging to all students and especially to targeted and vulnerable students. Camus, if alive today, would undoubtedly have written a novel centered on aggressive behaviors in our schools.

Simone Weil also writes on the duties and obligations persons have toward one another. Her philosophical writings exemplify her as a philosopher with a heart, a person who possesses incredible wisdom combined with empathy and compassion for the injustices and sufferings of others. Human dignity and the respect owed to all persons are foundational planks of Simone Weil’s writings which are coupled with the duty to make things right through dialogue and understanding one another. Weil expresses an incredible wisdom in her writings. She is a unique, caring individual who possesses the gift of empathy for others and what St. Benedict called the “ear of the heart.” Her philosophy is so relevant to restorative justice practices because empathy, compassion, and justice are among her key values.

In Weil’s writings, she mentions *The Cave* by Plato in reference to personal pain and Plato’s *Gorgias* on suffering. The pain and suffering endured by students who are harassed and bullied require repair of harm. Simone Weil would understand the pain suffered as a result of aggressive behavior in our schools. She would undoubtedly have much to say in her writings on social philosophy about the vulnerability of youth and the
need to foster civility and respect in today’s schools. She would have been a marvelous role model for youth as a teacher or school administrator.

Weil brings heart and soul to the philosophical concept of justice. Her writings center upon healing and harm, as well as compassion for the vulnerable and the injured. She expresses her empathy for others through her views on liberty, justice, and truth and the dignity of each human being. Her comprehension of human physical and emotional suffering is unique to her fellow philosophers. As does Kant, Weil acknowledges a duty of each person to help the vulnerable and oppressed. She sees personal security as a need of the soul. However, Weil brings duty out of the discussion and theory stage and into the practical application stage of real life. Her principles and values are synonymous with restorative justice practices, but even more so with Navajo Peacemaking which also has a heart and a soul.

Weil recognizes the obligation owed to one another as human beings, as well as the personal responsibility and obligation to respect one another. She believes in repair, not retribution. She believes in punishment, but not punishment founded on revenge, anger, or retribution. Weil’s personal compassion enables her to understand the depth of harm that can be suffered by someone as the result of wrongdoing. She distinguishes between the suffering from physical harm and suffering from mental and emotional harm which can damage the very core and soul of a person. Soul murder is the ultimate injustice, and justice requires each person to take reparative action.

The final philosophical view is that of Hans-Georg Gadamer, whose Gadamerian hermeneutics establishes the dialogical process for true communication and understanding. He reinforces the importance of the phenomenology of understanding
through conversation and dialogue as essential to problem solving. Gadamer promotes open and genuine discussion in the search for truth. Gadamerian hermeneutics is a type of active listening that overcome biases and preconceived notions concerning facts essential to resolving conflicts. Gadamerian hermeneutics differs from hermeneutics in general which is interpretative of other’s views. Gadamerian hermeneutics stresses the understanding of what others are actually saying through a to-and-fro dialogical and flexible process that focuses on true understanding rather than interpretation. Understanding and interpretation are not synonymous but are differences with distinctions.

The term hermeneutics in general comes from Hermes, the messenger from the gods. It is an intermediary interpretive process which serves as a conduit for messages and communication in dialogue. On the other hand, Gadamerian hermeneutics is a more specific dialogical methodology that does not serve as intermediation but, rather, requires the participants in dialogue to listen closely to what each is saying as opposed to mere interpretation. It is an “active listening” process where the parties listen to each other’s needs and views. Gadamerian hermeneutics is a more effective dialogical process that leads to better understanding and ultimately truth. Gadamerian hermeneutics comes the closest to the open and civil dialogue of Navajo Peacemaking in particular, as well as restorative justice practices in general.

CHAPTER 2

The court decisions in American jurisprudence give legal reinforcement to the philosophical theories of Plato, Kant, Camus, Weil, and Gadamer. These decisions from state and federal jurisdictions hold without doubt that children have rights based in law
and that children are to be treated with respect and dignity. It could not be more clearly stated than for courts to hold that children have a federal constitutional right to personal safety and bodily integrity.

The federal Circuit Courts, especially the Sixth Circuit Court of Appeals, have addressed the Fourteenth Amendment right of children to bodily integrity and personal safety in the school setting, as well as the rights of school children emanating from title IX of the Education Amendments of 1972. With bullying and harassment, as well as sexual and physical abuse of students becoming seemingly endemic in school environments, case law continues to evolve in favor of child safety.

The rights of children in the educational setting have been unfolding through court decisions since 1954. In *Brown v. Board of Education*, the Supreme Court of the United States held that separate but unequal schools are inherently a violation of the Fourteenth Amendment to the United States Constitution (*Brown v. Board of Education 1954*). In 1967, the Supreme Court ruled in *Application of Gault* that children are persons under the United States Constitution (*Application of Gault 1967*).

With the moral, ethical, and legal duties toward children’s personal safety and bodily integrity established but unfortunately not always recognized, it is my goal and intent to emphasize the enforcement of those rights particularly in the school setting where school officials have the duty to supervise children and a duty to take appropriate action to repair resulting harm. Notice and deliberate indifference are key to the duty owed. Aggressive behavior can be effectively addressed in the school setting through Diné Peacemaking without waiting for a lawsuit demanding the repair of the harm.
Title IX of the Education Amendments of 1972 is a Federal law binding on public school districts as a result of receiving Federal funds. If a school district has actual knowledge of harassment and the school’s responses to the harassment are unreasonable, inadequate, or indicate deliberate indifference, claims under Title IX are actionable when an offended student is deprived of access to educational opportunities and benefits. Title IX claims frequently involve bullying, harassment, and sexual abuse of a student by peers or school employees. Title IX cases focus on the authority of a school official with knowledge of the offenses and the failure to institute corrective measures. The misconduct in a Title IX claim must be based on facts which are sufficiently severe, pervasive, and objectively offensive to be actionable.

It is notable that in 1989, the United Nations General Assembly adopted the Convention on the Rights of Children which specifically recognize *inter alia* that “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth.” This document is in addition to the Geneva Declaration of the Rights of the Child of 1924 and the Declaration of the Rights of the Child adopted by the United Nations General Assembly on November 20, 1959.

In particular, Article 19 of the 1989 document provides that “parties shall take all appropriate legislative, administrative, social, and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect as negligent treatment, maltreatment of exploitation, including sexual abuse….” Article 23 provides that “a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance, and facilitate the child’s active
participation in the community.” The 1989 document further states that parties shall “recognize the right of the child to an education” (Article 28) and shall “undertake to protect the child from all forms of sexual exploitation and sexual abuse” (Article 34).

Appropriate measure are to be taken to “promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; …or from any other form of cruel, inhuman, or degrading treatment or punishment; … Such recovery and reintegration shall take place in an environment which fosters the health, self-respect, and dignity of the child.” Every school community should reflect this goal.

The legal basis for children’s rights to bodily integrity and personal safety, specifically in the educational setting, is established in federal case law emanating from the District and Circuit Courts jurisdictions. The case law addressing the constitutional rights of children under the United States Constitution to personal safety and bodily integrity in the school setting are carefully parsed. These rights emanate from the Fourteenth Amendment to the Due Process Clause of the United States Constitution and the liberty interest secured by the Fifth and Fourteenth Amendments. Although education is not an absolute right under the United States Constitution, it is a right established in each state’s constitution. As such, education becomes state action which comes under the aegis of Federal law and the Constitution of the United States (Fourth, Fifth, and Fourteenth Amendments of the United States Constitution, as well as 42 U.S.C. sec. 1983 and Title IX of the Education Amendments of 1972, 20 U.S.C. sec. 1681-1688). The applicable state tort law is also a protector of school children’s safety.

When school districts accept federal funding, the federal government has a legitimate interest in enforcing Federal laws relating to education, such as Title IX of the
Education Amendments of 1972. The operations of public schools involve school boards, school officials, teachers, and staff “state action” and, as such, are bound by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution.

The rights of children to personal safety and bodily integrity are absolute and well established. These rights are well founded not only morally and ethically but also in American jurisprudence. From legal perspectives, the crux of the issue is the doctrine of parens patriae as guardians of the children on the part of the state (the term “state” used here means the public school district as a political subdivision whose acts constitute state action) and the doctrine of in loco parentis (in place of the parent) in the educational setting. Violations under the law, whether state law, common law, or constitutional law, can occur when there is deliberate indifference to the rights of children or failure to act when there is knowledge or foreseeability of harm to a child. Hate crimes, bullying, harassment, assaults, and other aggressive behaviors, whether physical or sexual, cannot be ignored with impunity.

The Supreme Court has made it clear that education is not a fundamental constitutional right. It is, however, a state constitutional right emanating from each individual state constitution. As a state right, public education is provided through the 95,000 school districts representing 50 million students nationally and are political subdivisions of the state. Actions of public school districts and their staff become “state action” with Fourteenth Amendment due process and equal protection implications as well as liberty issues under the substantive due process doctrine of the Fourteenth Amendment. The Fourteenth Amendment is designed to protect rights not expressly
mentioned in the Constitution, such as the right to privacy from state infringement (Dacosta v. Nwachukwa 2002). Parents, however, do not relinquish their parental rights to school officials and teachers who act *in loco parentis* or in place of the parent while a child is under the care and supervision of school officials and teachers (Barrett v. Steubenville City Schools 2004).

Private schools on the other hand, whether sectarian or non-sectarian, became established as legal and viable alternatives to public schools as meeting state compulsory education statutes when the United States Supreme Court ruled in 1925 in the companion cases of *Pierce v. Society of Sisters of the Holy Name of Jesus and Mary* and *Pierce v. Hill Military Academy*. The High Court held that corporations engaged in providing private education, as long as chartered by the state, satisfy the compulsory education requirement (*Pierce v. Society of Sisters of the Holy Name of Jesus and Mary, Hill Military Academy 1925*). Compulsory education state statutes become of particular importance in Chapter 2 when the duty to protect children is addressed.

CHAPTER 3

In Chapter 3, the process known as restorative justice is addressed. Restorative justice is not primarily about forgiveness; it is not mediation. It is instead a process that focuses on harms resulting from offenses. The needs of both the offended and the offender and the obligations resulting from those harms are addressed in seeking to repair the harm. Restorative approaches are applied in schools in lieu of punitive disciplinary practices and are very effective as interventions. Restorative approaches are modified paradigms that work in the educational setting to repair harm, promote respect and civility, and to transform a school environment where respect and civility are lacking.
The various authors on restorative justice practices have differing views on its definition, value, principles, goals, and applications. The writings of selected authors of restorative justice practices speak in general of its principles and values. The majority of authors on restorative justice practices approach it from use in the criminal justice and juvenile justice systems. There has been recent movement recognizing its value in the educational setting. These writings are few and remain for the most part in the theory stage as opposed to the practical application stage.

Many disciplinary proceedings under a school district’s Code of Conduct can be and should be referred to a restorative justice practice under school board adopted policy binding on all schools within a school district. Simply implementing a disciplinary code structured on punitive principles with the minimal due process mandated under *Goss v. Lopez* and/or applicable state law does not bring about behavioral change (*Goss v. Lopez* 1975). Once the detention, suspension, or expulsion is completed, the offender has either missed so much school that re-entry is overwhelming, if not virtually impossible, or the offending behavior continues on a greater scale. The stigma and shunning of the offender adds to the unlikelihood of transformed behavior. The entire school community, an atmosphere conducive to learning, and a safe environment are jeopardized.

Restorative justice practices have been used in both the adult and juvenile criminal justice systems over the past thirty years, but recently are being used on a limited basis in the school setting as a means of preventing aggressive, harmful behavior involving student-to-student and student-to-teacher encounters. Restorative justice practices are required in selected primary and secondary schools by act of Parliament in the United Kingdom. This government mandate is of recent origin, but even the initial
implementation in the schools in England and Scotland has demonstrated the success of this process in transforming a school community.

Chapter 3 considers the corresponding duty to repair harm resulting from a deliberate indifference to a child’s rights to personal safety and bodily integrity in the school setting. Restorative justice practices are a viable and effective alternative to traditional school discipline and seek to repair harm done. Restorative justice practices, which are inherently interdisciplinary in nature, include social justice, morality, legal issues, human rights, and human values. These practices are inherently proactive and transformational.

Chapter 3 also includes the restorative justice goals of amends and atonement on the part of the offender. Without atonement and amends, forgiveness is a difficult achievement. Although forgiveness on the part of the offended is not an essential element in restorative justice practices, it is an added benefit and catalyst to the healing process and a desired goal in Navajo Peacemaking. Forgiveness cannot be demanded from any victim and is achieved at the individual pace of each victim. It must come in due time, perhaps in segments, and sometimes it may never be achieved. However, understanding as a result of the dialogue in restorative justice practices may lead to some degree of forgiveness. Together with the restoration of mutual respect, civility, and dignity, making amends and atonement are also essential to the transformation (transformation is the positive evolving change of an ethos or culture in a community or a positive change in an individual, especially the offender or offended) of an individual, as well as an atmosphere which is lacking these values.
Restorative justice is not so much about a justice system promoting restoration but about doing justice through restoration. It is an outcome-based process primarily oriented toward repairing the harm to the individual. Restoration gives priority over punishment. Restorative justice must be included in a formal system. Lode Walgrave finds that the moral values underlying restorative justice and its practices are deeply rooted in ancient wisdom. He references the differences between value-based concepts of restorative justice and process-based ones. Walgrave comments further that the values are socio-ethical and ideological beliefs over which restorative justice does not have a monopoly.

Restorative justice is an approach to offending and inappropriate behavior which places repairing harm and restoring relationships over and above the need for assigning blame and dispensing punishment. The implementation of restorative justice in the schools is not only an opportunity for the offender to reflect upon his/her damaging behavior toward another, but also upon the effects of the offending behavior upon the entire school community. If the process is ineffective for any reason (e.g., recalcitrance of the offender, inability to reach an agreement), the underlying matter can be referred immediately to the appropriate school administrator in accordance with the school disciplinary code and traditional discipline.

For the atmosphere in schools to be transformed from one of aggression and even violence to an atmosphere of civility and respect where students are able to learn and achieve individual student potential, the restorative justice process must not only be implemented in classrooms at individual schools, but on a school district-wide basis as part of an alternative to traditional disciplinary practices in appropriate situations.
While traditional school discipline involves three main concerns – what code of conduct has been violated, who committed the violation, and what punishment should the offender receive – restorative justice practices, as an alternative to traditional school discipline or after traditional school discipline procedures have been completed, include stakeholders who have an interest in a conflict and involve them in the dialogical process. The dialogue addresses the conflict and harm resulting from wrongdoing.

The broad spectrum of principles and goals of restorative justice practices include, but are not limited to repairing the harm done to the offended, making the offender accountable for the harms resulting from his/her offense, and focusing on the needs of offended students, the school community and the offender. For examples, principles and goals include:

- Make justice more healing and transformative.
- Assist offenders to be accountable for the harm for which they are responsible.
- Encourage offenders to become aware of their harmful behaviors.
- Encourage offenders to understand how their actions have affected others.
- Use collaborative methods to repair the harm to individuals and the school community.
- Involve all relevant stakeholders, including parents/guardians/caregivers, through the use of voluntary collaborative methods to repair the harm resulting from an offense.
- Through dialogue, work towards understanding, healing, and transformation.
- Address the needs of the offended, the offender, and the school community.
- Emphasize restorative justice rather than retributive justice.
- Develop and teach social dialogue.
- Reinforce social skills and social values.
- Resolve conflict in the school community.
- Decrease school drop-out rates and reclaim students who have dropped out (victims or offenders).
- Encourage the re-entry of offenders into the school setting from juvenile justice proceedings.
- Involve parents as stakeholders in a civil and peaceful school community.
- Promote a respectful, civil, and peaceful school community where learning can take place and students are able to achieve their full potential.
- Transform not only the offender and the victim, but also the school community as a whole.
- Change the ethos of a school community from one of aggression and disrespect for others to one of civility and respect.

Gerry Johnstone and Daniel W. Van Ness, editors of their *Handbook of Restorative Justice*, provide a comprehensive and instructive research manual. They emphasize that restorative justice practices in the criminal justice field pave the way to forgiveness and reconciliation, reintegration of wrongdoers into the community, as well as healing victims’ trauma. This handbook is a comprehensive and instructive manual that examines contemporary restorative justice, its principles, and goals.

Howard Zehr is often regarded as the initiator of contemporary restorative justice. Zehr’s writings center only on the implementation of restorative justice in the criminal venue. He does, however, tangentially mention that restorative justice practices have a place in the educational setting without further detail. In addition, Zehr tangentially mentions that restorative justice practices have their origin in the justice systems of the indigenous peoples of North America. He, as others, does not give specific credit to the
Navajo People who have used Diné Peacemaking for centuries. This may be due to the fact that Navajo Peacemaking is a confidential process that does not invite observers. Without access to the Navajo Nation and to its traditional courts and the Peacemaking Process which requires an invitation, there would be no personal knowledge upon which contemporary authors would be able to assess its components. Zehr, being most familiar with the Mennonite community, mentions their use of restorative justice practices.

Zehr refers to the “circle process” which mirrors the horizontal decision-making Navajo Peacemaking process which places all parties on equal footing. The traditional Navajo home (“hogan”) similarly is circular in design with a single access door and a heat source in the center of the dwelling. Although the term “circle process” is not used by the Navajo, their traditional Peacemaking process expresses total equality for all. Zehr concentrates on criminal wrongdoing and the need for an offender to acknowledge responsibility for offending behavior and to admit accountability through making things right and repairing harm.

Kay Pranis, as Zehr, uses the term “circle process” in describing restorative justice practices. The principles and values which she emphasizes are respect, honesty, sharing, inclusivity, mutuality, responsibility, forgiveness, and understanding. These are the same principles of Navajo Peacemaking, but only Navajo Peacemaking requires confidentiality. Pranis suggests that peacemaking circles be used for reintegration, celebration, talking, healing, sentencing, community building, and conflicts. There is no singular or specific process recommended.

Pranis in her book on the circle process and peacemaking states that she is combining ancient traditions of the indigenous peoples of North America with
contemporary concepts of democracy. She does not credit Navajo Peacemaking as the basis of her democratic process. Pranis states that her book is not a detailed description of a peacemaking circle since more adequate preparation is needed to lead more complex circles. This flaw could be easily overcome by utilizing the Diné Peacemaking process which lacks complexity and can be used for any conflict or dispute.

Pranis’ process is centered on storytelling by each participant about issues and concerns in their personal lives, rather than on the Peacemaker storyteller who uses stories to stress morals and values related to a dispute. The peacemaking, circle, and storytelling process advocated by Kay Pranis is more conferencing than conflict resolution peacemaking. She views her peacemaking process more as a social experience where people share their stories. The facilitator or “keeper” is not a well-respected, knowledgeable person who gives direction when needed without controlling the procedure, but one selected among the participants by the participants. This process lends itself more toward peer mediation than Navajo Peacemaking. Pranis’ approach is complicated and over generalized.

George Pavlich centers upon how people should live and restore relationships after injustice has occurred. As with other authors, his writings address solely the criminal justice system with an emphasis on punishment following commission of a crime. Pavlich’s approach is closer to Diné Peacemaking in that he favors an uncomplicated process with ethical dialogue that addresses the harm and needs of those affected by wrongdoing. He has a compassionate, restitutive approach to justice.

Examples of opposite viewpoints are those of R. A. Duff, Margaret Walker, Lode Walgrave, and Linda Radzik. Duff is a retributionist who strongly believes in painful
punishment. Declan Roche, whose writings encompass the criminal justice system, considers retributive justice to be backward looking. Walker’s moral repair is centered upon moral norms and values, as do Radzik’s views on moral reconciliation, amends, and reparation. Walgrave considers punitive retribution to be unethical. He emphasizes that his writings concern the criminal justice system only and not schools. He views forgiveness on the part of the victim to be a gift to the community.

In their book on restorative discipline in the schools, co-authors Lorraine Stutzman Amstutz and Judy Mullet hope to create caring school climates. They focus on Circles, a term also used by Kay Pranis, as a restorative justice practice and suggest various uses and models. However, no model is similar to Diné Peacemaking, which is concise and simple to implement in schools. This single process can be used with all issues of conflict and dispute. Amstutz and Mullet suggest that a generalized approach be used to resolve bullying and that another approach such as mediation or conferencing be used in truancy matters. In situations involving recovery from drugs, they suggest that “beginning of the day” or “end of the day” Circles be used in the schools. Their use of restorative justice practices in schools is so broad and general that a clear and concise approach is missing.

What works in schools is a single process that is easily understood and easy to use. That process is the ancient Diné Peacemaking with its flexibility to meet the needs of all participants. No matter whether offender, offended, or stakeholders who have been harmed by the wrongdoing, all participants are on equal footing. There is a facilitator of the process but not a sole decision maker. There is no “talking stick” to be passed around during the discussion since respectful, honest, and open dialogue must be spontaneous so
participants can speak their concerns totally and without inflexible structure. Peacemaking teaches that respectful dialogue occurs not only during the session, but the same respectful behavior continues into the smallest community of the family and into larger social communities as well.

CHAPTER 4

Chapter 4 focuses on moral reform in schools and the emphasis on the importance of the moral education of the child, which is considered to be the task of greatest importance in the schools. Richard Arum, a twentieth century sociologist and university professor whose writings center on legal and institutional environments of schools, states that if there is a crisis in American schools, erosion of moral authority plays a large part along with the ineffectiveness of school discipline and low educational achievement. Arum posits that the problems of moral authority impact the very core of public education because primary and secondary schooling is as much about the socialization of youth as it is about teaching basic cognitive skills.

Jean Piaget, a French speaking Swiss national and developmental psychologist and philosopher of the twentieth century, places a great emphasis on the education of children. He identifies two extreme types of social relations: obligatory rules and cooperation. Mandatory rules, he opines, are constraints, while cooperation creates within a person’s mind the awareness of ideal norms as the basis of all rules. According to Piaget, moral realism is founded entirely on a child’s spontaneity, yet stylized in a hundred different ways by adult constraint. Without guidance, he maintains, an individual remains egocentric which limits the ability to distinguish what belongs to
others. The moral growth and development of children requires formal guidance and direction.

Michael Fullan, considered to be a change agent and contemporary sociologist and educator, is a distinguished author of numerous books focusing on leadership, needed changes, system reform, and education. In his book on the moral imperative and school reform, he equates educational success and needed change with the moral leadership in school administrators. To lead schools, Fallon insists, principals must have the courage and capacity to build new cultures based on trusting relationships and a culture of discipline.

The concept of trust in the school environment is addressed by Anthony Byrk and Barbara Schneider, both professors at the University of Chicago. He is a sociologist who specializes in urban education, and she is a sociologist focusing on human development. As co-authors, they wrote on the need for trust and the power of relationships in the educational setting. They submit that social relationships are part of a child’s self-identification when it comes to connection to friends, school, and community. Social exchanges, they maintain, are valid and important outcomes in schools. They stress the need for reinforcement of open discussion and respectful dialogue in schools where personal conflicts can escalate into aggressive and harmful behaviors. As a result, children must be taught on every level to recognize and resolve conflict.

Chapter 4 also includes the writings Émile Durkheim. Durkheim in his book on moral reform in schools distinguishes two stages of childhood. The first stage takes place within the family, and the second occurs when the child attends elementary school. It is the second stage, Durkheim maintains, that is the critical moment in character formation.
CHAPTER 5

Although hermeneutics is a term often used in relationship to a theory of literary interpretation, it focuses on human values including respect and dignity of each person having moral standing as well. Chapter 5 examines how hermeneutics and dialogue are critical to problem solving and conflict resolution and to restorative justice Navajo Peacemaking. In particular, the hermeneutical method as defined by Hans-Georg Gadamer, the German-born philosopher, is addressed. Rather than stressing interpretation, Gadamerian hermeneutics emphasizes understanding in dialogue.

Gadamer’s contributions to truthful research and his firm belief in the importance of dialectical questioning as a model for understanding an issue are of unquestionable significance in restorative justice practices. The central element in Gadamer’s thinking is his idea of *phronesis* or practical wisdom. His Gadamerian hermeneutics alerts us to be aware of our biases and to remain open in our views. Gadamerian hermeneutics involves active listening and the listening to the needs and concerns of others. It is a more effective understanding than mere intermediation as a conduit for relaying the messages of another. These elements are critical to restorative justice practices in the schools as efforts are made to identify the harm that has occurred to a victim, as well as identifying the needs of both the offender and the victim. Getting to the cause of the harmful behavior is crucial in order to repair the harm and transform behavior, and Gadamerian hermeneutics can effectively advance the restorative justice practices.

Chapter 5 also includes the works of authors in addition to Gadamer who have written on the importance of dialogue and language in arriving at truth and understanding. Dr. Ori Z. Soltes focuses on the importance of active listening in dialogue with others as a
means of achieving understanding and truth. Dr. Francis J. Ambrosio addresses Gadamer and Plato as he discusses the discipline of dialogue as the criterion for truth which results from conversation among persons.

CHAPTER 6

The centuries’ old Diné Peacemaking process involves all stakeholders to a conflict. A Peacemaker facilitator does not control the process, but instead assists participants by maintaining open discussion and respectful dialogue toward a goal of reaching agreement or resolution while building or rebuilding relationships. Shaming, retribution, and revenge are not the goals of the Diné restorative justice Peacemaking process.

As in Gadamerian hermeneutics, in a Peacemaking session, the participants are reminded to keep an open mind in seeking the truth underlying the harmful behavior, not to impose personal views on the group, and to be objective in bringing about an agreement acceptable to all.

Gadamer believes that the principles of hermeneutics, in particular dialogue, provide a checks-and-balances for validating truth. It is the phenomenology of understanding that is center stage in Gadamerian hermeneutics. Gadamer tells us that to understand is to understand differently. For Gadamer, it is the ontology of language that is central to the meaningful emergence of the human experience, and it is the power of language that is so very effective in dialogue. It is through dialogue and understanding that the Navajo Peacemaking process is able to repair the harm resulting from conflict. A session typically begins with an Invocation by the Peacemaker where ground rules are announced and a traditional story is told to address the type of dispute in issue. The
Peacemaker facilitator sets the tone for a mutual, respectful process and encourages a relaxed atmosphere for the session by telling a traditional story with a moral related to each conflict.

Diné Peacemaking, used interchangeably in this narrative with the term Navajo Peacemaking and Peacemaking, is an extraordinary restorative justice process that is flexible, straightforward, uncomplicated, and voluntary which seeks to repair harm caused by wrongdoing. Its key goals are restoring personal harmony and harmony in personal relationships through mutual respect, understanding, and open, respectful dialogue by all participants. Diné Peacemaking is a horizontal decision-making process that places all participants on equal footing. A Peacemaker who serves as a facilitator is not an adjudicator. This restorative justice process has the capability of transforming an aggressive school ethos into one of respect and civility. It is a process that instills moral values of understanding, compassion, empathy, honesty, respect, gentleness, and civility. This value-laden process is uniquely suited to the educational setting as a means to prevent and resolve conflict.

Although contemporary restorative justice has acquired its foundation, principles, goals, and values from Diné Peacemaking, the uncomplicated process of Peacemaking has been lost with the many interpretations and types of restorative justice practices in use today in the courts and justice system. Diné Peacemaking has no adjudicatory component whatsoever. It is a flexible and straightforward process that adults and children can easily use. The dialogue among the participants is personal and relevant because they uncover the underlying causes of a dispute and resolve it themselves. There is no individual telling the participants what should be done. Peacemaking is not
mediation or arbitration. It is horizontal decision making by those involved in a conflict. For that reason, once an agreement is voluntarily reached by the parties with the guidance of a Peacemaker, the underlying causes are resolved, as well as the immediate dispute which brought them together in Peacemaking.

Children cannot be “ordered” to participate in the Peacemaking process in a session used as an alternative to a disciplinary proceeding. Because it is a voluntary process, either the offender or offended, or both, may initiate Peacemaking by request, but both must agree voluntarily to participate and also to the confidentiality required by the process. When Diné Peacemaking is used in the schools, the same core principles, goals, and values must be followed. When students understand the process and goals of Peacemaking through the teaching of an age-graded curriculum, they will then be able to make a voluntary request to initiate it. In the classroom setting when conflict arises or if wrongdoing has caused harm to someone, as a result of the implementation of the curriculum, students will understand the need to resolve issues and know how to resolve them through Peacemaking. If the appropriate school administrator determines that a breach of the code of discipline is appropriate for Peacemaking as an alternative to the disciplinary procedure, then a request and waiver form (Appendix F) should be provided to parents/guardians to initiate the voluntary Peacemaking process.

It has been the tendency of authors on books addressing the use of restorative justice practices in the schools to attempt to revise traditional Diné Peacemaking and change the core process in order to make it adaptable to the school setting. In doing so, the uncomplicated Diné Peacemaking process which is suited to all types of conflicts becomes instead protracted procedures that are all different. Conferencing, meetings,
mediation, and arbitration are dissimilar processes. In revising Diné Peacemaking, the uncomplicated process is corrupted, and the result is a more complicated and confusing process.

Restorative justice Navajo Peacemaking in the schools is not only cost effective but consumes less time than traditional punitive disciplinary processes with due process hearings and appeals. Most importantly, however, Navajo Peacemaking has the capacity to transform individuals, as well as the school atmosphere. The long-term effects of its successful use as an intervention and transformational process are of exponential value to staff, the offended, the offender, and the entire school community.

Traditional school discipline focuses on the violation, the violator, and the punishment, whereas Navajo Peacemaking focuses on the individual harmed, the victim’s needs, and the obligations of the offender, all with the intent of resolving the underlying issues in any given conflict. It is a powerful and effective process that involves dialogue, respect, and understanding as the stakeholders together seek conflict resolution.

CHAPTER 7

Chapter 7 brings the interdisciplinary approach to justice and children’s rights full circle to practical application. Not only will the age-graded curriculum be of significance to all children in schools nationwide, it will enable the Navajo Nation to implement its ancient Peacemaking process in the schools where the children of the Navajo Nation attend. It will bring about an educational atmosphere safe for children and conducive to learning, and through its emphasis on respect, harmony, and repair of harm and relationships resulting from wrongdoing, Diné Peacemaking will bring about transformation in individuals and in the educational system itself.
A fundamental component of this Thesis is the uncontroverted need for school district boards of education to adopt policy that authorizes Peacemaking as an alternative to traditional school discipline, as well as the adoption of a kindergarten through grade twelve age-graded curriculum to teach students the Navajo Peacemaking process and its values. To that end, I have prepared and included in this Thesis school district policy and curriculum templates that can be readily adopted by boards of education. The policy establishes Peacemaking as an alternative to traditional school disciplinary processes, and the age-graded curriculum serves to implement the Peacemaking process. These templates bridge theory to the practical application of justice in the school environment.

The age-graded curriculum is a practical way to make justice happen. Children learn through doing. This Thesis ultimately focuses on justice and the rights of children. From the outset with philosophical theories of justice, proceeding to decisions in American jurisprudence and legislation on justice issues, and then moving on to contemporary views on restorative justice practices which have their foundation in traditional Navajo Peacemaking, this Thesis concludes with policy and an age-graded curriculum on Diné Peacemaking for immediate use in the schools. The interdisciplinarity of this Thesis weaves theoretical philosophies on justice with jurisprudence, legislation, and reparative and restorative justice through the Diné Peacemaking process, to the application of theory and law, to the practical implementation of all into a template policy and curriculum for adoption by public school districts and private schools.
CONCLUSION

Restorative justice is a generic term used to describe multiple processes which aim to repair harm resulting from wrongdoing. There is no agreement among authors on a single definition, nor is there a consensus on its principles or values. Restorative justice practices are founded on the principles of fundamental human rights, the dignity of each person, and the recognition of the duty to repair harm caused by wrongdoing. Respect is an integral component of the dialogical process which includes the offended and the offender. The goal is to achieve mutual respect and understanding and eventual agreement. Although voluntariness on the part of the participants is essential, this prerequisite is not stressed in the writings on restorative justice. Confidentiality is not mentioned at all. Contemporary restorative justice practices are used more frequently in the criminal justice area, however, they are also used in the juvenile justice system and in the mediation of differences in domestic disputes on a more limited basis.

As authors on restorative justice practices move their focus from the theoretical to practical application, the principles and values of the restorative justice process become more refined. At the point of practical application, the descriptive characteristics include its reparative and transformative elements. Reparation, amends, and apology are discussed, but forgiveness is not particularly mentioned as an expected outcome most likely because the depth of the harm caused will be a determinative factor. Healing, however, is an expressed goal.

Navajo Peacemaking, however, is a clearly-defined restorative justice process with expressed goals, principles, and values. Its use over centuries has not changed the process which is readily adaptable to social changes and demands. The similarities between
restorative justice practices and Navajo Peacemaking are apparent. Peacemaking is founded on respectful and civil dialogue among the participants with the goal of reaching consensus and agreement by the parties themselves. Prime goals are to restore damaged relationships and to repair the harm caused by wrongful actions. The underpinnings of Navajo Peacemaking are the respect and dignity of each person. Voluntariness is an essential component as is confidentiality of the sessions. A well-respected Peacemaker performs the role as facilitator of the horizontal decision-making process. It is clearly not mediation or arbitration. Navajo Peacemaking is a restorative justice practice that relies upon open and civil dialogue among voluntary participants who agree to the confidentiality of the sessions and to the finality of the agreement which is reached through consensus. Repair of harm is a critical component. Navajo Peacemaking is an inclusive process with the continuing goal of restoring relationships. In reaching an agreement, the underlying causes of a conflict are also resolved as part of the finality of the process. Navajo Peacemaking is inclusive, reparative, transformational, dialogical, and respectful. It is a restorative justice practice, but it is definitive in its goals, objectives, and values. There is nothing theoretical about Navajo Peacemaking. It is an uncomplicated, straightforward, and reparative dispute resolution process that has been successfully used for centuries. As a horizontal decision-making process, which makes it unique, the participants with the assistance of a Peacemaker are empowered to resolve their differences. Reparation and amends include repair of harm to both body and spirit. There is no exclusion of an offender but, instead, a total integration of all participants into the community.

Family and children are the center of Diné life, and restoration of relationships, whether family or community, are paramount. Navajo Peacemaking is the moral compass
for peace and civility. Through open and respectful dialogue, repair of strained or fractured relationships and transformation occur. Restorative justice practices mirror Navajo Peacemaking. However, there is no theoretical disagreement over Navajo Peacemaking principles, goals, values, or definition. Peacemaking has been successfully applied to disputes for centuries as the same horizontal, voluntary, and confidential decision-making process which seeks harmony. This uncomplicated process can be readily implemented in the school setting.

Navajo Peacemaking is an effective restorative justice practice that can resolve conflict in our schools, identify its underlying causes, and repair the harm that has resulted from an offense committed on school premises or during school-related activities. Until there is a repair of the harm, the right of children to personal safety and bodily integrity is not complete, and justice has not been afforded to them.

Navajo Peacemaking is a particular restorative justice practice that suits the school setting. The ultimate goal of this Thesis is to provide educators with an alternative to traditional punitive discipline which focuses on restoring relationships, repairing harm, and acknowledging the respect and dignity owed to every individual. Navajo Peacemaking reinforces and restores those rights in the educational environment. It seeks to empower participants in the Peacemaking process to dialogue effectively and to take an active role in discussions about agreements and resolutions directly related to them. This encourages participants in the Peacemaking process to assess the root causes of the offending behavior, encourages offenders to take responsibility for their actions, and promotes the healing of human relationships through reinforcement of the dignity of every individual.
Regardless of school district or school size, whether a public or private school, Navajo Peacemaking can be readily implemented in the classroom, in an entire school or district-wide. Through a classroom curriculum and board adopted school district policy, the restorative justice process provides an effective process to bring about paradigmatic change in the school setting. After the adoption of a policy endorsing the process by a school board and staff training is completed, the time spent on classroom instruction will increase while time spent on discipline will incrementally decrease.

For school officials concerned about costs of policy mandates, the transformation of the ethos of a school community from one of aggression to one of civility and mutual respect will lessen, if not eliminate, the need for large security staffs and law enforcement at schools. Peacemaking is not only cost effective, but it is in so many ways priceless considering its potential for results.
CHAPTER 1

MORAL AND ETHICAL RIGHTS OF CHILDREN TO PERSONAL SAFETY AND BODILY INTEGRITY: THE PHILOSOPHICAL BASIS

East philosopher has been chosen because of views relating to values and principles of Navajo Peacemaking. As a composite, their philosophies of morality and ethics represent the panoply of traditional Navajo Peacemaking principles and values. The genius of each illustrates the respect and dignity owed to each human being, the primacy of justice and fairness, compassion for the vulnerable, and the importance of active listening in open and respectful dialogue. All focus on human values, but with different approaches that result in emphases on truth, understanding, justice, duties to ourselves and others, and openness. They are brought together in a framework of justice, respect, and duty towards others because of their philosophical views on human values, justice, and moral norms. The selections from their writings involve the shared ground upon which a synergistic view can be used as a foundation for dignity, respect, dialogue, and justice. While these philosophers who may be unable to agree in totality on any particular issue, partially due to their own frames of reference and experiences, as well as the times in which each lived, each is able to provide a unique and distinctive insight to the components of human values and the dignity and worth of individuals. The absence of a symbiotic philosophical view on every issue does not diminish the value of their individual strong views on humanity and the worth of the individual. Each arrives separately at the belief that human dignity is priceless.

The initial focus is on Plato and his emphasis upon the education of youth and the importance and necessity of the education of political leaders as a fundamental essential
of the ideal state. Plato maintains that the success of a political state is dependent upon the success of the education of young citizens when they are amendable to learning. Plato recognizes youth as the hope of the future and teaches us that justice is the crown virtue in our relationships with others. He subscribes to personal harmony and discipline along with wisdom and courage as essential personal qualities. Societal problems of violence and aggression, crimes involving the personal violation of others and their property demonstrate that human values are not widely accepted by a significant segment of society. If society is to be changed from a lack of civility to one of respect, there must be an acknowledgement of the dignity owed to all persons. This transformation will not occur through legislation of laws or codes of conduct. Change will take place through education, and education must begin with the young and continue into adulthood. Moral reform, especially in our schools, requires the willingness on the part of administrators and teachers to take necessary risks in achieving the goals of relational trust and moral leadership.

From Immanuel Kant, we learn the importance of the duty to respect not only ourselves, but others and never to use others as a means to an end, but only as ends in themselves. Kant is a proponent of the right of every human being to respect and dignity. He recognizes human beings as persons and the integrity of each rational being. His Categorical Imperative emphasizes that for an action to be good, it must be done for the sake of the law. Otherwise, conformity is uncertain. The notion of moral duty, Kant maintains, arises from practical reason, not from empirical notions or experiences. His Categorical Imperative or law of morality is based on the maxim that any action must be capable of becoming a universal law from which imperatives or mandates of duty have
been deduced. Our personal ethics should be founded on this principle, and all moral actions must be done from an unconditional sense of duty independent from experiential knowledge. Kant, like Gadamer, believes we must always be aware of our biases and prejudices.

Albert Camus teaches us about justice, injustice, and the hypocrisy of a criminal justice system which can ensnare and convict an innocent person. He sees the need for harmony and respect and the acknowledged worth of each individual. He is a believer in moral rehabilitation as a type of personal transformation. Simone Weil similarly believes in duties and obligations towards one another. She sees an innate dignity and respect due each person. Her capacity for empathy and justice forms the basis for the repair of harm and healing. It is Hans-Georg Gadamer who views dialogue to be essential to problem solving. Through the dialogical process of an open and respectful discussion, Gadamer sees the phenomenology of understanding as the result.

Immanuel Kant views the will as a determinative faculty for proper action in accord with certain laws. The end serves the will as the objective ground of its self-determination. If this end originates in reason alone, it must be equally valid for all rational beings. Kant determines that subjective ends rest on incentives, and objective ends depend on motives which are valid for every human being. This leads Kant to his determination that every rational being is an end in himself and not merely as a means for arbitrary use (Kant 1993, 35). Kant posits that “rational beings are called persons insomuch as their nature already marks them out as ends in themselves, i.e., as something which is not to be used merely as means and hence there is imposed thereby a limit on all arbitrary use of such beings, which are thus objects of respect.” As a result, as Kant
explains, persons are not merely subjective ends with an effect on our actions and one of value to us. Instead, each person is an objective end and exists as ends in themselves. They possess absolute value (Kant 1993, 36).

Kant references “human beings” in his moral theory of respect. I have extended his basic concept of humanity to the right of children to respect, since he does not exclude children from his moral philosophy on duty and the immorality of using another human being as a means and not as the end itself. To use any human being solely as the means to an end would be immoral according to Kantian moral ethics. As a result, when children are bullied, harassed, abused verbally and physically, or victimized in any way, they are being used as a means to an end, the victim of wrong and immoral acts.

Kant’s moral philosophy fits well into the social community within the educational setting. One of the acclaimed benefits of the public or private school environment, as opposed to home schooling, is its socialization or community aspect. Children learn early to wait their turn and share communal supplies. A child is expected to learn quickly that sharing and respect for self and others are mandatory. Kant’s concept of duty to self and others and the inherent knowledge that we do not treat ourselves or others as a means to an end but as an end in and of itself is a universal moral law. In seeking our own happiness, it is a moral requisite that we also take affirmative action involving the happiness of others as a cohesive part of the principle of humanity.

Kant exalts the integrity of each rational being above all other values. His written philosophical views are categorized into imperatives and principles. His fundamental moral belief centers on human dignity and emphasizes the moral importance of human beings as ends-in-themselves – the absolute value.
Kant had a particular approach to duties. He emphasizes that the rights of others are achieved as a result of man acknowledging his duty to act in a particular manner. Kant recognizes that obligations towards others, as well as towards oneself, have their source in moral duties which cannot be rationalized or reduced.

In the educational setting, children are not taught to ignore the happiness or best interests of classmates but are guided toward positive acts of kindness towards peers. Bullying, harassment, and other aggressive behaviors are contrary to Kant’s principle of humanity. We cannot with reason exclude children from Kant’s definition of humanity nor from his principle of the duty to give respect and equal duty to all rational human beings. Including children in Kant’s definition of humanity is not only reasonable, but also relevant to the abusive treatment of vulnerable children.

The moral development of the child in the school setting is critical. The Peacemaking curriculum aims to accomplish this task. Compliance with codes of school conduct should also be based on the duty owed to others. This objective foundation instills correct decision-making skills in children and eliminates the subjective selfish motive to comply with school rules solely to avoid punishment.

THE RIGHTS OF CHILDREN

It is well accepted that respect and dignity are owed to every human being, but this principle is not uniformly practiced. As the author of numerous tomes, in particular *Groundwork of the Metaphysics of Morals*, Immanuel Kant categorizes the duties that individuals have not only towards themselves but also towards others and as formulae or imperatives. Kant’s moral and ethical writings on human dignity support the right of children to personal safety and the duty to avoid harm to them as well as others.
In stressing the dignity owed to every human being, Kant states that in “…the kingdom of ends, everything has either value or dignity. Whatever has a value can be replaced by something else which is equivalent.” When something is above all value, it has no equivalent, but has a dignity (Abbott 2001, 192).

The essence of dignity is more than adequately explained by Kant. He holds, “The dignity of humanity in man’s own person is personality itself – i.e., it is freedom, for man is an end in himself insofar as he is being which sets itself goals” (Werkmeister 1980, 130). Kant believes that there is “nothing holy in the world except the rights of humanity in our own person, and the rights of human beings in general.” This “holiness” is based on the premise that we can never use human beings “merely as a means.” This prohibition, according to Kant, is grounded in man’s freedom and personality. Valid purposes for individuals include not only one’s own perfection, but also the interest and happiness of others (Werkmeister 1980, 131).

Kant’s argument, as summarized by Hardy E. Jones, is based on the premise that since all rational beings have a valid ground for regarding themselves as ends, each person must regard all other rational beings as having dignity (Jones 1971, 24). A person can respect the rights of another by limiting one’s actions towards another by refraining from performing any action that will transgress those rights (Jones 1971, 66). The fundamental value of moral theory is the “autonomy of reason and the dignity of rational beings…” (Wood 2005, 131). Kant sees moral duties as “categorical imperatives,” as inflexible, no exceptions, ethical mandates (Wood 2005, 131).

According to Kant, a categorical imperative requires us to act in accordance with universal law – a principle valid for all rational beings. To Kant, the duties of virtue are
two-fold: to self and to others. Every person has a duty of benevolence to others regardless of whether he finds the other lovable. Children, possessing moral standing, as well as the capacity to make moral choices, are recipients of Kant’s imperatives, formulae, propositions, and maxims. Dignity is the source of children’s rights. We owe a duty of respect and dignity to children and are further duty-bound to protect them from harm. They are indeed the beneficiaries of Kant’s wisdom.

Without the need to address minor children as moral agents or “human persons,” Kantian moral ethics cover the issue with the issue of human beings’ soul and rationality. Human beings by the core of their nature are rational, thinking persons who possess a soul. Because a child has a soul, a child is a human being. There is no semantical need to designate them as persons who possess moral agency. As a rational human being, therefore, children deserve respect.

Relying on Kant, it is essential, therefore, that we instill moral values in students and not stress a list of proscribed acts which tend to teach children that it is wrong to get caught and not that an act is in itself wrong and harmful. We must teach children what Kant does – there is a genuine supreme principle of morality that rests merely on pure reason and which is independent of all experience. There is a metaphysics of morals, a pure rational knowledge separated from all things empirical. All moral concepts have their foundation “completely a priori in reason” (Kant 1993, 21-22).

Kant believes that there is nothing holy in the world except the rights of humanity. He further reasons that this “holiness” consists in the fact that we can never use others merely as a means. He states that the obligations to seek happiness and perfection as individuals are duties to advance human nature. Kant’s moral and ethical writings on
human dignity support the right of children to respect and personal safety with the corresponding duty on the part of others to avoid behavior that causes harm to them. Kant’s understanding of the “human condition” or imperfections of man are readily discernable in his work. This is of particular importance in child sexual abuse. Kant’s moral and ethical writings, however, do not accept rationalization of any type for the violations of duties toward others.

Kant’s basic approach to morality is that we have a priori, commonsense knowledge of what is and is not moral. When forced with a moral dilemma, Kant asserts that we need to ask ourselves what we ought to do as we consider our ethical obligations. This involves not only an innate standard, but also choices. With children especially, they respond and act according to what they witness and observe. As a result, the school atmosphere, to be a teaching tool, must be one of civility and mutual respect.

Kant also incorporated maxims into the structure of his moral philosophy. He determined that the maxim of an action or categorical imperative should conform to a universal law or imperative (Kant 1955, 43-46). A maxim, according to Kant, is a purely personal principle upon which we act, a “subjective principle” which may be good or bad (Paton 1948, 13-14). An objective, he maintains, is one which every rational person would act upon if ration has full control over his behavior. Once we act upon an objective principle, it becomes subjective or personal, yet still remains objective. A morally good action is one which is performed out of reverence for the law (Paton 1948, 12-14). There is no question that Kant recognized the moral force of law.

Kant determines that the “practical necessity” of acting on the maxim-universal law principle is duty which does not rest on feelings, impulses, or inclinations but, rather,
on the relationship between one rational being to another. This relationship, he maintains, is always legislative, otherwise it could not be an end in itself. Reason, he posits, refers every maxim of the will to every other will, including every action towards oneself. Kant argues that this moral theory emanates from the idea of the dignity of every rational being requiring that each person obey only the laws which he also gives (Abbott 2001, 191). This moral theory of Kant’s is far stronger and mandatory than the Golden Rule since it is not an ideal to seek, but a duty requiring action.

Kant expounds on his theory of a priori morality when stating that morality is all action that responds to law which is capable of existing in every rational being and of emanating from the will of every rational being. The result is the principle of one’s will “…is never to act on any maxim which could not without contradiction be also a universal law….” We are to act always so “…that the will could at the same time regard itself as giving in its maxims universal laws” (Abbott 2001, 191).

DUTY AND MORAL LAW

For a law to have moral force being the basis of an obligation or duty, it must be an absolute necessity arising a priori from the conception of pure reason. The moral laws and their principles are distinguished from all other practical knowledge with its empirical part. Moral philosophy “rests wholly on its pure part.” It does not borrow anything from the empirical knowledge of man, but “gives laws a priori to him as a rational being” (Abbott 2001, 147).

Kant acknowledges that moral laws do require a judgment “sharpened by experience, in order on the one hand to distinguish in what cases they are applicable, and on the other to procure for them access to the will of the man, and effective influence on
conducted; since man is acted on by so many inclinations that, though capable of the idea of a practical pure reason, he is not so easily able to make it effective in concreto in his life” (Abbott 2001, 147-48). As a result of this reasoning, Kant found it necessary to write a metaphysic of morals, a compendium of the source and nature of moral philosophy and moral laws.

Motive is important to Kant as a major component of a moral decision. He finds morals themselves capable of all types of corruption if man is without “…that clue and supreme canon by which to estimate them correctly….” He reasoned that in order for an act to be morally good, merely conforming to the moral law is insufficient. The morally good act must be performed “for the sake of the law” to be certain. It is possible to have an immoral principle which may occasionally conform to the law and also result in actions contradictory to the law (Abbott 2001, 48).

Based on Kant’s philosophy of morals and normative ethics and applying them to youth, teachers and school administrators who act in loco parentis as educators of school-aged children must continue the moral development of children as part of the total curriculum. This foundation and development are key from the earliest formative years of formal education in primary school on through the completion of secondary school. The moral development of the child cannot be distilled from the academic segment of the school curriculum.

Kant’s normative moral ethics have a nomenclature including the terms duty, maxim, proposition, principle, imperative, formula, and will. His schematic of morality builds upon these terms:
Kant clarifies that a will is not good because of what it performs or effects, nor through attainment of a good (end), but merely by virtue of the volition, the will is good in and of itself and considered more esteemed than the achievement itself. Kant further maintains that reason recognizes the establishment of a good will as the highest practical
goal. It is always necessary to evaluate motive when distinguishing whether an act is
done from duty or from a selfish interest (Abbott 2001, 152, 155).

In his *Critique of Practical Reason*, Kant differentiates between acts which are
done solely according to duty and those acts performed from duty, which he maintains is
the “true goal of all moral cultivation.” Acts of the first type are *juridical*, while acts of
the second type are *moral*. To Kant, the distinction was the difference between legality
and morality. These are the two basics of his *Metaphysics of Morals* – jurisprudence and
virtues (Werkmeister 1980, 131, 141).

In his *Metaphysics of Morals*, Kant separates morals into two parts:

1) Doctrine of Right, and

2) Ethics (Doctrine of Virtue) on the basis of the system of juridical duties.

Kant considers the basis of all juridical duties is the principle of right. Any action,
according to Kant, is right either if it can coexist with everyone’s freedom in accordance
with universal law or if the freedom of choice of each is able to coexist with everyone’s
freedom in accordance with a universal law (Wood 2005, 143-44). Kant asserts that the
underlying principle of social obligation is the happiness of others.

Kant believes that men are free beings who are subject to the moral law. Man is
rational *because* he has the capacity of making rational decisions in accordance with the
requirements of morality. Rationality is but only one of the components in the nature of
man, and Kant certainly acknowledges flawed human nature and the human condition.
Kant states that although man is capable of thinking rationally, he does not always do
what is right. Man’s actions do not always measure up to the standard from which moral
rules are derived or to the standard to which man is capable. Kant believes this failure to
measure up is due to man being a natural and sensible human being who possesses inclinations and desires (Jones 1971, 9). These inclinations are a constant source of temptation and continuously threaten the making of rational choices in accordance with moral demands. This belief of Kant underscores the need for moral direction as part of educational curriculum in our schools.

Since man is subject to the moral law and has duties, this presupposes, from Kant’s viewpoint, the possible choice of not acting in accordance with morality. Rationality and sensibility are absolutely essential to man’s nature as a moral agent. Without morality, man is incapable of morality and could not be held responsible for his actions (Jones 1971, 9-10). Amorality, however, is not recognized as a defense to abuse or to any wrongdoing. The law further does not recognize the incurable nature of the illness as a defense either. On this determination of Kant, the judicial system is in complete disagreement with him.

IMMANUAL KANT:
THE CATEGORICAL IMPERATIVE AND RESTORATIVE JUSTICE

Kant’s imperatives are either hypothetical or categorized. Kant defines imperatives as formulae to express the relationship of objective laws of all volition of the will to the subjective imperfection of the human will. He groups them into hypothetical and categorical imperatives (Abbott 2001, 172). A categorical imperative is one that represents an action as necessary of itself without reference to another end. Kant considers it objectively necessary. A hypothetical imperative represents the necessity of a possible action as a means to something else that is willed, or at least one which might
possibly be willed. According to Kant, all imperatives are formulae which determine a necessary action according to the principle of a *good* will (Kant 1955, 37).

Kant’s Categorical Imperative, his foundation of all moral duties, provides that we must act only according to a maxim by which we can at the same time will that it shall become a general law or act as if the maxim of our actions were to become through our will a general natural law. Kant maintains that virtue does not depend on the intended result of an act, but solely on its own principle which, in itself, is a result. His thesis provides that *a priori* knowledge of moral should provide us with a calibrated moral compass. Kant’s Categorical Imperative includes a Second Formulation, the Humanity Formulation, which reinforces respect for all persons and states that we ought never act in such a way that we treat humanity, ourselves or others, as a means only, but always as an end in itself. The Second Formulation reinforces Kant’s *a priori* innate moral reasoning because we know immediately that something is wrong when we treat others who have an absolute value as mere instruments. Kant considers his authoritative and cogently expressed normative principle, the Categorical Imperative, as the means to discerning the supreme moral one. He firmly held that moral duties and commands are unconditional, objective, and absolute and, further, that all moral human agents know this. Kant’s moral philosophy centered upon his Categorical Imperative is supportive of a traditional school disciplinary code and the requirement to comply with it on the part of a student. Kant’s concept of duty to others is also applicable to the school setting and to the maintenance of an atmosphere in which respect and the dignity of others are paramount and foundational. Kant’s moral philosophy expressed in his Categorical Imperative and Second Formula on Humanity as an End in Itself, along with Plato’s
philosophy of education and justice, provide the moral philosophical basis for the value of restorative justice practices in schools, which seek respect, openness, tolerance, truthfulness, self-discipline, understanding, compassion, empathy, and justice in transforming an aggressive school environment to one of respect.

As a normative ethicist, Kant focuses on duties, maxims, propositions, principles, imperatives, formulae, laws, norms, and rules. His *Metaphysics of Morals* contains the foundation of his ethical system, the Categorical Imperative, which reinforces his belief that all moral concepts originate entirely *a priori* in reason. Kant maintains that moral behavior occurs only when one acts from a sense of duty. The imperative, according to Kant, commands immediate conduct without any prerequisites, conditions, or purposes. What is essentially good in the Categorical Imperative consists in one’s mental disposition without concern for the consequences. This Kant calls the imperative of Morality (Abbott 2001, 174). The imperative of Morality is in no way hypothetical, and its objective necessity cannot arise from any hypothetical foundation. The moral imperative is categorical and unconditional. The categorical imperative has the “purport of practical law” (Abbott 2001, 177). Kant re-emphasizes that the imperative of duty may be expressed as: “Act as if the maxim of thy action were to become by thy will a Universal Law of Nature” (Abbott 2001, 177, 179).

Kant clarifies his principle of duty with the example focusing on one’s own happiness as the natural end of each person. If in seeking our own happiness we do nothing to impair the happiness of others, we would not harmonize positively with humanity as an end in itself. The principle of humanity, as well as that of every rational
nature as an end in itself, Kant points out, is the “supreme limiting condition of every man’s freedom of action” (Kant 1993, 36-38).

Kant’s Categorical Imperative certainly plays a significant part in reinforcing the understanding of personal duty to others, accountability, and the need for a civil ethos in schools. When students harass, demean, taunt, bully, and abuse fellow students, they are treating others as objects of their own selfish ends and not recognizing their worth and right to dignity and entitlement to respect.

The supreme limiting condition of an individual’s freedom is the principle of humanity, which requires that we treat ourselves and others as an end and never as a means to an end. Kant proffers that this principle is not “borrowed from experience” because it is universal, applicable to all rational human beings, and also because it is not subjective, but objective (Abbott 2001, 188).

Kant notes that the violation of the principle of humanity is clear when attacks are made on the freedom and property of others. Those acts are clearly a transgression of others’ rights (Abbott 2001, 187). In the Navajo Peacemaking curriculum, the duty owed to others clearly involves the respect for individuals and their property and can be focused on in individual lessons, especially those developing a classroom agreement stressing appropriate behavior toward fellow classmates.

The basic division of duties are those duties toward oneself or those duties toward others. They mirror the mutual respect component of restorative justice practices. Duties toward oneself are perfect duties – those requiring specific actions or omissions. Imperfect duties are those meritorious acts where one is required to set an end. Duties toward oneself are either perfect or imperfect, whereas duties toward others are
subdivided into duties of love. Duties of respect correspond to perfect duties (Wood 2005, 145-46).

Kant argues that the concept of duty includes a good will (Kant 1993, 9). One’s actions have moral content unless an act is performed from duty, not from inclination or fear (Kant 1993, 10). When teaching youth moral values and a moral sense of duty, neither fear nor inclination is an appropriate part of instruction. Traditional school codes of conduct and discipline, therefore, neither transform behavior nor teach a lasting moral value (Kant 1993, 13).

In the Second Section of Grounding for the Metaphysics of Morals, Kant restates that our concept of duty is drawn from the ordinary use of our practical reason, yet he cautions that we are not to infer that duty is a concept of experience. Kant comments that we meet complaints that although most acts are done in accordance with that which duty commands, doubts still exist as to whether acts are really done from duty, therefore, having moral worth or from self-love. Kant notes that although we “like to flatter ourselves with the false claim to a more noble motive; but in fact we can never, even by the strictest examination, completely plumb the depths of the secret incentives of our actions. For when moral value is being considered, the concern is not with the actions, which are seen, but rather with their inner principles, which are not seen” (Kant 1993, 19).

Kant distinguishes the perfect duties, which allow no leeway, from the imperfect duties, which do allow some leeway in behaviors. The bit of “give” does not, however, reduce the validity of a duty towards one’s neighbor. Kant classified moral duties into four categories:
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<tr>
<th>Duties to Oneself</th>
<th><strong>Perfect Duties</strong></th>
<th><strong>Imperfect Duties</strong></th>
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<tbody>
<tr>
<td></td>
<td>Forbiddance of suicide</td>
<td>Forbiddance of not developing one’s abilities</td>
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<table>
<thead>
<tr>
<th>Duties Toward Others</th>
<th><strong>Perfect Duties</strong></th>
<th><strong>Imperfect Duties</strong></th>
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<tbody>
<tr>
<td></td>
<td>Forbiddance of false premises</td>
<td>Forbiddance of indifference toward the needs of others (Hoffe 1992, 152).</td>
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As to a strict duty to others, Kant similarly holds that we can never treat another as a means to an end. He maintains that the principle of duty to others becomes clearer in matters where attacks on the freedom and property of others is considered. In these cases, the transgressor of the rights of another clearly intends to make use of another person merely as a means without taking into consideration that rational beings should always be esteemed simultaneously as ends and as beings who “must be able to hold the very same action as an end” (Kant 1993, 36-37). This is more than the Golden Rule since Kant’s concept of duty to others is a universal law. Kant advocates that the duty to oneself and to others is an affirmative absolute duty as opposed to a duty that merely does not conflict with humanity in our own person as an end in itself.

Kant makes it quite clear that not only must actions not violate the humanity in ourselves and others, but they must harmonize with it, as well. We are duty-bound to further the best interests of others (Abbott 2001, 188). This harmony is an integral part of Navajo Peacemaking.

**THE MORALLY RIGHT ACT**

A right action must be in sync with the categorical imperative. It is from this ultimate moral principle that one learns what behavior is “required, prohibited, or permitted with regard to the performance of right action.” An act is morally right if it is
in agreement with that which is mandated. Kant’s separation of moral objectives and moral worth may be the rational explanation of the two competing interests. In order to achieve moral worth, however, an action “must be done not solely from inclination but because of a motivation to do what is right” (Jones 1971, 73). In *Groundwork of the Metaphysics of Morals*, Kant makes a crucial distinction between moral rightness and moral worth. A morally right act, he posits, is that which is performed pursuant to a duty, whereas a morally worthy one is done from the motive of a duty (Jones 1971, 72). According to Kant, the essence of all moral worth of actions lives in their being immediately determined by the moral law (Greyer 2000, 137).

Kant is rightly regarded as the philosophical “defender for excellence” of the rights of man, of his equality, and of a republican form of government. He considers morality and law to be founded on the individual rights of man (Ladd 1965, ix). Kant’s understanding of human nature and its flaws are evident when he maintains that the completely self-absorbed individual may perform right actions by shear accident as a result of his own selfish desires leading him to act entirely in accordance with the objective or external mandates of the moral law (Jones 1971, 73).

Kant treats exceptions to moral rules as one of his twelve fundamental categories of practical reason. He draws attention to and is critical of the human tendency to make exceptions for ourselves in the case of moral values we expect others to follow. Moral values may sometimes have exceptions as a flimsy excuse for failing to follow moral rules when we should follow them. Kant expresses that people do this frequently and, as a result, this behavior is responsible for much evil (Wood 2005, 131-32). This is true for the child abuser who rationalizes his aberrant abusive behavior as being instructional to
the child-victim or consented to by a child incapable of consenting to abuse. Kant continues with his thoughts on evil behavior and states that it is a universal law that everyone who regards himself to be in difficulty promises what he pleases, and if the promise is impossible to keep, all such statements are vain pretences (Kant 1955, 47-48). This can be equated to the “grooming process” used by child abusers to gain a child’s trust and interest. This process used to attract youthful victims includes gifts and excessive, inappropriate attention to make the child feel needed and understood.

PRINCIPLES OF MORALITY

Kant defines three modes of presenting the principles of morality. He asserts that the first is form, which consists of universality expressed by the formula of the moral of the imperative. The next mode is matter, which is an end. The formula states that the rational being is an end in itself. The third mode is a complete characterization of all maxims by means of the formula that all rational beings are an end in themselves. Kant sums it all up when he states that when we form our moral judgment of actions, the best method is to begin with the general formula of the categorical imperative, which states: “Act according to a maxim which can at the same time make itself a universal law” (Abbott 2001, 193-94).

When presented with the view that moral convictions are often based on other different or cultural norms, Kant responds with his principle of legislation based on reason alone, which he calls his Universal Principle of Justice. This principle beckons us to act in such a way that our choices are not incompatible with each individual’s external freedom – the basis also of restorative justice principles. When the dignity of a person is denied, that person’s freedom is also jeopardized. Restorative justice practices approach
justice from healing and understanding. These practices insist offenders be accountable for the harm for which they are responsible. Collaborative, respectful dialogue in Peacemaking takes an offender off the defensive since these proceedings are not adversarial.

THE DUTY OF RESPECT

To Kant, respect is a feeling, but not one “received through influence, but is self-wrought by a rational concept.” It is distinct from all feelings of inclination or fear. Kant maintains that what we recognize as a law, we recognize with respect, signifying our awareness that our will is “subordinate” to a law, with no intervention of other influences on our sense. Respect is the effect of the law on a person and not the cause of it (Abbott 2001, 159).

The duties of virtue are two-fold: to self and to others. This concept is echoed in the principle of respect found in Diné Peacemaking. Love and respect are the feelings that accompany the practice of these duties to others. Even though our neighbor may give little respect, we can show him the respect necessary even if we might not consider him lovable. Love and respect are always joined together in a duty. Every person has a duty of benevolence to others regardless of whether he finds the other lovable (Gregor 1964, 115, 118).

Respect is not to be taken merely as the feeling that comes from comparing one’s own worth with another’s as when a child feels respect toward parents. Respect is a maxim of limiting our self-esteem by the dignity of humanity in another person (Gregor 1964, 116-17). The duty of love for one’s neighbor can also be expressed as the duty of making other’s ends my own, as long as these ends are not immoral. The duty of respect
for my neighbor is embodied in the maxim of not abasing another to a mere means to my end. In other words, a person cannot demand that another degrade himself in order to accomplish my personal goals. In fulfilling a duty of respect, I limit myself in order to detract nothing from the worth to which another is entitled (Gregor 1964, 117). Our feelings and desires are corrupted by social competition and self-conceit (Wood 2005, 150). Kant, fully aware of the human conditions and accompanying flaws and character disorders, states that because of human frailty, law must appear to us as a law of duty which commands or compels obedience. Law must excite in us a feeling analogous to fear. This is a complex feeling between reverence or respect. A man is morally good for seeking to follow and obey a law valid for all men and to follow an objective standard not determined by his own desires (Hill 1992, 21-22).

Kant regards the duty of respect to others as an imperfect duty to adopt a “maxim of limiting our self-esteem by the dignity of humanity in another person.” It consists in avoiding the vices of pride, calumny, and mockery. A perfect duty, on the other hand, includes avoidance of suicide and lying. Thomas E. Hill, Jr. considers duties of respect in accordance with Kant’s philosophy to be “imperfect duties” which are derived from a primary duty to adopt a very general maxim “to limit our self-esteem by the dignity of humanity in another person” (Hill 1992, 154-55). Hill further interprets Kant by stating that the principles of respect allow latitude and room for judgment in deciding whether or not a given principle is relevant to a particular situation and the freedom to choose various ways of satisfying a principle in any given situation.

Principles of respect, however, do not allow liberty in the sense that there is a freedom to do one thing or another as one pleases when one knows that a certain act or
behavior is required (Hill 1992, 155). An imperfect duty, therefore, is a duty to adopt a maxim which is so unspecific about what one is required to do that only principles of action that we can draw from this duty allow considerable latitude (Hill 1992, 155-56).

Kant believes that a person possesses moral worth if and only if an act is performed solely from duty. Acting from duty requires respect for the law as the only legitimate moral incentive. Kant first introduces respect at the close of his discussion on moral worth in *Groundwork of the Metaphysics of Morals*. He claims that it can be inferred that “duty is the necessity to act out of respect for the law.” Having eliminated inclination and every object of the will or a possible basis of obligation, Kant determines that there is nothing remaining to determine the will other than objectively the law and subjectively pure respect for it (Allison 1990, 120-21).

Kant reasons that respect is “qualitatively different” from other feelings which arise totally from our sensuous nature (Allison 1990, 121). According to Henry Allison in *Kant: Theory of Freedom*, the law confronts us as an imperative, and moral requirements take the form of duties. Allison maintains that Kant supports that we need an incentive to do what duty mandates, that “the moral” functions as the sole incentive to morality. If we perform a dutiful act for any reason other than its own duty, the performance lacks all moral worth (Allison 1990, 122). He discerns three positive aspects of respect. The first aspect is that it is a complex phenomenon having an interrelated intellectual and sensible component. Secondly, Kant suggests that negative aspects of the feeling of respect have some analogy with fear, where the positive aspect has some analogy with inclination. The third and final aspect of respect is its connection with a sense of self-worth or self-approbation (Allison 1990, 121-25).
In both of its negative and positive aspects, respect is produced by the consciousness of a rationally compelling value or norm known as the moral law. Kant characterizes respect as the incentive to morality. Allison concludes that if to “respect the law is just to regard it as the ultimate norm governing one’s choice of maxims, then to respect it is to have a sufficient reason to obey it.” Allison interprets Kant to believe that respect for the law is based merely on the awareness of its negative effect on sensibility not on the recognition of its intrinsic rationality and authority (Allison 1990, 125-27).

The value of the human person is again expressed by Kant when he states that “a thing has a price if any substitute or equivalent can be found for it. It has a dignity or worthiness if it admits no equivalent” (Paton 1948, 31-32). Each person, including children, is unique and deserving of dignity. Kant continues with this thought and states further that morality and human beings, as far as they are capable of morality, alone have dignity (Paton 1948, 114). Kant through his written philosophical views and categories of imperatives and principles postulates that human beings ought to be treated as ends-in-themselves and never merely as means. Kant’s fundamental moral belief centers on human dignity and emphasizes the moral importance of human beings as ends-in-themselves, the absolute value (Jones 1971, ix). This fundamental moral belief of Kant is of significant value in teaching children moral standards. The bullying and harassment of others, for instance, is treating others as a means to an end, the perverted self-pleasure of the abuser.

DIGNITY AND THE ABSOLUTE WORTH OF HUMAN BEINGS

Hardy E. Jones is the author of an analytical assessment of Kant’s *Groundwork of the Metaphysics of Morals*, which he describes as a famous dictum concerning human
dignity. Jones finds the second formulation of the categorical imperative, the principle of humanity, to be one of the most significant of Kant’s insights (Jones 1971, 3). In *Groundwork of the Metaphysics of Morals*, Kant refers to the principle of human dignity as the mandate to act in such a manner that one always treats humanity never simply as a means but always as an end. This principle has been used as condemnation of an array of actions including punishment, slavery, and lying (Jones 1971, 96).

Kant’s reasoned formula on human dignity, according to Hardy E. Jones (Jones 1971, 3-4), can be appreciated only in relationship to Kant’s claims about objective ends, the will, absolute value, autonomy, and respect. The core belief behind Kant’s principle is that human beings have absolute worth. Kant’s principle is to provide moral guidance through reinforcement that human beings deserve absolute respect from their fellow human beings. Kant recognizes that actions are two-fold -- the internal phenomena of attitudes and motives and the external events consisting of physical acts (Jones 1971, 3-4).

In developing his moral and ethical theories, Kant focuses on moral dilemmas. His concept of humanity provides “content” for the moral law. He provides a framework for morality in his first formulation of the categorical imperative in his *Groundwork of the Metaphysics of Morals* where he states that “human beings must … act only on that maxim through which you can at the same time will that it should become a universal law” (Jones 1971, 5). This core belief of Kant is analogous to the behavior of the pedophile whose sexual gratification focuses primarily on children. The pedophile treats children *merely as a means*, thereby violating the duty of dignity and respect owed to children. Seeking solely personal satisfaction as the reason for his/her actions, the
pedophile “grooms” the vulnerable child to gain the child’s trust before offending and violating the child’s personal and bodily integrity.

MORAL AGENCY

Kant appears to be unwavering in his position that a human being possesses moral agency, a work in progress whereby the human being grows, advances, and develops. He does not emphasize moral agency, but instead, a human being who possesses characteristics including moral agency and who is of absolute value.

Lara Denis, in her assessment of moral agency and Kant’s Categorical Imperative, argues that there are no observable traits in moral agency or any proof that any particular being is a moral agent (Denis 2007, 569). As a result, she posits that we reserve attribution of agency until we can “reasonably attribute maxims to the human being” (Denis 2007, 569). Under either the Kantian moral ethics or Denis’ proposition of “reserved agency,” acknowledging the growth and development of children, especially school-aged children, they possess moral agency, and it is a duty of parents and teachers who act in loco parentis to assist the child in cognitive and emotional development. In addition, Denis submits that we must assist the child in social development and make him “feel safe in meeting new people and exploring the world.”

One may relate to an infant in ways that help him develop cognitively and emotionally, and make him feel safe in meeting new people and in beginning to explore the world. In all these things, we think it best if parents have in view their mission to shepherd this little human into his own agency, and are sensitive to the demands of this task. (Denis 2007, 575)

Denis cites Tamar Schapiro, who states childhood to be a “…normative predicament in which human agency is forged, and which places certain demands on the parents (and
others) who have duties to help fledgling agents through this different stage…” (Denis 2007, 575).

THE DOCTRINE OF VIRTUE

Kant’s system of ethical duties is the Doctrine of Virtue. Virtue is the fundamental presupposition of all reliable ethical conduct (Wood 2005, 150). The obligatory ends of pure practical reason are the duties of virtue. Kant defines virtue as a “naturally acquired faculty of non-holy will” or more specifically as “the moral disposition in the struggle.” In his *Metaphysics of Morals*, he sees virtue as “the moral strength of a human being’s will in fulfilling his duty” (Wood 2005, 150). Moral strength, according to Kant, is an “aptitude” in acting and “a subjective perfection of the power of choice.” He believes that we have a duty to cultivate feelings and inclinations that harmonize with duty and a duty to acquire a temperament suitable to morality. However, Kant does not equate virtue with success in fulfilling that duty.

Virtue is perceived as a need tailored precisely to the extent that good conduct is hard for individuals since it consists of strength we need to perform a difficult task. Kant clarifies that temperament is not virtue but only makes virtue, a quality of character, less often necessary (Wood 2005, 149). Our human expressions of competitive self-conceit are manifested in our inclinations, which are inevitably a counterweight to the moral law. Strength is required to overcome their depictive behavior. As a result, Kant maintains that there can be no reliable fulfillment of duty without some degree of virtue (Wood 2005, 149).
Moral philosophy can have an empirical part based on experience because it must determine the will of man in so far as it is affected by nature. Moral laws are those according to everything ought to happen and also consider the conditions under which ought to happen, but frequently does not (Kant 1993, 1).

A two-fold metaphysics arises – one of nature and one of morals. Kant believes that ethics has an empirical part called “practical anthropology,” while the rational part he calls morals. He considers whether there was necessity to develop an argument for a pure moral philosophy totally devoid of all empirical and solely belonging to anthropology. Kant determines that “…there must be such a philosophy evident from the common idea of duty and of moral laws. Everyone must admit that if a law is to be morally valid, i.e., is to be valid as a ground of obligation, then it must carry with it absolute necessity….” The “ground of obligation” must be sought not in man’s nature or in the world in which man lives, “…but it must be sought a priori solely in the concepts of pure reason.” Kant emphasizes this point by stating that “…every other precept which is founded on principles of mere experience … can indeed be called a practical rule, but never a moral law” (Kant 1993, 2-3). It can be argued that all persons, including children, especially as they continue in growth, development, and maturity, know what is right and wrong. But this a priori moral knowledge does not alleviate the need for continual character formation through direction both at home and in our schools.

Kant determines that a metaphysics of morals is “indispensably necessary” since morals themselves “…are liable to all kinds of corruption as long as the guide and supreme norm for correctly estimating them are missing…." What is morally good must
not only conform to the moral law, but “must also be done for the sake of the moral law.” Since the moral law can only be sought in pure philosophy (metaphysics) which must precede it, without pure philosophy, there can be no moral philosophy. Pure philosophy does not mix the empirical (Kant 1993, 3).

There is a need for educators to continue to develop a standard of morality in students, as well as good will, which Kant considers rudimentary to all qualities and virtues and as an essential condition of “being even worthy of happiness” (Kant 1993, 7). An act has moral worth when it is performed simply from duty (Abbott 2001, 156). When directing children in moral development, importing the sense of duty and obligation towards others is essential. Stepping in to assist a victim of bullying or reporting it to school officials is a moral duty.

Kant names desirable qualities to include intelligence, wit, judgment, and other talents of the mind. He considers qualities of temperament to include courage, resolution, and perseverance. Other qualities which Kant considers comprise part of the essential worth of a person to include “moderation in emotions and passions, self-control, and calm deliberation” (Kant 1993, 7). This type of moral education is incorporated throughout our educational systems through instruction, guidance, and codes of conduct.

It is the conformity to law which serves the will as a principle if duty is not to be a worthless notion (Abbott 2001, 160). If in seeking the clarity of a moral act, unless I can will that a maxim be a universal law, it must be rejected on moral grounds.

CHILDREN AS THE BENEFICIARIES OF KANT’S WISDOM

It is clear that Kant regards rationality as the supreme condition restricting man’s will and his actions (Jones 1971, 25). What an imperfectly rational being ought to do is
what a wholly rational being (God) in fact does. Kant urges us to be god-like and virtuous.

Human beings are sensible members of the natural world. They are subject to the yearnings of passions. Nevertheless, they possess a rational will which legislates moral law and are capable of acting rightly. Morality is a part of man’s nature. Kant’s theory of human nature is, thus, absolutely essential to an understanding of the principle of humanity (Jones 1971, 26). Kant states that an act violates a perfect duty, the duty of respect, for instance, if it sets an end contrary to one of the ends we are duty bound to set or it shows disrespect toward humanity in someone’s person (e.g., using the person as a mere means). Immanuel Kant insists that we are all conscious of the moral law and that we all recognize that all are unconditionally bound by it (Gregor 1964, 135).

We are duty-bound to treat children with dignity and respect. The child abuser not only violates civil and criminal laws, but violates moral law as delineated by Kant. To treat persons as mere means is often to treat them in ways similar to the ways one might treat non-human animals or inanimate objects. A wholly self-absorbed individual, such as the narcissistic, self-absorbed child abuser, strives to make all his actions conform to his own self-interest. He views other people solely from this perspective. Others have a significant place only in his egoistic calculations (Jones 1971, 76). Although it may be true that having respect for a person is sufficient to keep the treatment of an individual as a means from being wrong, it is not sufficient for the action’s (or the agent’s) possession of moral worth (Jones 1971, 77).

The principle of personality demands that one seeks perfection as a goal. Fulfillment of the duty to treat persons as ends must also involve an effort to advance
their happiness. Like the duty of perfection, the obligation to seek others’ happiness is only an imperfect one (Jones 1971, 118). Kant believes that each man naturally seeks his own happiness (Jones 1971, 119). The right of children to bodily integrity is essential to a child’s happiness. Happiness of others is an “end which is also a duty” (Jones 1971, 121).

Kant’s emphasis on the absolute value of human beings is an important feature of his ethical theory. Kant maintains that human beings have a value which is absolute or unconditional (Jones 1971, 127). Children have an intrinsic and absolute value. He equated dignity with intrinsic value. Persons have intrinsic value in order to support the claim that all persons are ends-in-themselves who ought not to be treated merely as means. Kant believes all persons are end-in-themselves which is dependant upon absolute value. If all persons are ends-in-themselves, then each person must have dignity or absolute value (Jones 1971, 128).

Regarding each man as an end-in-himself, all persons are not to be treated merely as a means. Man’s status as an end is essentially connected with his dignity or absolute worth. Man’s autonomy is the basis of his dignity as a rational agent (Jones 1971, 134). Persons have a dignity or unconditional value wholly independent of being valuable for or valued by anything else (Jones 1971, 140).

Child safety and personal dignity are components of a moral imperative. Immanuel Kant emphasizes that each person has a duty to seek the happiness of others. He further believes that there is a critical connection between respect for the moral law and respect for human beings with the human personality forming the source of the moral law and duty. Since humanity is the source of moral law, if persons fail to respect one
another, they do not respect morality. It is not possible to respect something unless its origin or source is also respected.

The key to Kant’s moral philosophy is his concept of the dignity of the individual which gives man an intrinsic worth. Dignity is the source of man’s innate right to freedom and the source of his legend and political rights. “Inasmuch as every individual possesses this dignity and right, all men are equal.”

**SIMONE WEIL: A PHILOSOPHER WITH A HEART**

Both Immanuel Kant and Simone Weil base their philosophy concerning the dignity of human beings on unconditional, absolute respect. The foundation of Kant’s philosophy is universal rationality, whereas the foundation of Simone Weil’s philosophy of absolute respect is the vulnerability of the human affective desire for the good.

Weil is a unique, caring individual who possesses a depth of empathy for all persons based on the vulnerability of human affection. She sees the desire in people for the good and, further, sees how others can be hurt in not only a physical way but also the “harm of the broken heart.” Weil sees the rational equality of all persons’ inner soul. As a result, she advocates that both the physical harm and soul must be healed. It is not simple enough to restore material goods, but damaged self-respect of the victim must also be a part of the repair. All persons are identical in their human affectivity and vulnerability.

Weil considers the basis of morality to be affective. She sees the absolute good, but is not an absolutist where reason is concerned. The absolute good could not be compromised by absolute reason as emphasized by Kant. Weil has an alternative, yet complementary, argument for restorative justice practices compared with that of Kant.
Restorative justice is not purely a Kantian rational justification of rights, but involves the repair of harm caused to the core of a person, the soul.

Simone Weil expresses an incredible wisdom acquired during her thirty-four years of life. She, on the cusp between secularism and scriptural religion, is an extremely inspirational writer on issues of moral philosophy, including social justice and the meaning of life. She is concerned about marginalized people and their needs, which she says are sacred and include liberty, justice, truth, freedom of expression, and solitude. She witnesses poverty and the plight of individuals firsthand. Of all things, Weil knows this is not a perfect world. Where some people only know the price of things, Weil knows the value of all things. She finds something sacred in every person. She has empathy for others.

Like Immanuel Kant, Weil believes that all human beings are mindful of obligations, but states further that it is impossible to feel equal respect for things that are unequal until we respect the universal link with the reality of the outside world that is present in all persons. Simone Weil posits that the degree of respect we owe to one another is “a very high one” because each person is unique and irreplaceable, unlike a sack of corn which can always be substituted for another sack of corn. Food for the human soul has no equivalent (Weil 1971, 8). Weil goes on to enumerate a few of those needs essential to the life of the soul -- order, freedom of opinion, and security which she defines as the absence of fear or terror as permanent states of the soul (Weil 1971, 34).

HUMAN DIGNITY

Weil and Kant have some common beliefs, but articulate them in different ways. Kant has his Categorical Imperative, which he believes is known by all human beings a
priori by virtue of their humanity. Weil expresses her view on an imperative of humanity, but her imperative is based on empathy for those who are damaged to the core of their inner soul, a type of “soul murder.” Weil posits that all human beings, terminology also used by Kant, have an “unquenchable desire for good, surrounded by an accretion of psychical and bodily matter.” She maintains that only by directing one’s attention beyond the material world can an individual be in real contact with the essential, central fact of human nature. Weil, who refers to this accomplishment as the “faculty,” maintains in an a priori Kantian sense that human beings who are in possession of this faculty to direct one’s attention beyond this world, have it whether or not they are aware of it (Rosenthal 1976, 7).

In The Need for Roots, Weil provides a distinctive analysis of rights, denying them absolute status. She maintains that rights are “cultural products,” yet linked to supernatural justice (Allen and Springsted 1994, 187). Weil proposes that we view rights as legitimate, specific, cultural values. It is the fundamental concern for others that obtains from supernatural justice by means of an obligation that each human being has toward others. The bottom line is that rights are the “specific historical and cultural specifications of this obligation, which actualize it but never exhaust it” (Allen and Springsted 1994, 187). As a result, Weil maintains that rights are “mutable in changing historical circumstances.” This historical contingency is tempered when rights are “the result of obligation meeting need.” It is at this juncture when rights become “historical witnesses to specific acts of recognition of the sacredness of human beings” (Allen and Springsted 1994, 187).
The apparent differing philosophies of Weil and Kant on the rights of human beings may really be a distinction without a difference. Kant is an intellectual, while Weil brings feelings and the combination of physical body and spiritual soul into the picture. She possesses the empathy that is not evident in the majority of Kant’s writings. He lived in a different time when law was the foundation of moral philosophy, whereas Simone Weil experienced the horrors of power out of control and its affect on the human soul.

Kant believes in an inflexible moral theory of respect for others and its violation deserving of retribution. Perhaps Kant and Weil differ on retribution in part because they were living at different times and experiencing different views of humanity. Kant did not experience the ravages of war with its destructions of human dignity and the heart and soul of its victims. Kant approaches morality from experientially sterile and pure academic lenses. Later in life, perhaps due to critics of his moral absolutist philosophy, he seems to acknowledge that morality has a human emotional facet to it that he neglects to acknowledge with his emphasis on reason. It is Simone Weil who builds a moral philosophy upon humanity, its search for good, and its second critical component of respect coupled with empathy. Her philosophical base suits restorative justice and Peacemaking.

Weil submits that duty and obligation toward others is present to all men, although in differing forms and in “varying degrees of clarity,” since individuals are more or less inclined to either accept or refuse obligations as their “rule of conduct” or personal ethics. Weil is so strong in her moral belief that each of us has a duty toward others, that to refuse it is criminal and proportionate to the good or evil in any society (Weil 1981, 8).
Although Kant and Weil maintain a passion about duty and respect owed to others, it is Weil who humanizes, yet simultaneously raises both, to a spiritual level through personal empathy and love. It is Weil who speaks of repair rather than retribution and the harmful destruction not only of another’s physical person, but also the destruction of one’s soul. She emphasizes the combination of the humanity and the spiritual soul in human beings while acknowledging the extent of damage and harm caused by disrespect to others, which results in the destruction of the total human being.

Kantian moral philosophy, on the other hand, speaks of the retribution towards an offender rather than the repair of harm done to a victim. It is Simone Weil who raises the bar in moral philosophy to address the rule of laws and to question what the basis of law should be. She challenges us “to discern, discriminate, and enumerate” with all possible accuracy the “earthly needs” of soul and body (Weil 1981, 9-10). When we achieve this, we acknowledge the need to replace retribution with repair of harm since each need requires another stage of obligation.

EMPATHY, HUMAN SUFFERING, AND AFFLICTION

Weil explains why it is humiliating, degrading, and oppressive for a human being to be at the mercy of another as opposed to being at the mercy of natural disasters. She reasons that when one is subject and at the mercy of the will of another, the victim cannot anticipate the limits of what will happen (Rhees 2000, 24). Being the victim of a natural disaster such as a flood or earthquake is not as demoralizing, degrading, or debasing as being humiliated by another person. Natural disasters do not destroy one’s self-respect (Rhees 2000, 24).
The contributions of Simone Weil during her short life are remarkable. The depth of her empathy for others, especially the marginalized, and her concerns for the welfare of their bodies and souls are beyond measure. Her philosophy of life concerning our duties to address the needs of others from obligation and justice are compatible with the rights of children to personal safety and bodily integrity and the concurrent universal obligation to protect those rights.

In addressing an individual’s suffering, Weil notes that at the end of a certain time, suffering becomes intolerable. She reasons that the energy consumed to be able to bear long-term suffering results in exhaustion (Weil 1956, 1:153). Eventually, she states, there comes a point in affliction when the suffering individual no longer can bear that the suffering continue or that it cease (Weil 1956, 1:153). It is critical that children be taught empathy and compassion for others and become egocentric in their thinking.

The child who is bullied often feels this depth of suffering. Children who suffer from acts of aggression feel their fate is continual victimization unless adults intervene to stop the offending behavior. By doing so, school officials, in particular, can overcome the fatalistic, but realistic view of Simone Weil, that injustice is inevitable, although each person can make a difference by treating others with fairness. It is this core principle that restorative justice practices, especially Peacemaking, reinforce.

Weil distinguishes between those who directly inflict hurt and those who are bystanders who “simply do not hear it,” do nothing, and remain indifferent. She finds the two states of mind to be similar with the complacent failure to hear the cry of hurt to be a lesser manifestation of the first. So often in the school environment, school authorities are indifferent to aggressive behaviors and fail to address the resulting harm. Too often,
students who witness offending behavior also ignore it. She reflects that repeated infliction of harm may seem to deaden the cry of the offended, but that place in the heart of each individual which releases the cry of hurt is never deadened but simply becomes unable to cry out any more (Weil 1981, 15). This eventually happens to the offended student who is repeatedly abused or harassed and finds no one coming to help end the misery. Weil asserts that those who feel victimized are often the least able to express their hurt. Children certainly fit into this category. Weil would be a proponent of a system of public education capable of developing that human faculty, the point in the heart which cries out against evil with a means of expression.

Intelligence and the human faculty point in the heart which decries evil must be provided with a means of expression by a system of public education capable so far as possible to nurture this empathy (Weil 1981, 15). This is what St. Benedict calls the “ear of the heart.” Schools need to build a sense of community where a responsibility towards all human beings is developed through addressing the respect for the sacredness of the human being.

COMPASSION FOR OTHERS

The *Discussions of Simone Weil* by Rush Rhees is a compilation of letters written by Weil to M. Drury, a close friend of Rhees. Weil’s discussions fall into three basic categories: social philosophy, science and necessity, and reflections on ethics and religion according to the Editor’s Preface (Rhees 2000, viii). Rhees believes that the greatness of Simone Weil can be found in her reflections on ethics and religion (Rhees 2000, ix). Weil undoubtedly was a deeply religious thinker which is evidenced in all of her writings. Her empathic concern for others is inspiring. Rhees considers Weil to be a saint. He finds
Weil’s remarks on human affliction to be of a depth not found in any other writings, including those of Saint Paul, Saint Augustine, and Kierkegaard (Rhees, ix).

Weil is able to distinguish between suffering and affliction in an unvarnished style void of embellishment. She comments, for instance, that the loss of liberty especially occurs when an individual acts from “blind fear.” It is then that a person is reduced to threats or supplication. In such instances, a person cannot foresee the ways in which an opposing force will operate and is, therefore, unable to meet or manage the situation (Rhees 2000, 23). We see this occurring in cases of bullying and aggression in schools where vulnerable students experience fear as a result of subjection to harmful behavior by peers. Weil’s writings reinforce the absolute duty of school officials to step in when aggressive behavior is threatened or occurs. Mutual respect must be taught and reinforced, and the dignity of each person must be recognized. Victimization in the school environment can longer be ignored and tolerated. Humiliation at the behest of another makes it impossible to maintain one’s self-respect and makes it impossible to recover emotionally as opposed to physical suffering endured in a natural disaster (Rhees 2000, 24).

Plato’s influence on Weil is also seen in Weil’s references to The Cave where she notes that a person “…begins by suffering, mental confusion, groping in the dark, effort that at times appears hopeless…” (Weil 1956, 2:362). This dark and hopeless state certainly should not exist in the school setting where school officials have the authority and skills to raise the level of the school environment to one of safety and civility. “Reality is transcendent; this is Plato’s fundamental idea” (Weil 1956, 2:480).

Simone Weil references Plato’s Republic, Book V, 472b when she quotes in Volume Two of her Notebooks:
If we have discovered what is justice, are we to require that the just man should in nothing fail of absolute justice; or may we be satisfied...with an approximation, and the attainment in him of a higher degree of justice than is to be found in other men? – The approximation will be enough. – Then, so that we may have an ideal model, let us enquire into the nature of absolute justice and into the character of the perfectly just man, while supposing it possible for such a one to be born, and what he would be like if he were born. And let us do the same in the case of injustice and the unjust man.... (Weil 1956, 2:374)

Weil asserts that Plato makes clear the difference among “...(1) just men, who are, without exception, no more or less; (2) justice, and (3) the perfectly just man....” She notes that the “just man” is one who is “…despised, beaten, buffeted on the face, crucified, forsaken even by the god...” (Weil 1956, 2:374). If we as a society or even as a community regard the just man in these terms, before harm can be repaired, much work needs to be done to recognize justice as a virtue essential to all aspects of social living.

When addressing human suffering, Simone Weil views it in degrees of vulnerability. She equates human suffering with afflictions that pulverize the soul like a worker who gets caught up in a machine. This is such an appropriate assessment for offended students who are victims of harassment and bullying in the school environment. The degree and type of suffering vary with different people depending on their vitality, vulnerability, and attitude towards suffering (Weil 1981, 29). Especially with children, this is so definitely the case.

Weil submits that to be self-aware of affliction is to experience non-being. She compares such an awareness to the “state of extreme and total humiliation.... It is the death of the soul.” Affliction is a corrosive force and a corrosion of one’s soul, a self-annihilation (Weil 1981, 30). We see this state when children die from self-inflicted
wounds following bullying and harassment. They see no way out, are totally humiliated, and are despaired from the affliction they have experienced. Weil asserts that affliction is more difficult “than suicide would be for a happy child” (Weil 1981, 30). The added tragedy, as she points out, is that the afflicted are ignored. When they move their lips, she says, no sound can be heard, and, as a result, they soon lapse into a “state of impotency,” where they cannot use language because they are not being heard. Even if an afflicted person utters a cry that can pierce the soul, no one hears it. So it is with the vulnerable victimized child.

Diogenes Allen and Eric Springsted point out that Simone Weil delineates affliction as a particular type of human suffering. It can be the result of physical suffering if it is “very prolonged or frequent.” In order for suffering to escalate to the level of affliction, some event must be severe enough to “uproot a life and affect it physically, socially, and psychologically, with the source of affliction being primarily social.” At the point when a person is uprooted from the “fabric of social relations,” it is then that a person feels he “no longer counts for anything.” It is then that social degradation occurs or the fear of it takes place. Harassment and bullying are perfect examples (Allen and Springsted 1994, 98).

Weil emphasizes further that what is even more horrific from the psychological aspect is the contempt and disgust others express towards another who is regarded as socially insignificant. Weil suggests that a discounted individual who becomes afflicted “feels self-contempt and disgust, and even guilt and defilement in proportion to his or her innocence” (Allen and Springsted 1994, 98).
Affliction, according to Weil, overwhelms us and turns a person into “nothing” by crushing an individual from the outside, an action over which they have no control – the loss of autonomy. Their freedom of consent has been removed from them (Allen and Springsted 1994, 98). Nothing can prepare a person for affliction. As a result, there is no means to counter it or keep from being crushed or degraded (Allen and Springsted 1994, 101).

So we see that Weil arrives at the ultimate thesis based on foundational virtues which address the spiritual, emotional, intellectual, and physical needs of each person. Weil appears to have rejected the inflexible philosophy of Kant and his Categorical Imperative. Where Kant’s philosophy of personal rights end, Weil continues with an all-encompassing moral philosophy based on man’s desire for good. Weil’s incredible understanding of the depth of the human affliction paves the way for restorative justice practices which repair harm and emphasize understanding and mutual respect.

Simone Weil recognizes the need to repair harm, an essential element of restorative justice and Navajo Peacemaking. She states in Volume One of her Notebooks that by “…doing good (materially, morally, or in any other way) to some unhappy being (one of those into whose soul affliction has eaten its way), we reduce his present form of affliction, but we run the risk of increasing his past form of it.” She questions how one can exert any influence over past harm and how to cure bygone years of misery (Weil 1956, 1:151). She instinctively knows that repair of harm is essential to the finality of life.

Weil’s writings on suffering are poignant and so applicable to the harm suffered by victims of wrongdoing, especially young, vulnerable victims. Navajo Peacemaking,
however, is capable of bridging that point when a victim is so conflicted that the harm is
unbearable, whether it stops or continues. It is in The Need for Roots that she explains
how natural justice, exemplified by the notion of human rights, can be reconciled and
joined with supernatural justice as exemplified by the eternal obligation to respect the
sacredness in human beings.

Weil describes the desperate state of the marginalized child victim of relentless
bullying and harassment. Only through grace, Weil maintains, can love be capable of
getting attention and lead to truth to attend to the afflicted state. It is love, she proffers,
which is this “intense, pure, disinterested, gratuitous, generous attention” (Weil 1981, 30-
31). Since beauty emanates from pure love and all hopes of truth and justice rest on it, we
seek solace from any other place (Weil 1981, 32). School officials and teachers are in a
position to stop and prevent bullying and harassment, and students look to them for swift
intervention. When that does not occur, the suffering of the offended student is intensifies.

Weil extrapolates further and states that as a result, there is no need to consider
rights or even “personal rights” because these terms are related to personal things. Here
she definitely differentiates her moral philosophy from that of Kant. Weil views rights as
alien to good because, she reasons, they imply the possibility of making good or bad use of
a right. She further explains that rights and especially personal rights are on a lesser level
than good. She asserts that we must confine ourselves always and everywhere to express
only good since it is always good that fulfills an obligation. It is Weil’s position that truth,
beauty, justice, and compassion are always good (Weil 1981, 27).

Weil finds that the feeling of impossibility is the feeling of the void. It is
impossibility, she states, that “…accompanies all true suffering and breaks through as
soon as the imagination ceases for a moment to fill the void…” (Weil 1956, 1:153). She continues, stating further that there exists as a result the feeling of unreality in affliction. “If it isn’t true because it isn’t possible. It isn’t possible because it isn’t possible for me to bear it…” (Weil 1956, 1:153). Children who are unmercifully harassed and bullied often feel this way. Some come late to school to avoid the abuse, others drop out of school, and some are so despondent they take their own lives.

Weil’s writings on suffering are poignant and so applicable to the harm suffered by victims of wrongdoing. Peacemaking, however, is capable of bridging that point when a victim is so conflicted that the harm is unbearable, whether it stops or continues. This point is where apology, amends, and responsibility for wrongdoing on the part of the individual causing the harm take the victim to a place of peace and harmony. On forgiveness, Simone Weil states that it is “[I]mpossible to forgive anyone who does us harm if this harm degrades us” (Weil 1956, 1:137). Forgiveness of wrongdoing that extends to the core of one’s soul is more difficult and takes longer time. Sincere amends offered to the offended often assist the protracted process of forgiveness in such situations.

According to Ronald Hathaway in an introduction to the Two Moral Essays written by Simone Weil, he believes that these two works demonstrate that the thinking of Simone Weil is “free from the twin ideas of the person and his right,” which Hathaway maintains are the “cornerstone of the moral ideology of the European middle class” (Weil 1981, 4). The two essays by Weil exhibit a deep empathy and feeling for the individual and the right to respect. What does make the writings of Simone Weil appear at first to be free of all moral philosophical influence of the European middle class of her time is her depth of understanding for the suffering of others. She voluntarily left the comforts
of her family home, gave up her teaching, and immersed herself in the horrific effects of war and the life of the working class who suffered so severely. These harsh experiences enabled her to feel the hurt and depth of human suffering.

DUTY AND OBLIGATION

In Part One of The Need for Roots, The Needs of the Soul, Simone Weil opines that obligations come before rights, and rights are subordinate to obligations. She explains that the effective exercise of a right does not emanate from the person who possesses it, but springs from others who consider them under a certain obligation to the possessor of the right. Recognition of an obligation makes it effective. An obligation, Weil maintains, that goes unrecognized loses none of the full force of its existence, but a right which goes unrecognized is worth little. Weil explains further that a man alone only has obligations or duties toward himself, but has rights when seen from the point of view of others who recognize they have obligations toward him. A man alone in the universe has no rights, only obligations (Weil 1971, 3).

Weil takes this position on individual rights because she maintains that to start off with the idea of rights is to recognize solely those rights on the human plane. The realm of the eternal, the eternal and the unconditional, is related to the recesses of the human soul. All human beings are bound by obligations, and no one can escape them without being guilty of crime (Weil 1971, 4).

Weil finds exclusion morally offensive and maintains that no person can say to another “you do not interest me” without committing an act of cruelty and an offense against justice (Weil 1981, 13). She finds something sacred within every human being. It is not his/her person or human personality. It is humanity of that individual – the
“whole of him,” “his arms, eyes, thoughts, and everything,” that Weil finds sacred. As a result, she would not touch anything of another’s.

Weil makes it clear that the physical or mental qualities of an individual (color of the eyes, length of the arms, thought process) or state in life does not make someone “sacred” to her. What is important to her is the fact that a person’s soul is pierced when harm is done to him. The depth of this harm, she explains, is a result of every human being’s expectation from the bottom of the heart that good, not evil, will be done to him. The source of the sacred is the good and what pertains to it.

According to Weil, the object of any obligation is always the human being, solely because he or she is a human being. This obligation is based on no law, custom, or social structure since no de facto situation is able to create an obligation. The obligation or duty is an eternal one, one that is co-extensive with the eternal destiny of human beings. The obligation is without foundation but is verified in the common consent accorded by the universal conscience. The recognition of this obligation is expressed in a form called positive rights. The obligation of respect is owed to each human being because each possesses an eternal destiny and is expressed through meeting mankind’s earthly needs. Never has the human conscience varied on this point. It is an eternal obligation toward each human being not to let him suffer (Weil 1971, 4-6).

It is Weil’s position that we are bound in public and private life by the permanent obligation to remedy according to our “responsibilities and to the extent of [one’s] power, all the privations of soul and body which are liable to destroy or damage the early life of any human being whatsoever.” This is the repair of harm and the making of amends which is a core foundation of restorative justice Diné Peacemaking. We have a duty,
Weil continues, not to excuse ourselves by maintaining that we lack power or responsibility to repair harm until we do “everything possible” to explain truthfully our perceived limitations. Weil sees the obligation to repair harm as absolute and which is never canceled by any circumstances (Weil 1981, 8).

Simone Weil points out that we can satisfy the needs of others. However, these “earthly” needs arise from the combined soul and body. Navajo Peacemaking also focuses on the body and spirit. The failure to address the needs of another’s soul, Weil states, leaves a person in need in a starved or mutilated body. She cautions us not to focus solely on one person in need, but on the needs of all – the human need of equality (Weil 1981, 10). Among the common needs of human beings, Weil mentions personal property, liberty, truth, a social life, punishment, security, and honour (Weil 1981, 10-12). The justice aspect of Weil’s concept of punishment differs from pure retribution because, she explains, just punishment is determined by many factors, including atonement, repair, and acknowledgment of harm. A just punishment does not aim to humiliate the offender. Her empathetic comprehension of personal needs is unequivocally unmatched.

Weil finds punishment to be another vital need of the human soul. She distinguishes between two kinds of punishment – disciplinary and penal. Disciplinary punishment, she opines, provides security and support against human failings. Not a retributionist in her views, Weil states, however, that punishment inflicted for crime is the most indispensable punishment for the soul. She clarifies her view by explaining that a person who violates the criminal law puts himself outside the chain of the eternal obligations that bind every human being to every other one. Punishment, required by
law, she posits, is the only way, along with the violator’s consent, that he can be reinstated inside the law. Weil submits that punishment shows respect for the violator and enables him to re-enter the social community (Weil 1971, 21).

In Volume Two of her *Notebooks*, Weil addresses moral repair and the conception of punishment in the *Gorgias* where all pain sent by God to a person is purificatory. She reasons that if we cause suffering to someone, we do real evil to that individual. She states that “…if we cause suffering to someone … unless we are compelled to do so by some overwhelming duty, which is at the same time connected with him – it is we who really do him evil, and the thing applies if we do not alleviate another’s suffering when we are in a position to do so” (Weil 1956, 2:610). Weil could not get any closer to a moral duty to protect others from harassment and harm.

Simone Weil also emphasizes the importance of a feeling of community and belonging, one’s need for roots where human needs are satisfied and there flourishes a feeling of fraternity, joy, beauty, and happiness (Weil 1981, 12). How transformed the environment of an educational community would be with these qualities.

Simone Weil’s philosophy of the sacredness of the human person follows so closely to the underpinnings of Diné Peacemaking. Her values are Peacemaking values: justice, harmony, mutual respect, kindness, inclusion, dialogue, and repairing harm. Uniquely, Weil explains that this profound, yet childlike, expectation of good in the heart is not what prompts us to step up and advocate for our rights. The motive is found instead, she maintains, is found at a “much more superficial level of the soul” - justice. Injustice occurs, she submits, every time the depths of the soul release a plea questioning why hurt has occurred (Weil 1981, 14). If hurt occurs as a result of a misunderstanding,
the injustice amounts to an inadequate explanation, an absence of communication (Weil 1981, 14-15). Weil not only finds lack of communication to be a cause of misunderstanding, but also finds it totally unacceptable. Weil also underscores the importance of understanding in any attempt to remove injustice. She states, “If you want to remove (or reduce) oppression, you have to know – and remove or meet – the conditions that give rise to it” (Rhees 2000, 26). Dialogue is a key to understanding one another, as well as to uncovering the cause of conflict. An integral, key component of the Peacemaking process is dialogue and discussion.

Rhees described Simone Weil as “…a woman who, if she hears of something terrible, at once thinks that she ought to try to do something about it…” (Rhees 2000, 176). We all need to acquire Weil’s sense of the suffering of others. School officials need to acquire the same vivid sense of empathy and maintain a school ethos void of disrespect and hostility. To fail to address aggressive or abusive behavior toward children in their care would show indifference at best and breach of trust and duty at worst.

Simone Weil personally experienced injustice and the terrors of war. She expresses that one must be grateful if treated with justice. In Volume One of her Notebooks, she states:

We ought to be grateful if we are treated with justice.

Conversely, we ought never to seek to do any other good to people than that which consists in treating them with justice. In order to feel true gratitude (the case of friendship being set aside), I have to think that it is not out of pity, sympathy or caprice that I am being well treated, it is not a favour or privilege, nor as a natural result of temperamental disposition either, but from a desire to do what justice demands; therefore, that he who treats me in this way
wishes that all who are in my situation should be treated in the same way by all who are in his own (but not, of course, that they should be made to do so by some form of coercion, for any such constraints may possibly produce more consequences of a dangerous than of a useful nature).

In such a case, gratitude is pure, joyful, a love accompanied by the desire not to do the same thing in return, but to imitate. If any desire to be of service exists, it is only called forth by admiration.

Any other form of benefit degrades both the benefactor and the person benefited a little. (Weil 1956, 1:152)

Weil continues in her Notebooks that we do not have the right to expect that “…things should happen in a manner in conformity with justice….” She further states that there “…is a wrong way of thinking that one has rights, and a wrong way of thinking that one has not any…. ” Even in real realism with a touch of pessimism, she emphasizes that it is essential that we be prepared “…for things to happen in accordance with gravity, unless there be supernatural intervention…. ” However, she further emphasizes that “…we ought never to seek to do any other good to people than that which consists in treating them with justice…” (Weil 1956, 1:152).

Just think of the harassed or bullied student who continues to attend school daily full well knowing the abuse to be endured, yet attempting to focus on daily school lessons, always with the hope that relief will come. Victimization from aggressive behavior fosters an atmosphere which is not conducive to learning and requires the offended student to transcend the misery.

HEART AND SOUL

In her Statement of Human Obligations, Weil starts right off with man’s longing for an absolute good, but she incorporates this as the “centre of the human heart.” She
posits that this longing is never extinguished and is never satisfied by anything in this life. She equates this world as the “sole foundation of facts” and the “other reality” as the “sole foundation of good” (Weil 1981, 5). It is Weil’s amazing spirituality and ability to comprehend good and evil that makes her moral philosophy so different from that of her peers and also so exceptionally superior. She attributes the potential to recognize that the source of all good can exist in this world. This source, she explains, is comprised of “all beauty, all truth, all justice, all legationary, all order, and all human behavior that is mindful of obligations.” When individuals’ minds and love are focused on this reality, Weil states that this united focus is the conduit from which good comes and can be spread among men (Weil 1981, 5). Only when this power is exercised does it become real, and the sole condition for its exercise is consent of the individual (Weil 1981, 5). When an individual does consent to the direction of his attention and loves beyond this world and focuses on the reality that exists beyond all human faculties, eventually, a part of the good “descends upon him … and … shines through him upon all that surrounds him.” This experience occurs with the transformation of individuals in the restorative justice process. Weil explains that it is the deep longing of the heart for absolute good coupled with the power to direct one’s attention and love to a reality beyond this world which comprises the link to the “other reality.” When a person recognizes this “link,” he then recognizes every human being without exception as sacred to which an individual is bound to show respect (Weil 1981, 6). We are all capable of being instruments of good. At this point, an individual achieves harmony, understanding, and mutual respect -- the basic foundational goal of Diné Peacemaking. It must be a goal in our educational process to nurture in children this desire to seek and do good.
In her consideration of “good” and each individual’s search for it, Simone Weil again cites Plato, in particular Books VI and VII of *The Republic*. She states further that what we really desire is the good, the object of our will, and the will to good is inexhaustible because pure and inexhaustible good resides only in the will itself. All that is necessary for each of us is to realize this fact. We must desire the good solely and unconditionally, no matter what it (Weil 1956, 2:490-91).

It is the moral right of every child not only to desire a good life in the school environment, but to have that good life become a reality. Weil continues that the basic “…fundamental idea in Plato is that of Good….” Citing Plato’s *Republic* Book VI, 505, Weil states:

Good is that which every soul pursues and makes the end of all its actions, having a presentiment that is some definite (real) thing and yet hesitating and incapable of grasping with sufficient assurance what this thing actually is. (Weil 1956, 2:502)

Weil states that there is a disposition to continue in the case of one who does evil to do more and on the part of the one who suffers evil to suffer more evil. “No good is ever lost. No evil is ever lost either. For the individual, spiritually speaking, the evil committed thickens the darkness…” (Weil 1956, 1:285). Only the person who is “…inside the supernatural escapes both these moral defilements…” (Weil 1956, 1:286). She sees pain as “evidence of the actual existence of the world,” (Weil 1956, 2:395) but it does not have to be that way in the school environment where teachers and school administrators act *in loco parentis* for students. The rubber hits the road when a school environment becomes uncivil and hostile, and school officials take no action to resolve the hostility.
In perhaps a veiled and indirect reference to Kantian moral philosophy, Weil posits that regardless of whatever “formulation of belief or disbelief” one selects, once the heart inclines a person to “feel this respect,” it is at that juncture that the recognition of a reality other than the reality of our world exists. Weil maintains that until an individual feels that respect, he is “alien to that other reality also” (Weil 1981, 6).

Weil views empathy to see man’s needs, the needs of body and soul, as a possible indirect expression of respect for a human being. She sees the possibility of indirect expression of respect for another as the basis for obligation or duty. Empathy for others is that connection in human nature between the essence of man, which is his desire for good, and man’s sensibility – the merger of the intellectual and the emotional. As a result of empathy, Weil suggests, when a man’s life is either destroyed or damaged by “some wound or privation of soul or body” due to another’s actions or negligence, the victim’s sensibility suffers, but also so does his desire for good. Because of the combined injury to body and soul, Weil states that a “sacrilege” has been committed because what is sacred to the victim has been harmed (Weil 1981, 7). She views respect for another human being to be the primary obligation – the duty to be concerned with the needs of the souls and the bodies of others (Weil 1981, 8). It is this philosophical view of Weil that is intrinsically compatible with the principles and goals of restorative justice. Her ability to comprehend the depth of harmful acts is unequalled.

Weil finds it impossible to define what is meant by respect for human personality. She is not speaking solely of a definition by words, but respect for the human personality also cannot be isolated by the “silent operation of the mind” (Weil 1981, 13). She considers among human needs to be physical ones, like protection from violence,
housing, clothing, heating, hygiene, and medical attention. There are others concerned with moral needs, which are more difficult to recognized and list. Yet, everyone recognizes that they exist. Some forms of cruelty, for instance, can harm a man’s life without injuring his body, but they injure his soul. Weil states that a “cornfield respect” is owed “because it is the food for mankind” (Weil 1971, 7). Similarly, the Navajo’s cornstalk philosophy is a traditional moral philosophy founded on values of crucial importance to personal and communal harmony.

Order, Weil explains, is the closest to the soul’s eternal destiny. It consists of a texture of social relationships such that no one is compelled to violate imperative obligations, according to Weil. It is at this point, Weil appears to be influenced by Kantian morality with its categorical imperative, absolute duty, and respect for individuals. When the need for order is violated, can spiritual violence be inflicted on the soul -- it is the first need (Weil 1971, 10-11). When a school community is respectful and civil, there is order and harmony is diffused throughout.

Another absolute need of the human soul is liberty, the ability to choose. Weil emphasizes that the rules are imposed on those who live in community for the common interest of all. By necessity, rules limit the possibilities of choice, but Weil posits they must have certain qualities which include being sensible, sufficiently straightforward, stable, and capable of being understood. All rules should emanate from a loving source of authority, not a hostile one. Rules should be limited in number and should not be so restrictive that every time a decision must be made, rules have to be consulted. This enables the liberty of men of good will to be a part of an individual’s conscience through incorporation of rules and norms into a person’s being. Weil so interestingly notes that
once norms are accepted, they are not considered by man to be a limitation on his liberty. However, it is only the child who feels a limitation by rules (Weil 1971, 12-13).

The same qualities of community rules delineated by Weil are applicable to the rules of the school community which are adopted by boards of education to reinforce appropriate behavior, not only for behavior in the school, but also for students as they enter the broader social community. Through the adoption of policy which designates Navajo Peacemaking as an alternative to traditional punitive school discipline and a curriculum based on Navajo Peacemaking, behavioral norms focused on understanding, harmony, and mutual respect are developed in children.

Simone Weil finds obedience to be another vital need of the human soul. She divides obedience into two kinds, the first being obedience to established rules and the second being obedience to human beings regarded as leaders. Consent is presupposed, but conditional upon satisfaction of the demands of one’s conscience (Weil 1971, 13-14). Her view on obedience is a significant one where school codes, rules, and regulations are concerned. Responsibility, coupled with initiative, are also vital needs of the human soul. Both, maintains Weil, make a person feel useful and even indispensable. Often, an individual must make decisions after considering the interests of others even though he may feel a personal concern, as well. Equality, another vital need of the soul, recognizes that the same amount of respect and consideration is due every human being. The differences among people should never imply a difference in the degree of respect owed (Weil 1971, 16). All of these needs of the human soul are relevant in Peacemaking and the repair of harm caused by wrongdoing. The term “need” is interchangeable with right
and corresponding duties owed to all persons as a result. Navajo Peacemaking similarly stresses these same needs.

REFLECTIONS ON SCHOOL STUDIES

Simone Weil points out in her *Reflections on the Right Use of School Studies* that the love of one’s neighbor means being able to say, “What are you going through?” As in all of her writings, Weil emphasizes empathy, a “recognition that the sufferer exists … as a man, exactly like us, who was one day stamped with a special mark by affliction…..” She asserts that knowing how to “look at” our neighbor in this certain way is what she calls “all attentive.” In achieving this look, a person’s soul “empties itself of all its contents in order to receive into itself the being it is looking at, just as he is, in all his truth.” Weil maintains that only a person capable of attention can do this, and attentiveness is developed through a focus on our studies as youth. If a student has difficulty with a subject, for example geometry, even though a math problem may be done wrong, the effort devoted to the learning process makes a person “better able to give someone in affliction exactly the help required to save him, at the supreme moment of the need” (Panichas, 1977, 51-52). The importance of education and character formation is emphasized by Weil.

Simone Weil believes that when an adolescent is capable of grasping this truth and possessing generosity sufficient enough to desire truth, school studies are able to produce their fullest spiritual effect apart from any specific religious belief. She considers academic studies to be a “one of those special fields containing a pearl so precious that it is worthwhile to sell all of our possessions, keeping nothing for ourselves, in order to be able to acquire it” (Panichas 1977, 52). The Peacemaking curriculum presents educators with the opportunity to offer the “pearl of great price” that is actually a
simple and cost-effective means to instilling and reinforcing values in school-aged children and youth.

PLATO AND EDUCATION

In Plato’s *Gorgias*, Socrates comments to Plato’s brother, Glaucon, that professors of education are wrong when they maintain “…they can put a knowledge into the soul which was not there before, like sight into blind eyes…” because the capacity to learn already exists in the soul. Socrates comments that just as in *The Cave*, the human eye cannot turn from darkness to light without the involvement of the total body. Through the movement of the soul, the world of becoming morphs into being (Jowett 2010, 8).

Plato emphasizes an organized educational format based on curricula, as well as specific training for teachers and guardians, including selection criteria for both. This format has proven the test of time for its effectiveness. Losin makes the observation in his analysis of *The Cave* that Plato’s Book VII in *The Republic* sets forth a curriculum “…to free the soul of the things that turn its sights downward and reorient it towards the truth.” Losin notes that Plato’s curriculum still forms the foundation for liberal arts education (Losin 1996, 49). His philosophy of education expresses a deep interest in the welfare of children and their formation with formal education beginning early in their young lives when children are first becoming socialized with peers and adults beyond the nuclear family.

Plato is concerned about the education of “guardians” and “how they are to be brought from darkness to light…” just as in *The Allegory of the Cave* where the journey upward is the journey of the soul into the intellectual world (Jowett 2010, 6). Plato
regards four branches of knowledge to be essential to the needs of the time: arithmetic, geometry, solid geometry, and astronomy (Jowett 2010, 22, 26-29). He is a believer in the interdisciplinary approach to studies where the studies reach “an inter-communion and connection with one another, and come to be considered in their mutual affinities….” Until then, Plato maintains, the pursuit of studies have no value (Jowett 2010, 34).

Curriculum for education of youth has expanded to address the needs for social skills and moral values. Plato’s concept of a curriculum as a format for learning, however, continues to be recognized as the approach for imparting knowledge.

In the allegory of The Cave, Plato compares the power of education to deliverance of the prisoners in the cave from their chains and shadowy images into the light, from the underground to the sun (Jowett 2010, 36). The cave is the analogous description of a dark underground chamber of uneducated prisoners to individuals enlightened by educational opportunity. In the dark cave, prisoners are chained with not even an opportunity to turn their heads. As a result, they are able to see only the shadows of objects behind them which are projected directly in front of them illuminated by firelight. The objects which are carried by individuals cast shadows of artifacts. The narrow extent of the prisoners’ knowledge are the shadows before them (Losin 1996, 50).

The prisoners’ journey upward and out of the cave is analogous to the soul’s ascent beyond perception and into the realm of the intelligible. Plato asserts that the role of the educator is to transform “souls” rather than to present knowledge previously unknown to an individual (Losin 1996, 49). In The Cave, the prisoners eventually are able to distinguish the reality of the shadowy and murky objects and progress from lack of reality to observed truth (Losin 1996, 51). This is how learning takes place. Plato
believes that we must compel the best minds to achieve the highest form of knowledge and refuse to return to the cave, but share their labors and rewards with the whole community (Lee 1974, 246-47).

Plato finds that all elements of instruction should be taught to the mind in childhood because no individual should be constrained in the process of acquiring knowledge (Jowett 2010, 43-44). The importance of early education is demonstrated by Socrates’ comments in *The Cave* where he states that specific fundamentals of justice and honor are taught in childhood. Under the tutelage of parents, children grow up obeying and knowing these principles (Jowett 2010, 47).

Plato is the earliest important proponent on state-provided education. He sees it as the key to the creation and endurance of his *Republic*. The same is true today concerning the quality of education and the future of our communities. Plato can be considered as the father of public education and someone whose concept of education is a holistic approach including factual knowledge, physical discipline, and the aesthetics. He finds the environment for his educational visions to be an atmosphere of justice, an atmosphere conducive to learning. Such an atmosphere is true today. Without an atmosphere conducive to learning where each person’s right to justice and respect is acknowledged and honored, a child’s true potential for learning and knowledge may never be achieved.

Plato states that “…when the eye of the mind gets really bogged down in a morass of ignorance, dialectic gently pulls it out and leads it up, using the studies we have described to help it in the process of conversion…” (Lee 1974, 265). He maintains that “the dialectic is the coping stone that tops our educational system; it completes the course
of studies, and there is no other study that can rightly be placed above it” (Lee 1974, 267). Plato posits that the task of the educator is “turning souls around.” To Plato, this process to learn is “phronesis,” or intelligence (Losin 1996, 51-52).

The bound person in The Cave equates to the uneducated person who has limited horizons and lacks in knowledge and the reality of life about him. In comparison, restorative justice practices aim to educate the whole child both from the academic and the moral perspectives and especially regarding the duty owed to one another concerning the recognition of dignity and respect. The journey out of the cave, for instance, is not the end, but only the beginning (Losin 1996, 56), just as in Peacemaking where the process seeks harmony, understanding, and mutual respect through open and respectful dialogue. Plato maintains that reorientation of the soul involves the “re-channeling” of desires. This aspect of education, according to Plato, begins long before formal education. Formation, he postulates, begins when the student is young and sensitive and best able to “…absorb every impression…” (Losin 1996, 54). It is essential, therefore, that reinforcing respect for one another begins at the earliest possible time in a child’s life and continues throughout formal education.

Under Plato’s concept of education, the uneducated can move from the realm of ignorance to the intelligible realm of knowledge because the power to learn and the ability to do so is within every person. Education must, therefore, recognize this innate ability and proceed with the understanding that every person possesses this capability, if directed in the proper way. This power to learn (phronesis) can be helpful or harmful depending on the teacher guiding the individual towards truth. The power to learn is also affected positively or negatively by the desire of the individual to learn. Both the
cognitive aspect and the expressed desire to learn are equally critical. With the use of
restorative justice Navajo Peacemaking in the school setting, the facilitator is trained in
the skills necessary for open and respectful dialogue in search of truth and harmony of
persons and relationships. A calm atmosphere presents each participating stakeholder
with the opportunity to express views without adversarial retorts. Just as Plato believed
in education of both body and soul, Navajo Peacemaking seeks transformation of body
and spirit of those involved in conflict.

Plato cautions that in educating the very young, the wrong teacher can destroy the
desire to learn and hamper acquisition of wisdom and knowledge. Early education
“awakes up the spiritual part of the child’s nature and enables it to work together with
reason, imbuing the social with that order and grace necessary for later cognitive
development” (Losin 1996, 49). Redirecting a student’s intelligence and nurturing
desires for education are essential skills of a good teacher. To Plato, this reorientation of
a student’s soul is a transformational process. Through education in Navajo
Peacemaking, its principles and values can reorient errant students to the principles of
decency and justice for others. It can bring them out of the dark into the light of self-
discipline and good behavior through a transformational process focused on respect and
understanding for self and others.

THE REPUBLIC PART III – EDUCATION: THE FIRST STAGE

During Plato’s time, in addition to the four branches of knowledge (Philosophy,
Poetry/Music, Theology and Law), education had three primary subdivisions, which
included reading and writing, physical education, and literary education, followed by
military training. Since the Greeks had no Bible, a source of theology and morals was found in the works of the poets (Lee 1974, 67).

Plato’s views on education focus on the education of youth. In Part III of The Republic, he states that “…the minds of the young are very impressionable…” (Lee 1974, 67). He queries whether we begin educating both mind and character of youth and concludes we definitely should. In fact, Plato states that “…we start to educate the mind before training the body…” (Lee 1974, 68).

Plato notes that in educating the young, this is the time in a child’s life when he/she is easily molded and impressionable. As a result, proper education “leaves a personal mark” (Lee 1974, 69). He cautions that the young are incapable of distinguishing between allegory and fact, so it is essential that moral foundations and character building be an integral part of education (Lee 1974, 70). This is certainly an endorsement of character education in any era. The value of truth, along with teaching self-control, were key factors in Plato’s views on the education of youth (Lee 1974, 81).

The traditional Navajo Peacemaker, however, uses storytelling as part of the Invocation which initiates a Peacemaking session. The Peacemaker selects a traditional Navajo story that illustrates a moral or behavioral norm relevant to the conflict in issue.

In his summary of Plato’s views on education, Desmond Lee’s translation of The Republic states that Plato’s purpose of education for the young was “to train both character and moral aesthetic judgment,” noting the close alliance between the two (Lee 1974, 96). Plato believes that “rhythm and harmony penetrate deeply into the mind and take a most powerful hold on it, and, if education is good, bring and impart grace and beauty; if it is bad, the reverse” (Lee 1974, 98). Similarly, one of the goals of Navajo
Peacemaking is to restore harmony in each participant in the session and restore harmony in relationships.

Plato also discusses in *The Republic* the education of guardians and youth and their proper training, which includes the “qualities of discipline, courage, greatness of mind, and others akin to them, as well as their opposition” in order to “be able to perceive the qualities themselves wherever they occur and representations of them…and acknowledge…that the same skill and training are needed to recognize both…” (Lee 1974, 98-99). In Part V of Plato’s *Republic* on justice, he emphasizes the need for each person to possess the four cardinal virtues of wisdom, courage, discipline, and justice. He comments that wisdom and courage equaled discipline, while justice is the crown virtue and the real object of his inquiry (Lee 1974, 137, 141).

Justice forms the nexus of this Thesis from the theoretical views of philosophers to its practical implementation as it affects the rights of children. Plato designated it as the highest of cardinal virtues. However, of significant importance then and now are the virtues of wisdom, courage, and discipline which are essential for an environment in our schools that is conducive to learning.

This takes us to *The Republic* wherein Plato outlines his curriculum, as well as the desired virtues and gifts of a good teacher. The foundations of restorative justice practices are infused throughout his course of studies. These include “good rhythm” instilled in the soul, inner harmony, grace, and a disciplined, good character (along with a love of aesthetics). When a person possesses grace, he judges things to be offensive which he *should* find offensive. For instance, bullying, harassment, and aggressive behaviors would be prohibited in Plato’s *Republic*. 
Plato stresses that educational issues and topics must be age-appropriate. Children should be encouraged to imitate role models who are courageous, self-disciplined, just, and generous. The effect would be self-mastery, respect for others, and civil behavior – all goals of restorative justice practices which are most effective when implemented on an age-appropriate level and are directed toward self-mastery, inner harmony, and good character. In *The Republic*, Plato reinforces the vulnerability and malleability of young minds while noting the importance of formal education beginning at a young age. He emphasizes the value of training educators, including parents, guardians, and teachers in sound educational methods so as to mold young minds and build character. Plato stresses that guardians must be of worthwhile character and teach the dignity and worth of all persons. He recognizes the role of parents as the first educators of their children and the importance of proper nurturing in the home as the first educational experience.

Learning through stories was a primary educational technique advocated by Plato. He recommends that stories glorifying crime and aberrant and aggressive behavior should not be used since children cannot distinguish between allegories and reality. Plato is realistic, however, by cautioning that we cannot let children believe there are no disputes by shielding them from all knowledge of harmful behavior, but he supports the proper guidance and instruction when teaching children the realities of life. Most of all, children must be taught that being and doing good can cause no harm to anyone. Traditional Diné Peacemaking incorporates storytelling into the process as a teaching mechanism to reinforce traditional Navajo values in achieving resolution of conflicts.
Plato cautions that we must not teach children that wrongdoing pays if one can avoid being caught or that justice is what is good for someone else but not for one’s own advantage. He says that initially justice must be defined before it can be taught. He defines injustice as the worst of evils in a community where wisdom, courage, and self-discipline mind their own business. Plato’s views not only on education, but on justice, are right on point with the principles of restorative justice practices in the school setting. The purpose of education is to develop both a child’s character and his/her moral and aesthetic judgment. Neither teachers nor students will be educated properly until they are able to recognize the qualities of discipline, courage, generosity, greatness of mind, and other related attributes. An educated person must be able to recognize these qualities in themselves and in others.

In *The Republic*, Plato maintains that the best gifted and educated possess moderate desires and are guided by reason, right judgment, and reflection – the self-disciplined. There is no doubt that Plato regards self-discipline as a highly respected quality. It produces harmony between its strongest and weakest elements and all those in between. Plato finds that self-discipline results in harmony among the strong, the weak, and those in between. No matter what the measuring stick, intelligence, or strength, it is self-discipline that forms a natural concordance among individuals who will become leaders (Lee 1974, 143). Plato’s theory of education is a blueprint for what the moral reform of today’s educational philosophy should be. He was a visionary whose philosophy is as valid today as it was centuries ago. In schools where the atmosphere is one of disrespect and aggression, “negative desires” have overtaken reason and right judgment. When that threshold occurs, self-discipline, harmony, and right judgment are
absent. Through restorative justice practices, self-discipline, harmony, and right judgment can be restored and reinforced in our schools so that education can occur. Plato’s model educational system founded on justice and self-discipline is accomplished. It is harmony that forms the framework for the Peacemaking process of conflict resolution.

There is an obligation in our schools to direct and guide the character development of students as part of the total educational process. When rules are broken, especially where harm is involved, restorative justice practices provide not only an opportunity to repair and restore relationships, but to reinforce the need for self-mastery—a real teaching moment where change and transformation of character are involved. Plato would have found restorative justice Peacemaking to be in agreement with his theories of education. Justice to him was a form of excellence that we should recognize the need to reinforce. That is what teachers and school administrators do when they intervene when harassment, bullying, and other aggressive behaviors occur rather than looking the other way and ignoring the situation.

Plato challenges us when he inquires whether justice consists in minding our own business and not interfering when we observe conflict. He responds that it is justice, his crown virtue, that brings about discipline, courage, and wisdom. In raising justice to the level of excellence, Plato further proclaims that when courage, self-discipline, and wisdom mind their own business, injustice occurs. When teachers and students, therefore, look the other way when they witness aggressive behavior, there is no justice. It is the responsibility of educators to foster and develop in their students the three virtues exhorted by Plato: courage, self-discipline, and wisdom. According to Plato, when self-
discipline is joined with wisdom and courage, these virtues are in harmony with one another and perform properly. In educating students, character development is critical to the development of the whole person. If teachers are to fulfill their roles, they will reorient students to the excellence of justice. Restorative justice practices are the vehicle for accomplishing this through reinforcement of the rights and dignity of others.

Plato argues for a value-centered education to be the concern of the state. His schematic vision of education is based on “guardians” who possess qualities as role models and on providing the proper direction and guidance to youth with emphasis on moral development. He emphasizes that students must be taught the morality of actions and never that it is only wrong to get caught (Lee 1974, 90).

GORGIAS AND VALUES

In Gorgias, Plato appeals once again on behalf of justice and personal non-violence in all things. The main thesis in Gorgias is that no one wishes to do evil, although many do so under the misconception that it is in their own best interests. This dialogue of Plato stresses the importance of a proper education with an emphasis on character development beginning with the youngest of children in the school setting. Plato’s idea of dialogue is, in a sense, applied by Gadamer in his hermeneutics. Plato, however, in Gorgias often asks a question and then answers it as well. In Peacemaking, true dialogical conversation takes place with no one person “in control.” The facilitator assists the participants in keeping dialogue open and respectful, but at no time dominates or controls. The common goals of justice, dignity, respect, self-discipline, and an atmosphere conducive to learning are sought, but not often attained. The use of
restorative justice practices in the schools is a means to that end, which also mirrors the educational goals of Plato.

THE POWER OF WORDS

In Plato’s *Gorgias*, the power of words is emphasized. When Socrates comments that Polus has paid more attention to rhetoric than to dialectics, the two continue to dialogue, and Gorgias acknowledges to Socrates that rhetoric enables people to speak and to understand what they are talking about (Jowett 1994, 3-6). Gorgias acknowledges that “words are persuasively powerful” (Jowett 1994, 10) and further comments how persuasive a teacher can be (Jowett 1994, 11). In *Gorgias*, as in *The Republic*, Plato is once again a proponent of education of the young as he emphasizes the importance of dialogue and the power of words. These beliefs comport to the foundational values of restorative justice Navajo Peacemaking and the importance of open dialogue in search of resolution. The power of words coupled with understanding their meaning during dialogue cannot be overstated.

The topic of punishment, as well as justice, is a focus of the dialogue between Socrates and Polus in *Gorgias*. Socrates opines that those who act unjustly are miserable. He maintains, however, that the unjust are more miserable if they are not caught and punished (Jowett 1994, 39). Socrates strongly disputes Polus’ contrary opinion when Socrates states that doing injustice supersedes the suffering of injustice (Jowett 1994, 39). Polus posits that to suffer injustice is worse than doing injustice, but concedes that to do injustice is the greater disgrace (Jowett 1994, 42). In Peacemaking, these arguments have no place since all parties are on equal footing in this horizontal decision-making process. Further, both agree that not “being caught and punished perpetrates the evil” (Jowett
Indifference to wrongdoing compounds the injustice, and the school environment is no exception. However, as an alternative to traditional school discipline and punishment, restorative justice Peacemaking with its dialogical component can achieve justice by bringing resolution to conflict, repairing harm, and restoring relationships.

THE COMPATIBILITY OF PLATO’S VIEWS ON RESTORATIVE JUSTICE PRACTICES

The Peacemaking process requires trained facilitators who possess specific skills and values not limited to the ability to listen, be non-judgmental, be respectful, foster a positive rapport among all parties involved, and to be compassionate, warm, and patient. As Plato would agree, any learning experience involving moral and good behavior should start early with the very young and continue throughout high school. These practices should be reinforced continuously in the school curriculum and at home throughout the child’s education. Just as philosophy seeks knowledge, truth, and understanding, so do restorative justice practices in the schools through dialogue and consensus.

Plato is the earliest important thinker on state-sponsored education, the precursor of the public school system of education. He sees it as the key to the creation and endurance of his Republic. Although one of his recommended methods to remove children from the care of their mothers and raise them as wards of the community appears rather extreme in the 21st century, those were different times when only an elite class was educated. Contemporary education acknowledges parents as the first and primary educators of their children, as well as the importance of parental partnerships with the schools that educate their children. Plato’s concept of education is a holistic approach
which included factual knowledge, physical discipline, related skills, and literature, music, and art – the aesthetics. The environment for his educational visions is an atmosphere of justice. He emphasizes an organized educational format of curricula, as well as specific training for teachers and guardians, including selection criteria for both. His philosophy of education expresses a deep interest in the welfare of children and their formation with formal education beginning early in their young lives. His philosophy of education is compatible with the concept that the process begins in the early years of a child’s life when children are first becoming socialized with peers and adults beyond the nuclear family. Restorative justice Navajo Peacemaking aims to educate the whole child, body and spirit, both from the academic and the moral perspective and especially regarding the duty owed to one another concerning the recognition of dignity and respect.

Plato’s views not only on education, but on justice, are right on point with the principles of Navajo Peacemaking. The purpose of education is to train both the character, moral, and aesthetic judgment of the student. Neither teachers nor students will be educated properly until they are able to recognize the qualities of discipline, courage, generosity, greatness of mind, and other related attributes. An educated person must be able to recognize these qualities in themselves and in others.

Plato believes in beginning education with the very young, but also cautioned that the wrong teacher can destroy learning and hamper acquisition of wisdom and knowledge. Redirecting a student’s intelligence and nurturing desires for education are essential skills of a good teacher. To Plato, this reorientation of a student’s soul is a transformational process. When an individual’s desires are channeled towards learning, the soul of the individual experiences pleasure, and this process begins before an
individual embarks on a curriculum of studies. In *The Cave*, prisoners are assisted out of the darkness of ignorance and helped to see the reality of things in the light of the sun. Restorative justice Peacemaking does the same. Its principles affirm open and respectful dialogue conducive to sharing one’s feelings without fear of denigrating comments. It can reorient an errant student to the principles of decency and justice for others and bring them out of the dark into the light of self-discipline and good behavior through a transformational process focused on the innate knowledge of proper and moral behavior. Similarly, through dialogue and understanding, Peacemaking can motivate an offending student to change and assist with the healing of relationships harmed by wrongdoing. A critical part of the transformational journey to wisdom and understanding is the resulting harmony.

**ALBERT CAMUS: JUSTICE AND THE CODE OF HUMAN DECENCY**

Albert Camus is included in this Thesis because he is regarded as one of the most articulate champions of justice. Although he is often referred to as a writer for the theatre of the absurd, his novels revolve around justice, honesty, and the “system,” as well as punishment, which often befalls the morally honest in his writings.

Camus addressed through his writings, including *The Myth of Sisyphus* and *The Stranger*, human despair but also that a life of dignity and authenticity is possible when the value of each person is recognized. In *The Myth of Sisyphus*, he emphasizes how often life can be repetitious without apparent success despite much fortitude. Camus states that “myths are more for the imagination to breathe life into them” (Meager 1979, 32). Camus’ philosophy, myths, and novels are filled with allegories focused on reality and truth, regardless of their somewhat depressing themes. Similarly, Navajo storytellers reinforce
traditional values and morés through stories based on traditional Navajo values and principles. Sisyphus represents a passion for life with his endless, repetitive assents and dissents of a cursed hill with his rock (Meager 1979, 31). Sisyphus was dragged back and forth, to and from the underworld which he so desperately tried to escape and was also made to shoulder his rock and carry it to the top of a mountain, only to have it roll back down. Yet, again and again he made the tedious trip upwards (Meager 1979, 32).

Every educator knows that repetition is essential when skills are taught to students. The “Sisyphus Method” of stressing and reinforcing concepts to be learned, especially when teaching values, achieves significant results. Teaching a Peacemaking curriculum from kindergarten through grade twelve reinforces intended results and impresses upon students that the values stressed are important social skills that are immediately beneficial and important in all facets of community life.

To compare the plight of Sisyphus to the student suffering from recurrent harassment and other aggressive behaviors, an offended student is forced to endure lost trust, the futility of frequent victimization, and the loss of a peaceful school environment where he/she can grow and learn. Like Sisyphus, the offended student is most often alone to fend for himself/herself. Peers tend to shy away or, perhaps, even enjoy the victimization, and school officials may be indifferent to it as well. The offended student waits for adult intervention or assistance from fellow students, which often does not come. Like Sisyphus continually rolling the rock up the mountainside only to have it roll back down from its own weight, resolution and finality never occur.

With appropriate and timely intervention by school authorities, through the use of Navajo Peacemaking, resolution of school conflicts does occur. The immediate
wrongdoing is addressed through dialogue and communication. The underlying causes of the conflict are discovered as consensus and resolution are reached. The rock-rolling ends because the conflict resolution is final, and all are expected to abide by the agreement reached in Peacemaking sessions. Camus so aptly states in Notebook II that “…[N]ot so long ago, bad deeds called for justification, but today it’s good deeds” (Meager 1979, 151). He further so wisely comments that tolerance is the result of decaying values (Meager 1979, 151). The decay of values in the educational setting occurs when school authorities become indifferent to any ethos of disrespect, incivility, and especially the cruel treatment of others.

In The Myth of Sisyphus, Camus reveals his own personal goals that he wishes to attain through his writings: “If I have tried to define something, it is on the contrary simply the common existence of history and of man, everyday life with the most possible light thrown upon it, the dogged struggle against one’s own degradation and that of others” (Meager 1979, 157). He would have been a great school administrator.

Camus’ personal struggle was one that he never ceased fighting. He states in his Notebook II that his “…most constant temptation, [is] the one against which I have never ceased fighting to the point of exhaustion: cynicism” (Meager 1979, 251). As he so aptly states, “There is no justice, there are only limits” (Meager 1979, 252). We can take note from Camus’ philosophy and never give in to cynicism, especially where it would be applied to school aggression and hostility. It is never too late to start addressing problems at the earliest stage (kindergarten) and continue to address them until a student leaves the tutelage of the school staff (grade twelve).
The renunciation of violence is for Camus a moral imperative. He also reasserts the primacy of responsibility in everyday life (Camus 1986, 13, 15). Above all, he reaffirms the responsibility of all individuals. Camus seeks to put a human face on depersonalized violence (Camus 1986, 17). He personally experienced the horrors of World War II and, in its aftermath, actively cultivates human respect, a restoration of dialogue, greater conviviality, and a higher level of tolerance for diversity (Camus 1986, 17). These are the foundational values of conflict resolution and are especially important in the education of youth.

In *Neither Victims nor Executioners*, Camus reaffirms the obligation to acknowledge personal responsibility (Camus 1986, 18). He wants political strategies to be developed to enable change in the political, social, and economic structures but further wants these strategies of change to nurture simultaneously a change in attitudes and values (Camus 1986, 19-20). He questions whether we can see ourselves as perpetrators of violence and also as its potential victims. Camus posits that we are unable to answer until we recognize our common humanity. He asserts that a person with whom we cannot reason is a person to be feared (Camus 1986, 28). When a paradigm shift in school discipline is desired, that certainly qualifies as a strategy of change intended to nurture a change in values.

Camus is a common sense thinker. He knows that we could never achieve a world where, for instance, murder no longer existed, but he proffers that we can have a world where such violence is not legitimized (Camus 1986, 13). This is a realistic approach to school safety and discipline, as well. It would be unrealistic to believe that conflict resolution and dialogical skills will eliminate all wrongdoing. But, reinforcement
of values and teaching conflict resolution skills enable children to develop into caring and empathetic adults who understand the need for harmony and mutual respect. The fringe benefit of learning how to prevent and resolve conflict based on values essential to community living of all sizes and types is a peaceful, harmonious ethos. When instruction is early in a child’s life, the benefits are immediate and increase exponentially with growth and development.

Albert Camus posits that terror is legitimized only if we believe that the end justifies the means. He believes that this principle is accepted only if the effectiveness of an action is presented as an absolute end (Camus 1986, 34). He further believes we must reach out clearly against terror while defining the violence by which a peaceful world may live (Camus 1986, 50). Although equating violence and aggression to some school environments might seem extreme, we must not lose sight of offended students of school aggression. To a vulnerable child who is the focus of aggressive behavior, terror would not be an exaggeration.

We can also analogize Camus’ beliefs with today’s issues of child mistreatment which is headlined daily – from infants tossed into dumpsters or children mutilated, set afire, or tortured to death in countries across the globe. To take Camus at his word, we cannot ignore an inconvenient truth and do nothing. We have duties and responsibilities to speak out against such horrific acts to define or re-define the values necessary for the macrocosm of a peaceful world. To bring this down to the microcosm of a community, a school community in particular, school officials and authorities must acknowledge their responsibility to act for the fundamental good of all children, especially those who are offended students of aggression in the school setting. Indifference is not a human value.
Camus feels that the best objective to ensure a peaceful world might be the drafting of an international code of justice (Camus 1986, 50). On the school level, the adoption of a policy implementing Peacemaking with its components of intercommunication and dialogue toward understanding should very well be the answer to a peaceful and civil school ethos. Camus wisely recognizes that injustice destroys sociability and intercommunication (Camus 1986, 53). This is evident in the school community where injustice, disrespect, and lack of civility are prevalent.
CHAPTER 2
THE LEGAL RIGHTS OF CHILDREN TO PERSONAL SAFETY AND BODILY INTEGRITY

EDUCATION AS A STATE RIGHT FOR SCHOOL-AGED CHILDREN

In 1973, the United States Supreme Court rendered an opinion in *San Antonio Independent School District v. Rodriguez* establishing and clarifying that education is not a federal constitutional right but a state right emanating from state constitutions and laws (*San Antonio Independent School District v. Rodriguez* 1973). The *Rodriguez* case arose from a challenge of the Texas school funding system based on local property taxation. The United States Supreme Court held, therefore, that the action was an inappropriate case in which the strict scrutiny test should be applied.

The strict judicial scrutiny test is reserved for cases involving laws which operate to the disadvantage of suspect classes or interfere with the exercise of fundamental rights and liberties, either explicitly or implicitly protected by the United States Constitution. Where wealth is concerned, the Supreme Court noted that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution does not mandate absolute equal or precisely equal advantages. The Supreme Court concluded in *Rodriguez* that while education is undisputedly one of the most important services performed by the state, education is not among the rights afforded either implicit or explicit protection under the Federal Constitution (*San Antonio Independent School District v. Rodriguez* 1973).

The source of funding for public schools in Texas was a property-tax base, as is the case in most states. The Supreme Court in *Rodriguez* held that this system assured a
basic education for every child and not only permitted, but encouraged participation in public education. The court found that the significant control of each district’s schools at the local level bore a relationship to a legitimate state purpose which did not violate the Equal Protection Clause of the Fourteenth Amendment, even if the property tax base for school districts differed widely (San Antonio Independent School District v. Rodriguez 1973).

In another case involving a state constitutional right to a public education, the Supreme Court of Connecticut held in Connecticut Coalition for Justice in Education Funding, Inc. v. Rell that the Connecticut state constitutional education provision encompasses a minimum qualitative standard. The Supreme Court of Connecticut further determined that its role is to ensure that the state’s public school students receive their state constitutionally guaranteed right to a substantially equal educational opportunity. The court stated that an adequate public education provided pursuant to the State of Connecticut Constitution is not a static concept and, as a result, the minimum level of education may change over time (Connecticut Coalition for Justice in Education Funding, Inc. v. Rell 2010).

Both of these cases clarify the same legal issue: education is not a federal constitutional right under the United States Constitution, however, the fifty states have authority to guarantee a free public education for school-aged children pursuant to state constitutions or state law. Once public education became a state right, the United States Constitution comes into the equation, and the Fourteenth Amendment rights to due process and equal protection become vested in school-aged children. Public schools, therefore, cannot deprive a child of a public education without providing the Fourteenth
Amendment due process rights of notice and hearing. In addition to the mandates of the Fourteenth Amendment to the United States Constitution, public school districts must comply with the guarantees of the First, Fourth, and Fourteenth Amendments.

Although it is well settled that education is a state right, there are Fourteenth Amendment applications under the Due Process Clause in particular and also under the Equal Protection Clause, as well as guarantees of liberty under the Fourteenth Amendment to the United States Constitution (U.S. Constitution, amend. 14, sec. 1). A state right becomes legally synonymous with state action and, therefore, triggers the Fourteenth Amendment to the United States Constitution in applicable situations. For instance, in Brown v. Board of Education of Topeka, the United States Supreme Court held that the segregation of children in public schools solely on the basis of race, even if physical facilities and other tangible factors may be equal, deprives minority children of equal education opportunities in violation of the Equal Protection Clause of the Fourteenth Amendment. The court ruled that “separate but equal” has no place in public education because “separate educational facilities are inherently equal” (Brown v. Board of Education of Topeka 1954).

Public school districts are political subdivisions of the state and, therefore, actions of public school officials, administrators, teachers, and support staff are state actions and may invoke protection under the First, Fourth, Fifth, and Fourteenth Amendments to the United States Constitution. In addition, the Federal Government establishes a comprehensive system of procedural safeguards as a condition of federal financial assistance to public schools which trigger Federal oversight by the United States Department of Education in specified areas of school operations.
One such oversight formation of the United States Department of Education involves the provision of the Education of the Handicapped Act (EHA) (20 U.S.C. sec. 1400 et seq.). This Federal law requires states to ensure a “free appropriate education” for all disabled children within their jurisdiction (Honig v. Doe 1988). When Congress enacted the EHA, it conferred upon disabled students an enforceable substantive right to a public education in those states accepting federal funds. In addition, another Federal legislative enactment, Title IX of the Education Amendments of 1972, prohibits peer and teacher sexual harassment of students, bullying, exclusion of students from educational benefits based on discriminatory reasons, taunting, humiliation, ridicule, and retaliation. When school officials have prior knowledge of and are deliberately indifferent to proscribed acts under Title IX, the United States Department of Education, Office for Civil Rights (OCR), has jurisdiction over complaints filed with the OCR. In addition to claims under Title IX filed with the OCR, a private right of action is also available through the courts on behalf of the harassed student. Litigation initiated under Title IX on behalf of a student-victim is usually coupled with a civil rights claim under 42 U.S.C. sec. 1983.

A safe school environment includes the absence of sexual harassment and discrimination. Under Title IX of the Education Amendments of 1972, sec. 1681, once a public school official has actual knowledge of sexual discrimination and who, at a minimum, has the authority to address the allegation and to institute corrective measures, but fails to respond, a cause of action under Title IX exists. Title IX in pertinent part states:
[N]o person…shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance. (20 U.S.C. sec. 1681(a))

Peer sexual harassment is one type of sexual discrimination which creates a hostile environment. Unwelcome sexual comments and advances, requests or demands for sexual favors or dates, bullying, graffiti, sexual rumors, intimidation, name calling, sexual jokes, cartoons, pictures, pornography, pressure for sexual activity, sexual conversation, sexual assault, blocking, and hand and/or body gestures are all examples of peer sexual harassment. Sexual harassment does not include non-sexual contact, such as contact occurring during sports, or flirting. Flirting is not intimidating, manipulating, or insulting. It does not make the person feel uncomfortable, helpless, or degraded. When peer sexual harassment is severe, persistent, or pervasive so as to limit a student’s ability to participate in the educational program as to benefit from it, a hostile educational environment exists. Gender-based, non-sexual harassment such as physical aggression, intimidation, or hostility is unlawful discrimination if it is pervasive or openly practiced (Lentz 2010, 1:309-10).

A Title IX action, which requires that a student has suffered discrimination based on sex, places the burden on the student (plaintiff) to prove that the harassment was severe enough to compromise the student-victim’s educational opportunities and that the school district had actual knowledge of the harassment and was deliberately indifferent to the harassment (Hunter ex rel. Hunter v. Barnstable School Committee 2006).

It is the assessment of the first prong of a Title IX violation that the degree of the harassment must be severe enough to compromise the victim’s educational opportunities,
which is the result of school officials and staff “looking the other way” when bullying
and harassment occur. What is not severe to an adult may be the severity that leads a
victim of harassment to suicide. The common sense response to harassment in the school
setting is to address it as uncivil and a disregard for the dignity owed to each individual.
Instead of debating whether it is severe enough to be a violation of Title IX before
harassment is addressed or a violation of a school code of conduct or school policy, the
focus should be on an educational atmosphere where all students treat one another with
respect and dignity. To do otherwise is a reinforcement of the philosophy that a federal
funding law such as Title IX controls the ethos of the school environment. Such an
attitude often fosters student aggression. Morality coupled with the rights of children
who attend school mandate that students be free from violations of their right to bodily
integrity and to an atmosphere conducive to learning under the state statutes requiring
compulsory attendance. Otherwise, school officials manage and administer their schools
by a standard that minimally meets federal funding law, which may result in loss of
federal funding.

In reality, no school district has lost federal funding under Title IX since school
districts in violation are given every opportunity to make attempts to resolve violations.
Title IX provides for an administrative regulatory scheme to enforce its provisions
(Gebster v. Lago Vista Independent School District 1998). It was the Supreme Court
decision in Cannon v. University of Chicago that recognized the enforcement of Title IX
through an implied private right of action (Cannon v. University of Chicago 1979), and
the Supreme Court decision in Franklin v. Gwinnett County Schools which held that
monetary damages are available under Title IX (*Franklin v. Gwinnett County Schools* 1992).

In assessing the severity of harassment, the Supreme Court in *Davis* stated that consideration will be given to the circumstances, expectations, and relationships of the offender and the victim. The Supreme Court commented in *Davis* that students may behave in ways that would be unacceptable by adults, however, some incidents in the school setting may be objectionable but “not severe, perverse, and objectively offensive harassment, such as insults, teasing, or banter which upset the student victim.” It is only when sexual harassment reaches the “severity or pervasiveness” necessary for a viable Title IX claim that such harassment is a violation of the federal law. A condition that must be met is the adverse affect the harassment has on the victim’s educational opportunities (*Davis v. Monroe County Board of Education* 1999).

It is this legal objective test of adverse affects on a student victim that is an impediment to a school ethos, which recognizes and respects each student’s qualities and differences, until the courts see the need for a subjective test which addresses a student-victim’s plea for help without requiring a check-off laundry list such as excessive abuses, truancy, dropping out of school, failing classes, or psychological treatment or even suicide as examples of an “adverse effect.” School officials can no longer ignore harassment and aggressive behavior in the classroom, in the school halls, or in the cafeteria by deciding that aggression and victimization has not yet risen to the proscribed level under Title IX.

Sexual harassment is unwelcome and unwanted. However, failure to complain about the conduct does not always mean that it is welcomed by the recipient. Once
school personnel become aware of the harassment, they are required to take prompt and sufficient action to investigate and stop it. If a school fails to respond appropriately and effectively to instances of peer sexual harassment once it has notice of the occurrence, loss of federal funding could result. In addition, a victim of peer sexual harassment has a private course of legal action (*Cannon v. University of Chicago* 1979). Because the private right of legal action has been judicially determined, the courts have a degree of discretion and latitude in determining a remedy. Attorney fees incurred by the victim may be awarded under the Civil Rights Attorneys Fee Awards Act (42 U.S.C. sec. 1988) for any action proceeding to enforcement of Title IX.

Title IX is applicable to all aspects of school activity: academic, extra-curricular, athletic, and all educational and related school programs whether on school premises, on a school bus or van, at sports events, or on field trips. Both male and female students are protected by the federal law. Same sex harassment, as well as female to male and male to female harassment, are prohibited (Lentz 2010, 1:310-11).

Each federal department or agency authorized to extend federal financial assistance to any educational program or activity, whether it be grant, loan, or contract, is directed to enforce Title IX. The intent is to avoid use of federal resources to support discriminatory practices. The United States Department of Education is charged with the responsibility for administering Title IX. There is no limit to the available remedies that the federal courts may use to correct a wrong where legal rights have been violated and where federal law provides for a general right to sue for such violation. There is always a question as to whether or not monetary damages are an adequate remedy. If not,
equitable relief may be in order. Conflict resolution Peacemaking is also a valuable tool to repair the harm caused by Title IX violations.

Effects of peer sexual harassment on the victim can be psychological, physical, and emotional. Victims are frequently reluctant to come to school, grades drop, absence increases, and victims drop out of school. Victims often feel humiliated, angered, and a loss of self-esteem. Even students who are not direct targets of the abuse and who witness harassment directed at another often experience a hostile environment.

The actual notice standard is met when an appropriate official has actual knowledge of a substantial risk of abuse of students based on prior complaints by other students (Johnson v. Galen Health Institutes, Inc. 2003; Doe v. Green 2004). Prior complaints by the same student also provide actual notice, even if the conduct complained about is not identical to that which a plaintiff alleges should have been remedied (Massey v. Akron Board of Education 2000). Actual notice “does not set the bar so high that a school district is not put on notice until it receives a clearly credible report of sexual abuse from the plaintiff-student. At some point … a supervisory school official knows … that a school employee is a substantial risk to sexually abuse children” (Gordon v. Ottumwa Community School District 2000). In the Sixth Circuit, all district courts have taken the view that a school must merely “have possessed enough knowledge of the harassment that it reasonably could have responded with remedial measures to address the kind of harassment upon which plaintiff’s legal claim is based” (Johnson v. Galen Health Institutes, Inc. 2003; Lentz 2010, 1:323-24).

The school environment should be a friendly place and a positive experience for students. So many come from hostile home environments, and their school may be the
only safe haven each day. Students have the innate right to expect to be in a school atmosphere in which they feel physically and emotionally safe and one which is conducive to learning. If that atmosphere is not provided by school administrators, the courts, which customarily do not seek to involve themselves in the operation of schools, will apply the appropriate law to assure that this right of children is enforced.

BULLYING IN THE SCHOOL ENVIRONMENT

It has been stated that about thirty-two percent of the students in the United States between the ages of twelve and eighteen acknowledge they have been victims of bullying in the school environment (U.S. Department of Education 2011, 5). Children need assurances that they are safe at school. The creation of a positive school climate depends on the efforts of many -- administrators, teachers, students, parents, and even the community.

Bullying is a type of youth violence, although on the spectrum of violent behavior, it may be at the lower end depending upon the aggressiveness of the misbehavior. Nonetheless, the effects on the offended student can be deep and enduring. School officials are committed and dedicated to providing an atmosphere conducive to learning with a focus on the personal worth and dignity of all persons. The negative effects on the victim, as well as on the student population as a whole, are extremely damaging. A child’s self-esteem is always in issue, and the emotional effects, and in some cases the physical injuries, are long-term. When race or ethnicity is the focus, ethnic intimidation is the result.

Bullying occurs more commonly in the school setting than educators think or are willing to acknowledge. It is often a daily occurrence that causes disruption in the learning experience. Too often, school personnel ignore the harassing activities under the
belief that youngsters need to learn to accept such behavior as a part of growing up. Nothing could be farther from the accepted norm. Students have the right to expect that they will be free from verbal and physical harassment. Bullying and harassment occur most frequently when supervision is absent, as well as in halls and stairwells, on the playground, in lavatories, and in the lunch area.

To eliminate bullying and harassment, early intervention by supervising adults is vital. Teasing and bullying can begin as early as kindergarten and increase with intensity as early as grade two. As the aggressive behavior continues to intensify with age, the harassment of the teen years can often be traced back to the early grades. The school curriculum should include lessons aimed at eliminating such aggressive behavior from the earliest grades. Gender-sensitive units in the early elementary grades should address such negative behavior (Lentz 2010, 1:267-68).

The real key to redirecting and altering the negative behavior of aggressive students who demean others is immediate investigation of allegations and appropriate disciplinary action and/or conflict resolution practices. It is important that all staff be vigilant to aggressive behavior and take prompt action. If staff personnel do not take the aggression seriously, it intensifies. Teachers and administrators should:

- Be vigilant and implement rules fairly and consistently.
- Make it clear that teasing and bullying behaviors will not be tolerated.
- Reinforce positive behaviors from kindergarten through high school.
- Stress problem-solving, anger management, and empathy.
- Utilize class time to discuss the negative effects of teasing and bullying.
- Intervene when such aggressive acts occur.
• Help students foster each other’s self-esteem and self-respect.

• Assist students in creating classroom rules and rules outside the classroom that foster a climate of positive student relationships.

• Reinforce positive and appropriate behavior by making students aware that misbehavior results in consequences and causes harm to others (Lentz 2010, 1:271).

When teachers discuss the reasons behind rules of conduct, a child begins to understand the goals: personal responsibility, understanding, accepting differences, and recognizing the dignity of each other’s person. Students must learn to develop self-discipline and respect for others that is demonstrated by their behavior.

Through violence prevention programs, the school can partner with parents, students, and the community to prevent violence and to resolve conflicts peaceably and quickly. All students, not just a few, should be taught the skills of conflict management and resolution. Ideally, programs would begin in kindergarten and continue throughout the elementary and secondary grades. If there is a particular class of students in need of violence or aggression-prevention programs, that group of students may also be targeted for life-skills training or anger management. Many states have enacted laws that require the teaching of an anti-bullying curriculum and the training of school staff to identify, prevent, and stop all school bullying and harassment.

The selection of qualified staff is another component to the safety of children in the school setting. Preventative measures are the best safeguard for a safe environment for our children. School authorities are directed to utilize the resources available through law enforcement and other local agencies to check backgrounds of personnel. State legislatures have enacted statutes which require the completion of criminal background
checks on any person to be hired by a private or public school who will have supervision of children. Information learned through careful hiring practices may alert school administrators that a candidate for employment is unfit to teach. In addition to background checks, it is advisable that school administrators require applicants to complete a written application form provided by the school. This form should require a thorough listing of all prior employment and positions. The hiring authority of the school should also personally contact all prior employers of the selected applicant before an offer of employment is made.

CHILDREN AS PERSONS UNDER THE UNITED STATES CONSTITUTION

In 1967, the United States Supreme Court established the constitutional rights of juveniles in the justice system and recognized juveniles as persons under the United States Constitution. This seminal case captioned Application of Gault held that a juvenile has the right to notice of charges, to counsel, to confront and cross-examine witnesses, and to the privilege against self-incrimination in the juvenile justice system. Citing the Fourteenth Amendment to the United States Constitution, the court further noted that due process of law is a primary and indispensable foundation of individual freedom. The court commented that there is no material difference, with respect to the right of counsel, between adult and juvenile justice proceedings in which adjudication of delinquency is sought since the loss of liberty for years is comparable in seriousness to a felony prosecution in the criminal justice system (Application of Gault 1967).

In the Gault case, the United States Supreme Court stated that the privilege against self-incrimination is comprehensive and, therefore, can be claimed in any criminal, civil, administrative, judicial, investigatory, or adjudicatory proceeding. This
has been extended by some jurisdictions to suspension of a juvenile from school for refusal to answer questions of an administrator concerning violation of a school code. The Supreme Court in *Gault* determined that the United States Constitution guarantees that no *person* shall be compelled to be a witness against himself when he is threatened with deprivation of his liberty.

The Supreme Court in *Gault* traced the jurisprudence history of the rights of juveniles or the lack of their rights. Under *parens patriae*, juveniles were excluded from the constitutional scheme. The term was used to describe the power of the state to act *in loco parentis* for the purpose of protecting the property interests and the *person* of the child. The right of the state, as *parens patriae*, to deny children procedural rights available to adults was based on the concept that a child, unlike an adult, has a right to custody, but not liberty. The Supreme Court in *Gault* noted that in its decision in *Kent v. United States*, the court stated the authority of the Juvenile Court Judge in exercising power of the state as *parens patriae* was not without limits. The court stated that “the admonition to function in a ‘parental’ relationship is not an invitation to procedural arbitrariness” (*Kent v. United States* 1966). In *Plyler v. Doe*, the United States Supreme Court also deemed children to be persons under the United States Constitution when it held that persons are protected under the Equal Protection Clause of the Fourteenth Amendment to the Constitution, including illegal alien children who cannot be denied an elementary education (*Plyler v. Doe* 1982).

We see a gradual and progressive advancement of juvenile rights in the decisions of the United States Supreme Courts, especially in cases arising from juvenile court proceedings and school discipline.
RIGHTS OF STUDENTS

In *New Jersey v. T.L.O.*, the United States Supreme Court determined that Fourth Amendment (U.S. Constitution, amend. 4) search and seizure rights are applicable to students in the public school setting. Rather than the standard of probable cause, the Supreme Court ruled that reasonable suspicion, a lesser standard of proof, is the required standard needed before school authorities search a student. The reasonableness of a search of a student depends on the totality of the circumstances. The *T.L.O.* decision does not address searches conducted by school officials at the request of law enforcement (*New Jersey v. T.L.O. 1985*).

The Sixth Circuit Court of Appeals ruled in a school strip search case that established case law put the school and its employees on notice that the search was unconstitutional since individualized suspicion was lacking and the searches were highly intrusive (*Knisley v. Pike County Joint Vocational School District 2010*). The case involves a search of students in a nursing class after two students notified their instructor that cash, gift cards, and credit cards were missing from their purses. As a result of one student informing two female staff members that an unidentified student was hiding the missing items in her bra, a female instructor was directed to take the students into a restroom, one at a time, and have them unhook and shake their bras underneath their tops and also take their pants halfway down their thighs. The students in the class were taken one by one into the first aid room where the school’s male director emptied their purses and flipped through their books. Two female staff members checked the girls’ shoes, socks, and pockets. The girls’ lockers were then searched.
The school defendants in *Knisley* argued that the students consented to the searches “based on their training and testing in the student handbook’s search policy” (*Knisley v. Pike County Joint Vocational School District 2010*). Absent mutual consent to the searches, a school’s student handbook search policy does not affect a waiver of privacy expectations (*Doe ex rel. Doe v. Little Rock School District 2004*).

It is the restroom searches that the students challenged. Under the facts and circumstances of the *Knisley* case, the court determined that the “severity of the school system’s needs was slight.” The Sixth Circuit found that a search for money serves a lesser government concern than a search for items that pose a threat to the health or safety of students. Not only did the school officials lack the individualized suspicion that a particular student was responsible for the theft to justify a highly intrusive search, under the Fourth Amendment (U.S. Constitution, amend. 4), the court concluded that the students had a legitimate expectation of the privacy of their bodies (*Knisley v. Pike County Joint Vocational School District 2010*).

On June 16, 2011, the United States Supreme Court ruled in *J.D.B. v. North Carolina*, a North Carolina case involving a thirteen-year-old public school student who was interviewed by law enforcement on school premises without notification of his legal guardian. The interview concerned two house break-ins. No *Miranda* warnings were given to the student. This Supreme Court decision stated two criteria for determining when a suspect is “in custody” for Fifth Amendment (U.S. Constitution, amend. 5) *Miranda* purposes: 1) what were the circumstances surrounding the interrogation; and 2) given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. The Supreme Court also noted that in some
circumstances, a child’s age would, in fact, affect how a “reasonable person…would perceive his or her freedom to leave” (J.D.B. v. North Carolina 2011).

POLICY, SCHOOL CODES, AND REGULATIONS

Students do not give up their constitutional right of expectation of privacy merely by setting foot on school premises. That expectation is reduced, however, due to the need for a safe school environment. Although school boards have the discretion to adopt disciplinary rules and regulations, this power is not without limitation, and school rules and regulations are presumed valid until challenged and placed under constitutional scrutiny. A Monell claim alleging violation of a custom, policy, or practice must properly “raise a constitutional violation” (Monell v. Department of Social Services 1978).

In Monell v. Department of Social Services of the City of New York, the United States Supreme Court ruled that a municipality can be liable under 42 U.S.C. sec. 1983 if its policy or custom causes a constitutional injury. It must be established both that the policy, practice, or custom played an affirmative role in bringing about the sexual abuse and that the defendant acted with deliberate indifference to the abuse (Monell v. Department of Social Services of the City of New York 1978). In order to establish deliberate indifference, “something more culpable…than a negligent failure to recognize [a] high risk of harm” to plaintiffs must be shown (Black by Black v. Indiana Area School District 1993 quoting Colburn v. Upper Darby Twp. 1991).

Under Monell v. Department of Social Services of the City of New York, for liability to attach, custom, policy, or practice must also be established prior to and be the cause of any alleged illegal conduct of the school district or its employees (Monell v.
Department of Social Services of the City of New York 1978. In Peck v. West Aurora School District 129, for instance, it was alleged that ignoring the students’ complaints created the policy, rather than the conduct occurring as a result of previously existing policy. To state a claim against a school district for violation of the constitutional right to bodily integrity under 42 U.S.C. sec. 1983, a plaintiff must allege that injury was caused by a school official with final policy-making authority (Peck v. West Aurora School District 129 2006).

ABUSE OF STUDENTS BY SCHOOL EMPLOYEES

The United States Supreme Court determined thirty years ago that the Eighth Amendment (U.S. Constitution, amend. 8) is inapplicable to corporal punishment in the schools (Ingraham v. Wright 1977). The Supreme Court stated that although school attendance may not always be voluntary, except perhaps when a child is very young, the child is not physically restrained from leaving school during school hours (Ingraham v. Wright 1977). Although the High Court seemed to leave the door open for a duty to protect suit under the establishment of the “special relationship” between a student and school officials for the very young students, this claim has either not been properly raised in litigation, or some courts have determined that compulsory attendance is not a sufficient basis for such a claim under the Fourteenth Amendment (U.S. Constitution, amend. 14). If there is a special relationship between the state and an individual, such as imprisonment or commitment to a mental institution where the individuals are not free to leave, there is an affirmative duty on the part of the state to protect those without the option to leave.
In 1995, the Supreme Court of Alabama held that students have a clear Fourteenth Amendment (U.S. Constitution, amend. 14) right to be safe from sexual abuse by a teacher while in school (C.B. v. Bobo 1995). In C.B. v. Bobo, the court recognized that if the United States Constitution protects a schoolchild from being tied to a chair or from arbitrary paddlings, then the Constitution certainly protects the schoolchild from physical abuse by a public schoolteacher. In Bobo, the Alabama Supreme Court determined: “It is incontrovertible that bodily integrity is necessarily violated when a state actor sexually abuses a schoolchild and that such misconduct deprives the child of rights vouchsafed by the Fourteenth Amendment” (C.B. v. Bobo 1995).

The Federal courts in particular have responded to claims involving child safety involving sexual abuse by a teacher. The Sixth Circuit Court of Appeals has determined that students have a “…constitutional right to personal security and to bodily integrity…” (Massey v. Akron Board of Education 2000). In Massey, the Sixth Circuit, citing Kallstrom v. City of Columbus and Doe v. Claiborne County, Tennessee, further stated that the substantive prong of the Due Process Clause of the Fourteenth Amendment includes “…the right to be free from sexual abuse at the hands of public school employees…” (Lentz 2010, 1:303-4).

In Peck v. West Aurora School District 129, a case filed by two female students arising from alleged teacher sexual and racial abuse, one cause of action is brought under Title IX of the Education Amendments of 1972 (20 U.S.C. sec. 1681-1688). Another cause of action is based on 42 U.S.C. sec. 1983 for an alleged violation of plaintiffs-students’ constitutional right to bodily integrity under the Due Process Clause of the Fourteenth Amendment. Remaining counts in Peck were based on state law. In spite of
complaints to the school counselor, requests to drop the teacher’s class, and complaints by another student who was being harassed and molested by the teacher, no action by school authorities was taken (Peck v. West Aurora School District 129 2006).

The Peck court found that the plaintiffs-students sufficiently alleged that specific school defendants acted with deliberate indifference and conscious disregard as a result of their failure to act, failure to investigate the complaints thoroughly, and failure to prevent further harm from occurring. The plaintiffs alleged that school employees and administrators “turned a blind eye” towards the teacher’s misconduct (Peck v. West Aurora School District 129 2006). To recover damages from school officials in their individual capacities in a 42 U.S.C. sec. 1983 case, the school officials must be “personally responsible for the deprivation of a constitutional right.” Knowledge, approval, condoning or turning a blind eye to constitutional conduct will suffice (Gentry v. Duckworth 1995).

The case captioned Meeker v. Edmundson arises from claims that a high school wrestling coach violated the constitutional rights of a member of the wrestling team by instituting and encouraging repeated beatings of the student by other members of the team. The complaint alleges use of brutal force and unprovoked beatings on numerous occasions, which a tier of fact could conclude were brutal, inhumane, and shocking to the conscience (Meeker v. Edmundson 2005). Such claims are sufficient to state a substantive due process claim pursuant to the Fourth Circuit decision in Hall v. Tawney (Hall v. Tawney 1980). Pain, bruising, and emotional injury are the sufficient basis for a Fourteenth Amendment substantive due process claim when school officials act with malice and without any disciplinary purpose (P.B. v. Koch 1996). Furthermore, if a tier
of fact, whether jury or judge, could find that the need to strike a student on the part of the school official was either minimal or non-existent, it could be concluded that the physical contact was brutal and an abuse of official power literally shocking to the conscience (Webb v. McCullough 1987). Case law in both State and Federal courts addresses allegations and claims of physical, emotional, and sexual abuse of children. When abuse is alleged to have occurred on public school premises or at school-sponsored events, constitutional guarantees of the Fourteenth Amendment are implicated.

A former female student in a western Pennsylvania school district filed suit in Stoneking v. Bradford Area School District against the school district and school administrators for injuries resulting from a teacher’s alleged sexual assault of the student. The Federal Third Circuit Court of Appeals addressed the issue of the liability of policymakers for policies or customs either authorized or recklessly maintained. Such a claim is not dependent upon the existence of a “special relationship” between municipal officials and harmed individuals (Stoneking v. Bradford Area School District 1989). The United States Supreme Court remanded this case to the Third Circuit to consider the Supreme Court’s decision in DeShaney v. Winnebago County Department of Social Services to address whether Stoneking may maintain a 42 U.S.C. sec. 1983 civil rights claim if there is no predicate duty on the part of school defendants to protect her (DeShaney v. Winnebago County Department of Social Services 1989). The Third Circuit determined that Stoneking could maintain a civil rights action pursuant to 42 U.S.C. sec. 1983 since she also alleged that defendants, with deliberate indifference to the consequences, established and maintained a policy, practice, or custom which directly caused her constitutional harm (Stoneking v. Bradford Area School District 1989).
The *Stoneking* case is not a case in which the school defendants are vicariously liable because of the band director’s actions, but a case of alleged liability of the school district and school administrators because they adopted and maintained a practice, custom, or policy of reckless indifference to known or suspected sexual abuse of students by teachers by concealing complaints of sexual abuse. Students were discouraged to make complaints about abusive conduct. The plaintiff in *Stoneking* argues that these practices, customs, or policies created a climate which, at the very minimum, facilitated the sexual abuse of students by teachers. The plaintiff further argued that there was not only a nexus, but a causal relationship between the policies, customs, or practices and the repeated sexual assaults against her by the band teacher. As a result, the existence of a “special relationship” between the school defendants and the harmed student is not essential (*Stoneking v. Bradford Area School District 1989*).

In *Stoneking*, the Third Circuit reached the conclusion case that the constitutional right alleged, the freedom from invasion of her personal security through sexual abuse, was clearly well established at the time the student was sexually assaulted (*Stoneking v. Bradford Area School District 1988*). The Third Circuit noted that the United States Supreme Court in *Ingraham v. Wright* had considered a closely analogous right in addressing corporal punishment in school when the Supreme Court held that “[a]mong the historic liberties…protected [by the Due Process Clause] was a right to be free from…unjustified intrusions on personal security” (*Ingraham v. Wright 1977*). The Third Circuit determined that the sexual violation of a student by a teacher is a violation of a schoolchild’s bodily integrity. Any reasonable school official would understand the scope of a student’s right to bodily integrity under the Due Process Clause of the
Fourteenth Amendment to include a student’s right to be free from sexual assaults by a teacher (Stoneking v. Bradford Area School District 1989).

In *E. D. v. Southeast Delco School District*, a special education student filed a 42 U.S.C. sec.1983 action against school officials for damages he allegedly incurred as a result of sexual, physical, and verbal abuse by a teacher. The federal court held that actions taken or not taken by school officials in response to reports of the teacher’s conduct amounted to custom, practice, or policy of deliberate indifference to the teacher’s actions and to the student’s constitutional rights. The court stated that school officials knew the teacher taught special education students who might not fully comprehend the inappropriateness of the teacher’s actions and who might be more reluctant to report teacher misconduct (*E. D. v. Southeast Delco School District 1993*).

The United States Supreme Court ruled in *Monell v. Department of Social Services* that a municipality could be held liable for constitutional deprivations if the deprivations occur pursuant to a governmental custom, policy, or usage (*Monell v. Department of Social Services 1978*), but in *Southeast Delco*, the plaintiff offered no direct evidence that the school district adopted a formal policy which either condoned teacher sexual abuse or discouraged reports of such abuse. Instead, the plaintiff argued that the manner of handling the teacher’s behavior by school district and school officials was the equivalent of the adoption of a practice, custom, or policy of deliberate indifference to the teacher’s conduct and student’s constitutional rights (*E. D. v. Southeast Delco School District 1993*).

The court in *Southeast Delco* commented that the Third Circuit in *Stoneking* declined to rule on whether the school defendants had an affirmative duty to protect
students from their teachers and, instead, based its decision on allegations that defendants adopted and maintained a practice, custom, or policy of reckless indifference to sexual abuse by teachers and, further, concealed complaints of abuse. This discouraged student complaints about teacher sexual misconduct (*Stoneking v. Bradford Area School District 1989*).

Children have a constitutional right to personal security and to bodily integrity. This right is protected under the substantive, as opposed to procedural, component of due process under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This right includes freedom from sexual abuse at the hands of public school employees.

A child’s right to a safe school environment does include personal safety and protection from injury, as well as protection from sexual, physical, and emotional abuse committed by students, staff, volunteers, or invitees to the school premises. Essential to these rights of every child are appropriate hiring procedures, staff retention procedures, supervision of staff and students, and the adoption and consistent enforcement of policies, rules, regulations, and procedures to maintain a safe educational environment. School administrators and teaching and non-teaching staff have a duty to take reasonable precautions and to use intervention techniques such as restorative justice Peacemaking to protect every child’s right to safety in the school environment. Students should not be left unsupervised at any time, and prompt intervention techniques are to be used to prevent and de-escalate tense situations and potential student conflicts. Since many “neighborhood” issues are carried into the school setting, these disputes need to be addressed as promptly as possible.
STATE ACTION AND THE FOURTEENTH AMENDMENT

The first eight of the ten amendments comprising the Bill of Rights to the United States Constitution contain specific rights of individuals that the Federal government may not infringe upon. The United States Supreme Court has determined that half of those eight amendments are applicable to the states, but the Second, Third, and Seventh Amendments and the grand jury clause of the Fifth Amendment are not. The First, Fourth, Fifth, and Eighth Amendments to the United States Constitution are applicable to students in the public school educational setting.

As political subdivisions of the state, public schools are bound not only by civil negligence law but also by the Fourteenth Amendment of the United States Constitution and its Due Process and Equal Protection Clauses. Allegations of violations of the United States Constitution, therefore, are brought in civil actions filed in either state or federal court. Violations of a schoolchild’s bodily integrity may also fall within criminal statutes, thereby leading to criminal prosecution of school officials and staff. The civil and criminal actions are not mutually exclusive.

To state a claim under 42 U.S.C. sec. 1983, a plaintiff must establish that a person acting under color of state law deprived the plaintiff of a federal right and that defendant’s conduct was the cause in fact of the alleged deprivation. When students suffer injuries while attending school, there are differing legal bases asserted to alleged liability of school officials and employees. They include 42 U.S.C. sec. 1983 federal civil rights law, the Fourteenth Amendment to the United States Constitution, Title IX of the Education Amendments of 1972, and common law negligence.
A Sixth Circuit decision provides guidance concerning violations of a student’s substantive due process rights under the United States Constitution to bodily integrity and to be secure at school (*Parker v. Fayette County Public Schools* 2009). The child who has autism wandered out of gym class and was found several hours later covered in mud and without any clothes. The allegations must state facts in support of a physical injury or psychological trauma stemming from a violation of the student’s right to bodily integrity. The Sixth Circuit commented in its decision in *Parker v. Fayette County Public Schools* that since no such evidence had been offered in *Parker*, the court need not address the allegations that school defendants had an affirmative duty to protect a student’s constitutional rights from infringement by private actors (*Parker v. Fayette County Public Schools* 2009).

The Eleventh Circuit Court of Appeals clarified the substantive due process doctrine of the Fourteenth Amendment as designed to protect those rights implicit in the concept of ordered liberty (*Dacosta v. Nwachukwa* 2002). The doctrine protects certain rights not expressly mentioned in the United States Constitution, such as the right to privacy from infringement by the state. Citing *Collins v. City of Harker Heights*, the Eleventh Circuit in *Dacosta v. Nwachukwa* stated that the substantive component of the Fourteenth Amendment’s Due Process Clause “prevent(s) government [officials] from abusing [their] power, or employing it as an instrument of oppression” (*Collins v. City of Harker Heights* 1991; *Dacosta v. Nwachukwa* 2002).
DEPRIVATION OF LIBERTY INTEREST AND THE FOURTEENTH AMENDMENT

The Eleventh Circuit in *Dacosta*, relying on *United States v. Salerno* determined that conduct by a government actor would rise to the level of a substantive due process violation when it “shocks the conscience” or interferes with rights “implicit in the concept of ordered liberty” (*United States v. Salerno* 1987). Conduct must affect individual rights guaranteed, explicitly or implicitly, by the United States Constitution itself.

In addition to excessive force cases premised on substantive due process under the Fourteenth Amendment, based on liberty interests of students under the Fourteenth Amendment, the Sixth Circuit in addressing an allegation of improper corporal punishment on the part of a coach against a player, clarified students’ Fourteenth Amendment liberty interest to be free from bodily injury (*Nolan v. Memphis City Schools* 2009). Relying upon its earlier decision in *Webb v. McCullough*, the court stated the proof necessary for a 42 U.S.C. sec. 1983 federal civil rights substantive due process claim in connection with corporal punishment (*Webb v. McCullough* 1987). A student is required to show that the force that caused severe injury was disproportionate to the need presented and was inspired by malice or sadism rather than merely careless or an unwise excess of zeal. If corporal punishment in the school setting amounts to a brutal and inhumane abuse of official power and is shocking to the conscience, a student’s federal rights are violated (*Nolan v. Memphis City Schools* 2009). It is to be noted that numerous state laws or by policy of public boards of education prohibit the use of corporal punishment in public schools.
The Fifth Circuit Court of Appeals held in *Doe v. Taylor Independent School District* that deprivation of the liberty interest recognized under the substantive due process clause component of the Fourteenth Amendment was violated when a high school student was sexually molested by a teacher (*Doe v. Taylor Independent School District 1994*). The court in *Taylor* stated that the student’s substantive due process right to be free from sexual abuse and violations of her bodily integrity were clearly established in 1987 in the Fifth Circuit, citing *Jefferson v. Ysleta Independent School District* (*Jefferson v. Ysleta Independent School District 1987*). If a real nexus exists between the sexual activity and the duties and obligations of the teacher, the teacher’s conduct is taken under color of state law for purposes of a 42 U.S.C. sec. 1983 civil rights action (*Doe v. Taylor Independent School District 1994*).

Supervising school officials can be held personally liable for a subordinate’s violation of an elementary or secondary school student’s constitutional right to bodily integrity if the student establishes that the school official learned of facts or a pattern of inappropriate sexual behavior by a subordinate pointing clearly toward sexual abuse of the student. In addition, the student-victim must establish that the school official demonstrated deliberate indifference toward the student’s constitutional right by failure to take action necessary to stop the abuse and, further, that such failure caused the constitutional injury to the student (*Doe v. Taylor Independent School District 1994*).

For a constitutional right to be clearly established, defeating a school official’s claim of qualified immunity, the “contours of the right” must be sufficiently clear so that a “reasonable official” would comprehend that his actions are violating that right. “Clearly established” does not necessarily demand that a case is factually identical to the
commanding case law precedent but, if in the light of pre-existing law, the unlawfulness is apparent (Doe v. Taylor Independent School District 1994). The Fifth Circuit in Taylor found that the high school principal could not have reasonably believed he could be indifferent to the teacher’s sexual misconduct after receiving numerous reports of the teacher’s inappropriate conduct with female students over years and, in particular, with the plaintiff. The principal on a regular basis dismissed reports and parental complaints, did not record the incidents, and declined to discuss the incident involving the plaintiff with her parents, the teacher, or the school superintendent (Doe v. Taylor Independent School District 1994). The Fifth Circuit added that if the United States Constitution protects a schoolchild from being tied to a chair or from arbitrary paddlings, then it surely protects a student from physical sexual abuse. The Fifth Circuit further stated in Taylor that it is “incontrovertible that bodily integrity is necessarily violated when a state actor sexually abuses a schoolchild and that such misconduct deprives the child of rights vouchsafed by the Fourteenth Amendment” (Doe v. Taylor Independent School District 1994).

The Fifth Circuit in Doe adopted the following test to determine the personal liability of school officials in physical sexual abuse cases, stating that a supervisory school official cannot avail himself of an immunity defense and can be held personally liable for a subordinate’s violation of an elementary or secondary school student’s constitutional right to bodily integrity in physical sexual abuse cases when the plaintiff establishes that:

1) The defendant learned of facts or a pattern of inappropriate sexual behavior by a subordinate pointing plainly toward the conclusion that the subordinate was sexually abusing the student; and
2) The defendant demonstrated deliberate indifference toward the constitutional rights of the student by failing to take action that was obviously necessary to prevent or stop the abuse; and

3) Such failure caused a constitutional injury to the student.

Because of the need to specifically allege violation of personal safety and bodily integrity under the appropriate federal laws and the availability of relief under one or more legal bases, both federal and common law state actions, the factual basis to support required elements of each cause of action needs to be clearly raised. If violations arise on one or more legal grounds, alternative pleading in a complaint alleging all forms of relief would be the prudent approach.

Offended students need to report violations of their personal safety and bodily integrity to school officials who have authority over an offending staff member, as well as to their parents. More often than not, offending behavior is not only a civil violation of a student’s rights, but also a crime. Law enforcement needs to be informed in those cases as well.

**TITLE IX LIABILITY: NOTICE AND DELIBERATE INDIFFERENCE**

The Sixth Circuit Court of Appeals held in *Soper v. Hoben* that a school district was not liable, under Title IX of the Education Amendments of 1972, for intentional discrimination based on alleged harassment or sexual molestation where the school district did not have actual knowledge of the discriminatory behavior until “after the fact.” The school district did not act with deliberate indifference since it took quick and effective steps to correct the situation (*Soper v. Hoben 1999*).
In *Soper*, the court set forth the basis for a Title IX peer sexual harassment claim:

- The sexual harassment is so severe, pervasive, and objectively offensive that it deprives the student victim access to educational opportunities or benefits provided by the school;
- The funding recipient (school district) had actual knowledge of the sexual harassment; *and*
- The funding recipient was deliberately indifferent to the harassment.

In addition to the Title IX claim raised in *Soper*, a claim under 42 U.S.C. sec. 1983 was also raised. The court was instructive in its statements on the required bases for a 42 U.S.C. sec. 1983 claim in the school setting:

- Establish that a person acting under color of state law deprived the plaintiff of a federal right.
- Proof of deprivation not only of a federal right but, also, that that conduct was a cause, in fact, of the alleged deprivation.

The plaintiffs in *Soper* asserted that the student’s constitutional right to equal protection and liberty under the Due Process Clauses of the Fifth and Fourteenth Amendments were violated by defendants who were acting under color of state law.

In *Soper*, the Sixth Circuit held that the rape of the plaintiff-student was committed by fellow students who were “private actors,” not governmental or school officials acting under color of state law or pursuant to governmental or school policies. Further, the court determined no special relationship existed between the school district and the female student-victim (*Soper v. Hoben 1999*).

The *Soper* decision is instructive on the liberty interest in bodily integrity under the Due Process Clause of the Fourteenth Amendment which protects an individual’s right against “unjustified intrusions on personal security” at the hands of the state, not by
private actors. The court, citing *DeShaney v. Winnebago County Department of Social Services*, explained that the purpose of the Due Process Clause is “to protect people from the State, not to ensure that the State protect[s] them from each other.” It is not a constitutional duty of school officials to protect against assault by private parties (*DeShaney v. Winnebago County Department of Social Services 1989*).

Title IX liability can result from two “harassment” time periods: 1) when a school exhibits deliberate indifference *prior* to a peer-to-peer attack in such a way that makes the student-victim more vulnerable to the attack, or 2) when a school exhibits deliberate indifference *after* an attack so that a student endures additional harassment. Deliberate indifference occurs when a school district’s response to harassment or lack of response is clearly unreasonable in consideration of the known circumstances (*Snethen v. Board of Public Education for City of Savannah 2008*).

The federal district court in *Hunter ex rel. Hunter v. Barnstable School Committee* provides guidance on Title IX and the requirements of deliberate indifference and actual notice, as well as instruction on the United States Supreme Court decisions in *Gebster v. Lago Vista Independent School District* and *Davis v. Monroe County Board of Education* (*Gebster v. Lago Vista Independent School District 1998; Davis v. Monroe County Board of Education 1999*). The *Hunter* court addressed each of the three elements required for a Title IX student-on-student sexual harassment claim. In assessing the severity of the sexual harassment, the first prerequisite, consideration was given to the circumstances, expectations, and relationships of the parties. Mere insults, teasing, or banter, even if comments involve gender upset the student target, are insufficient. To satisfy the severity prong of a Title IX violation, according to the court, sexual harassment must reach the
severity or pervasiveness to cause an adverse effect on the victim’s educational opportunities (*Hunter ex rel. Hunter v. Barnstable School Committee* 2006).

The *Hunter* court determined that the notice requirement mandates that a school system have actual notice of the sexual harassment. Notice alerts school authorities to a “probable cause” of sexual harassment. Even with actual knowledge of “cognizable peer-on-peer sexual harassment,” a school district will not be liable for monetary damages under Title IX unless it acted with deliberate indifference to the sexual harassment. A court, therefore, must determine whether a reasonable fact finder could conclude the school district’s response was clearly unreasonable in light of the known circumstances. If a school system acts in a timely and reasonable manner to end student-on-student sexual harassment, it will not be liable under Title IX (*Hunter ex rel. Hunter v. Barnstable School Committee* 2006).

As pointed out by the court in *Hunter*, the United States Supreme Court held in *Davis v. Monroe County Board of Education* that sexual harassment of a student by a fellow student (peer-on-peer) constitutes actionable discrimination under Title IX of the Education Amendments of 1972. The *Davis* case established the standard by which a school system, as the recipient of federal funds, may be liable for damages under Title IX as a result of peer-on-peer sexual harassment when the school district is “deliberately indifferent to known acts of student-on-student sexual harassment” (*Davis v. Monroe County Board of Education* 1999).

The Federal District Court in *Massey v. Akron City Board of Education* in determining whether a school employer had actual notice of a hostile environment under Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. sec. 1681(a),
examined whether or not a legally appropriate representative of the employer was aware
of facts “via any channel of communication” which would indicate a hostile environment.
An agent of the school must be aware of facts that indicate a likelihood of discrimination.
In order for a particular employee’s knowledge of facts concerning discrimination to be
imputed to the school district employer, sufficient facts must be known by a supervisor
who has the remedial power to hire, fire, and discipline an alleged harasser. The Federal
District Court in *Massey* further held that schoolchildren have a constitutional right under
the substantive component of the Due Process Clause of the Fourteenth Amendment to
the United States Constitution to personal security and bodily integrity. This includes the
right to be free from sexual abuse at the hands of public school employees (*Massey v.
Akron City Board of Education* 2000). The court also relied upon the 1996 Sixth Circuit
decision in *Doe v. Claiborne County, Tennessee* (*Doe v. Claiborne County, Tennessee*
1996).

In *Massey*, the Federal District Court determined that a reasonable jury could find
that the Akron Board of Education manifested a “policy” of deliberate indifference to the
sexual abuse of students by teachers or counselors, demanding denial of the school
board’s Motion for Summary Judgment.

The Third Circuit in *Kline v. Mansfield* determined that the evidence did not
demonstrate that the school district had a custom or policy of deliberate indifference to a
student’s right to be free from sexual abuse. The court further found in *Kline* that the
school district’s failure to provide training to school district employees to recognize and
report signs of sexual abuse did not demonstrate conscious or deliberate indifference to
the student’s right to be free from sexual abuse (*Kline v. Mansfield* 2007). In *Kline*, a
student was suspended from school after she skipped class to be with a teacher in his sixth grade classroom. Other teachers had complained about the amount of time the student was spending with the teacher, and the school failed to enforce its policy of prohibiting seventh grade students from being in the sixth grade hallway. The court found these failures amounted to negligence, but not deliberate indifference (Kline v. Mansfield 2007).

The Federal District Court in Marcum ex rel. C. V. v. Board of Education of Bloom-Carroll Local School District, relying on Davis v. Monroe County Board of Education, noted that the United States Supreme Court has established that school districts may be held liable for peer sexual harassment under Title IX. Marcum involved verbal taunts by classmates. The Marcum court continued, however, that this does not mean peer sexual harassment also implicates substantive due process rights under the Fourteenth Amendment (Marcum ex rel. C. V. v. Board of Education of Bloom-Carroll Local School District 2010; Davis v. Monroe County Board of Education 1999).

The Marcum court distinguishes a sexual assault, which clearly implicates the fundamental right to “bodily integrity,” from verbal taunting, which does not. The Marcum court further points out the distinction between sexual harassment by a teacher employed by a public school district, which constitutes state action, and Fourteenth Amendment substantive Due Process Clause protection from abuses of governmental power (Marcum ex rel. C. V. v. Board of Education of Bloom-Carroll Local School District 2010). The Federal District Court in Marcum determined that, as a general rule, the Fourteenth Amendment does not impose a constitutional duty on school officials to protect students from harm inflicted by private actors such as their classmates, citing
DeShaney v. Winnebago County Department of Social Services (DeShaney v. Winnebago County Department of Social Services 1989).

The Marcum court delineates the basis for a claim under Title IX of the Education Amendments of 1972, as amended, and the protection under the Fourteenth Amendment to the United States Constitution to the right of bodily integrity. The rights exist, but as with all legal claims, the allegations must be properly raised and based on the appropriate laws.

The United States Supreme Court rendered its decision in Gebser v. Lago Vista Independent School District eleven months before its decision in Davis v. Monroe County Board of Education. Both cases arose from Title IX, however, Gebser involved a teacher’s sexual harassment of a student, and Davis was a student-on-student harassment case. The Gebser case was a private action filed by a high school student and her parents who sued the school district directly seeking monetary damages under Title IX for a teacher’s sexual harassment of the student. The Gebser case established the private right of action under Title IX and the requisite for actual notice on the part of the school district concerning the sexual harassment. Further, an implied private right of action will not lie without a school district’s deliberate indifference to the teacher’s misconduct after receiving actual notice. A school official who “at a minimum” has authority to address alleged discrimination and the authority to initiate corrective measures on behalf of the school district recipient of federal funds must have actual knowledge of discrimination in the school district’s program and fails to respond (Gebser v. Lago Vista Independent School District 1998).
If a public school district refuses federal funding, it is not a “funding recipient,” and, therefore, the provisions of Title IX would not be applicable. This further demonstrates the need for school districts to take action regardless of legal constraints to provide an educational atmosphere of respect and civility simply because it is the moral and right course of action.

PEER SEXUAL HARASSMENT UNDER TITLE IX

As in all Title IX claims, allegations of student-on-student sexual harassment are based on these required elements:

- The harassment is so severe, pervasive, and objectively offensive that it could be said to deprive the victim of access to educational opportunities or benefits provided by the school;

- The school-funding recipient had actual knowledge of the sexual harassment; and

- The funding recipient was deliberately indifferent to the harassment (Doe ex rel. Doe v. Derby 2006; Education Amendments of 1972 sec. 901(a); 20 U.S.C. sec. 1681(a)).

Even if a school district is not liable because it did not have knowledge of peer sexual harassment until after it took place, the school board could still be liable for deliberate indifference to known post-assault sexual harassment of a student-victim if the harassment is so severe, pervasive, and objectively offensive so as to deprive the victim of access to educational opportunities or benefits provided by the school (Doe ex rel. Doe v. Derby 2006).

If a school board has actual knowledge of sexual harassment and fails to discipline the offender until after the victim complains, this failure could be seen to be acting with deliberate indifference to known harassment (Doe ex rel. Doe v. Derby 2006).
In the subsequent United States Supreme Court decision in *Davis v. Monroe County Board of Education*, the court explains its decision in *Gebser*, as well as rendering its decision in *Davis*, a case arising from peer-on-peer sexual harassment. It appears that the High Court recognizes the constraints of a Title IX action as it references common law negligence actions and the Restatement (Second) of Torts sec. 20.

In *Davis*, also a private cause of action, the Supreme Court addressed peer-on-peer harassment and restates that deliberate indifference on the part of the school district funding recipient, coupled with severe harassment which “effectively bars the victim’s access to an educational opportunity or benefit,” are prerequisites to damages under Title IX. “Single acts of teasing and name-calling” are not actionable under Title IX. A funding recipient is only liable for damages for its own misconduct and not for parties “outside the scope of this power” (*Davis v. Monroe County Board of Education 1999*).

The Supreme Court noted that damages liability under Title IX is not based on a negligence standard but only where their own “deliberate indifference effectively caused the discrimination” (*Davis v. Monroe County Board of Education 1999*). At a minimum, the deliberate indifference must cause students to undergo harassment or make them vulnerable to it. The funding recipient must exercise substantial control over the harasser and the context in which the known harassment occurs.

In *Davis*, the United States Supreme Court found that funding recipients cannot merely expel student harassers, but school administrators will be deemed deliberately indifferent to acts of student-on-student harassment only where the response or lack of response to the harassment is clearly unreasonable in consideration of the known circumstances (*Davis v. Monroe County Board of Education 1999*).
In explaining its decision in *Gebser* in its opinion in *Davis*, the Supreme Court explained that it rejected agency principles to impute liability to a school district for the misconduct of its teachers (*Gebser v. Lago Vista Independent School District 1998*) and that the court also declined to impose liability under a negligence standard and holding the school district liable for its failure to react to teacher-student harassment for what it knew or should have known. Instead, the court concluded that a school district could be liable for damages only where the school district intentionally acted in clear violation of Title IX by remaining deliberately indifferent to acts of teacher-student harassment of which it had actual knowledge. A teacher’s misconduct is not treated as the school district’s actions (*Davis v. Monroe County Board of Education 1999*).

The Supreme Court referenced Restatement (Second) of Torts sec. 320 and further noted in *Davis* that the common law has put school districts on notice that they may be held responsible under state law for their failure to protect students from the tortuous acts of third parties. State courts routinely uphold claims of alleged negligence for failure to protect students from the torts of their peers (*Davis v. Monroe County Board of Education 1999*).

The High Court clarifies the phrase “under an operation of the funding recipient” when it commented that, as in *Davis*, misconduct occurs during school hours, on school grounds, and in the classroom. In this setting, the school board retains substantial control over the context in which the harassment occurs and “exercises significant control over the harasser” (*Davis v. Monroe County Board of Education 1999*). The court observed “that the nature of [the State’s] power [over public schoolchildren] is custodial and
tutelary, permitting a degree of supervision and control that could not be exercised over free adults” (Vernonia School District 47J v. Acton 1995).

The Supreme Court commented that an “obvious example” of student-on-student sexual harassment capable of triggering a Title IX damages claim would involve the “overt, physical deprivation of access to school resources.” This would occur where male students physically threatened their female peers on a daily basis resulting in successfully preventing female students from using a particular school resource such as an athletic field or computer lab (Davis v. Monroe County Board of Education 1999).

THE COURTS AND AGGRESSIVE BEHAVIOR IN THE EDUCATIONAL SETTING

Mohat v. Mentor Exempted Village School District Board of Education involves procedural issues and litigation motions associated with the bullying and harassment of a seventeen-year-old student who committed suicide (Mohat v. Mentor Exempted Village School District Board of Education 2011). A segment of the lawsuit is related to the state-created danger theory and the special relationship exception. The Federal District Court in addressing this issue noted that the Fourteenth Amendment Due Process Clause does not require the state to protect the life, liberty, and property of citizens from invasions of private actors. Unless one of the two exceptions exists, there is no constitutional duty on the part of the state to protect or rescue its citizens, unless:

- The state has custody of a person in need or some other special relationship exists that would heighten the state responsibility, duty, or care
- A state actor acts affirmatively to create or greatly increases a risk of harm to one of its citizens
In *Mohat*, the complaint does not allege that the deceased student was in state custody or that any special relationship existed between him and the school that would have given the state a heightened level of responsibility for his care and protection. As a result, the court stated that the parents could reasonably expect the school to do its best to protect children while they are under the school’s supervision. The federal law, the court continued, does not raise this expectation to a constitutional guarantee.

Under the state-created danger exception, there may be state liability if the state causes or greatly increases the risk of harm to its *citizens* without due process of law. Children are included in the term *citizen*.

The state-created danger theory is based on three elements: 1) an affirmative act by the state which either created or increased the risk that the plaintiff would be exposed to an act of violence by a third party; 2) a special danger to the plaintiff wherein the state’s actions placed the plaintiff specifically at risk, as distinguished from a risk that affects the public at large; and 3) the state knew or should have know that its actions specifically endangered the plaintiff (*Mohat v. Mentor Exempted Village School District Board of Education 2011*, citing *Jones v. Reynolds 2006*).

**LIABILITY, SPECIAL RELATIONSHIP, AND DANGER CREATION EXCEPTION**

Compulsory attendance requirements do not render a student “in custody” for purposes of a special relationship exception to a state actor’s non-liability for failure to protect individuals from harm by third parties. Although state officials are liable for deprivation of life, liberty, or property that rise to the level of a “constitutional tort” under the Due Process Clause of the Fourteenth Amendment, a state is not liable for failure to protect individuals from harm by third parties under the Fourteenth Amendment. As a
result, individuals *generally* do not have a constitutional right to bring an action against school districts for injuries caused by third parties (*Funez ex rel. Funez v. Guzman 2009*). However, there are two exceptions to this general rule: the special relationship exception and the danger creation exception under the Fourteenth Amendment to the United States Constitution (*Funez ex rel. Funez v. Guzman 2009*).

The court in *Funez* provides a valuable analysis of the danger creation exception to the failure to protect persons from injuries caused by third parties. To provide under this exception, it must be shown that school officials affirmatively placed a student in a position of danger where that action creates or exposes an individual to a danger he or she would not have otherwise faced. This exception does not create a broad rule making school officials liable under the Fourteenth Amendment whenever they increase the risk of some harm. Rather, it must be shown that they acted affirmatively with deliberate indifference in creating a foreseeable danger which leads to a deprivation of a student’s constitutional rights (*Funez ex rel. Funez v. Guzman 2009*).

In order to establish that school district officials acted with deliberate indifference to danger they created so as to fall within the exception for injuries caused by third parties, it must be shown that an unusual and serious risk of harm existed, that the school officials had actual knowledge or at least a “willful blindness” to the elevated risk, and school officials failed to take obvious steps to address the known, serious risk (*Funez ex rel. Funez v. Guzman 2009*).

aware of facts from which an inference could be drawn that a substantial risk of harm exists, and he must also draw that inference (McQueen v. Beecher 2006).

In Funez, where a disabled student sustained cuts, bruises, and internal injuries as a result of being struck, kicked, and pushed by other high school students while they were all under the care and supervision of the school district, the court, citing Cornelius v. Town of Highland Lake where a prisoner who was placed in a release program, noted that the disabled student was not placed “in a dangerous environment stripped of means to defend himself and cut off from sources of aid” (Cornelius v. Town of Highland Lake 1989). The Funez court found “no sufficiently culpable conduct.” The student went to school and not to a place in a “unique, confrontational encounter’ with a violent criminal.” The Funez court continued that no school official in the “performance of her duties abandoned him in a crack house or released a known criminal in front of his locker” (Funez ex rel. Funez v. Guzman 2009).

This language in the court analysis in Funez makes it clear that case law precedent in the danger creation exception and school area may need to be re-visited by the courts. The Funez court did state, however, that the student had “not adequately pled” the violation of his right to equal protection or to his right to due process under the state-created danger exception but that the student’s negligence claim was timely raised under the state tort claims law.

As to the “special relationship” exception, the Funez court re-stated its application in matters where a state actor abuses a special state-created relationship with an individual such as in cases of custody or involuntary hospitalization. The court further commented in its opinion that federal circuit courts have concluded that a student is not

In a case involving the death of a child on a school bus, the child’s mother filed suit alleging a 42 U.S.C. sec. 1983 civil rights action based on the alleged failure of the public school district to maintain adequate policies, rules, and regulations, as well as failure to train school employees on cardiopulmonary resuscitations and emergency procedures. The Sixth Circuit Court of Appeals held that no special relationship existed between the child and the school district which would impose an affirmative duty of care upon the school district. Further, the court determined that the school district board of education did not adopt a custom, practice, or policy with deliberate indifference to the child’s constitutional rights. The Sixth Circuit held that the state did not create a danger that resulted in the death of the child (Sargi v. Kent City Board of Education 1995).

Inadequate training of a school bus driver could form the basis of a 42 U.S.C. sec. 1983 action only if that failure constitutes deliberate indifference to the student bus riders. A showing of deliberate indifference is more than a negligent failure to recognize a high risk of harm. The state-created danger theory under a 42 U.S.C. sec. 1983 civil
rights action is predicated upon affirmative acts which expose an individual to danger (Sargi v. Kent City Board of Education 1995).

The Sixth Circuit further determined that the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution forbids states from depriving individuals of life, liberty, or property without due process of law. The court additionally noted that the Due Process Clause does not generally impose affirmative duties on the state to protect those interests. In certain situations, an affirmative duty of care and protection is imposed, such as in the case of incarcerated prisoners and involuntarily committed mental patients (Sargi v. Kent City Board of Education 1995).

Federal Circuit Courts, including the Tenth, Third, and Seventh Circuits, have ruled that compulsory school attendance does not restrict a student’s liberty so that neither the student nor parents are unable to attend to the child’s basic human needs. The Sixth Circuit determined in Sargi that a special relationship can only arise when the state restrains an individual and found that no special relationship gave rise in the Sargi case to protect the child from the consequences of a seizure while on a school bus. The Sixth Circuit left the door open, however, to address whether a special relationship exists between a board of education and students in other situations. The Sixth Circuit made it very clear that their decision in Sargi cannot be interpreted to mean that school districts have no duty of protection of students in other situations not yet before the court (Sargi v. Kent City Board of Education 1995).

The courts continue to refine the liability of state actors under the state-created danger theory. Under this theory of constitutional liability, deliberate indifference is the required degree of culpability of liability. The Sixth Circuit Court of Appeals determined
that when a teacher left six students unsupervised in a classroom while she escorted the
rest of her students to another classroom down the hall, this was not an affirmative act
that created or increased the risk to a student who was fatally shot by another student in
the unsupervised classroom (*McQueen v. Beecher Community Schools 2006*).

The Sixth Circuit in *McQueen* explained that liability under the state-created
danger theory of the Fourteenth Amendment due process liability under a 42 U.S.C. sec.
1983 action is predicated upon the affirmative acts of state actors which either create or
increase the risk that an individual will be exposed to private acts of violence. In
*McQueen*, the court held that absent evidence that the teacher knew or suspected that
another student possessed a gun or similarly dangerous weapon on the day of the
classroom shooting or that the shooter’s behavioral problems would escalate to shooting a
classmate, the teacher did not act with the required deliberate indifference necessary for
culpability under a 42 U.S.C. sec. 1983 action (*McQueen v. Beecher Community Schools
2006*).

The court in *McQueen* clarified that the state-created danger doctrine has its roots
in *DeShaney v. Winnebago County Department of Social Services* where the United
States Supreme Court held that even in the face of “undeniably tragic” circumstances, as
a general matter, a State’s failure to protect an individual against private action does not
give rise to a violation of the Fourteenth Amendment Due Process Clause (*DeShaney v.
Winnebago County Department of Social Service 1989*). The United States Supreme
Court in *DeShaney* did acknowledge that in limited circumstances, the Constitution does
impose upon the State affirmative duties of care and protection regarding particular
individuals such as a person taken into custody by the State and holds the individual against his will.

The Sixth Circuit in *McQueen* commented that the United States Supreme Court “seemed to open the door for another set of limited circumstances” that would form a basis for a state’s affirmative duty to protect when a special relationship exists. Although the Sixth Circuit in *Sargi* held that no special relationship exists between a school and its students who ride the school bus, the Sixth Circuit specifically commented that in other school-student relationships, their decision may change (*Sargi v. Kent City Board of Education* 1995).

So it seems that the special relationship issue and school district liability is a work in progress. The case law currently rejects the special relationship theory unless an affirmative act or the increase of risk of private violence in the school setting exists. Deliberate indifference and knowledge or if the State should have known of endangerment of portending harm also increase potential for liability. We do know from the case law, especially *McQueen v. Beecher*, that the elements of the state-created danger theory are:

1. The State acted with the required culpability to establish a substantive due process violation under the Fourteenth Amendment by either an affirmative act which either created or increased the risk to an individual by a private actor (*Ewolski v. City of Brunswick* 2002).

2. Government conduct must be “so egregious” that “it is arbitrary in the Constitutional sense,” although not a “calibrated yardstick” (*County of Sacramento v. Lewis* 1998).

3. The deliberate indifference standard, which is equated with subjected recklessness, is appropriate as a guiding principle, however, a higher bar may be necessary when “opportunities for reasoned deliberation are absent” (*Bukowski v. City of Akron* 2003).
The state-created danger theory, in the public school setting, involves a private person offender, an increased risk of harm to a student, and deliberate indifference on the part of school administrators and/or staff.

The Federal District Court in *Wilson v. Columbus Board of Education* determined that fact issues surrounding an assistant principal’s suspension of a student precluded summary judgment for the school defendants. The issues to be litigated involved whether the student’s suspension satisfied the required test for the state-created danger theory of liability, whether the principal’s actions either created or increased the risk that the student would be exposed to injurious conduct of a private person, and whether the governmental actor especially endangered the student or other students (*Wilson v. Columbus Board of Education* 2008). The suspended student in *Wilson* was being sexually abused at home by her stepfather, and fact issues to be determined included whether the assistant principal was aware of this abuse at the time he suspended the student from school, and as a result, established an increased risk of harm to the student’s Fourteenth Amendment liberty interest protected by the Due Process Clause.

In litigation of the state-created danger theory under 42 U.S.C. sec. 1983, the alleged constitutional violation is the violation of an individual’s right to bodily integrity under the Fourteenth Amendment Due Process Clause, as the prerequisite Constitutional violation, and 42 U.S.C. sec. 1983 civil rights law is the federal law and legal action basis under which the Constitutional violation is litigated. The *Wilson* case also illustrates the continuing trend of the courts regarding a person’s liberty and substantive due process rights under the Fourteenth Amendment, especially concerning the state-created danger theory of liability based on deliberate indifference to known risk of danger or abuse.
In *L.W. v. Grubbs*, the Ninth Circuit Court of Appeals addressed the danger-creation exception in a suit claiming that the state exposed a rape victim to danger by choosing a known sex offender to work with the victim. The Ninth Circuit determined that the state had affirmatively exposed the victim to danger and did so with deliberate indifference to a known danger (*L.W. v. Grubbs 1992*). It is the danger-creation exception that school districts need to address under the continually changing case law concerning the duty to protect and the state-created danger theory. This is a critical area in the school setting where students’ rights to personal safety and bodily integrity under the Fourteenth Amendment to the United States Constitution can be most easily violated by a private person offender.

In the often-cited case captioned *Doe v. Claiborne County, Tennessee* as the seminal case involving Title IX on federal civil rights claims under 42 U.S.C. sec. 1983, the Sixth Circuit reaffirmed a student’s rights to personal security and bodily integrity under the substantive component of the Fourteenth Amendment Due Process Clause. In *Claiborne County*, the Sixth Circuit emphasized the constitutional right of students to be free from sexual abuse by public school employees. The Sixth Circuit further held that although a public school system has an “unmistakable duty to create and maintain a safe environment for students as a matter of common law,” the *in loco parentis* status or the state’s compulsory attendance laws do not “sufficiently restrain students” to give rise to a school’s common law obligation to the “rank of a constitutional duty” under the Fourteenth Amendment to protect students on the basis of a special relationship (*Doe v. Claiborne County, Tennessee 1996*). It is especially noteworthy that the decision in *Claiborne County* rendered over fifteen years ago clearly emphasized a common law
right of students to a safe school environment, and the case law clarifying constitutional rights of students to Fourteenth Amendment rights to personal security and bodily integrity are being distilled continuously to the present by the courts.

The Sixth Circuit in *Claiborne County* involving teacher sexual abuse of a student also stated, citing *Collins v. City of Harker Heights*, that the Due Process Clause “does not purport to supplant traditional tort law in laying down rules of conduct to regulate liability for injuries that attend living together in society” (*Doe v. Claiborne County*, *Tennessee 1996*; *Collins v. City of Harker Heights 1992*). Not every tort violation rises to a constitutional level. It is clear, therefore, that students have always had a common law right to personal safety, and those rights are further developed in the Fourteenth Amendment to the United States Constitution and related Federal statutes.

The right to personal security and bodily integrity bears “an impressive constitutional pedigree,” as pointed out by the Sixth Circuit (*Doe v. Claiborne County*, *Tennessee 1996*). In 1891, the United States Supreme Court recognized that “no right is held more sacred, or is more carefully guarded…than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law” (*Union Pacific Railway Company v. Botsford 1891*). The court in *Claiborne* reaffirmed the clearly established fundamental right of individuals under the substantive component of the Due Process Clause to personal security and bodily integrity in holding that sexual abuse of a student by a public school teacher violated their fundamental rights.

In *Doe v. Big Walnut Local School District Board of Education*, arising from a number of threats and physical encounters involving the special needs minor child of the
plaintiffs and classmates over a two-year period, allegations include substantive due process violations, the Americans with Disabilities Act, and state law claims. The federal District Court in *Big Walnut*, relying upon the Sixth Circuit opinion in *Doe v. Claiborne County, Tennessee* (*Doe v. Claiborne County, Tennessee* 1996), held that a sexual assault clearly implicates a fundamental right to bodily integrity, but that right does not extend to “verbal taunting” or “bullying.” In addressing a school district’s duty to protect students from bodily harm, the court in *Big Walnut* stated that the Substantive Due Process Clause of the Fourteenth Amendment (U.S. Constitution, amend. 14, sec. 1) protects individuals from abuse of governmental power and does not impose a duty on a public school to protect students from harm inflicted by private actors, such as fellow students (*Doe v. Big Walnut Local School District Board of Education* 2011).

**COMMON LAW NEGLIGENCE**

In addition to litigation in Federal courts for violations of children’s federal and United States constitutional rights, litigation is possible under common law negligence actions in state courts. The elements of a common law negligence case are duty owed and duty breached, with the breached duty being the proximate cause of the injury. Both public and private sector schools may be liable under common law negligence.

The Louisiana Appellate Court for the Third Circuit held that a violation of a school’s established policy was a breach of the duty of reasonable supervision of its students. In *D.C. v. St. Landry Parish School Board*, a twelve-year-old junior high school student checked herself out of school during regular school hours in order to retrieve appropriate clothing. En-route home, she was sexually molested by a stranger while walking in a crime-ridden neighborhood. The Louisiana Court of Appeals held
that, under common law negligence, the scope of the school board, the school principal, assistant principal, and school secretary duty of supervision encompassed the foreseeable risk that the female student might become a victim of the criminals who frequented the area (*D.C. v. St. Landry Parish School Board* 2005).

Under the duty-risk approach, it must be proven that the release of the student during school hours was the cause-in-fact of the resulting harm, that the school defendants owed a duty of care to the student, that the requisite duty was breached by the defendants, and the risk of harm fell within the scope of the protection afforded by the duty breached. A critical issue to be determined is whether the sexual assault would have occurred, but for the defendants’ alleged substandard conduct. Whether a duty exists in a negligence case is a question of law. Breach of duty is a question for the tier of fact. Breach of a duty is the failure to exercise reasonable care under the circumstances (*D.C. v. St. Landry Parish School Board* 2005).

In the *D.C.* case, the court found that the school defendants breached their duty to the student by violating their own policy which provided that only the school principal or assistant principal had the authority to permit a student to leave campus during regular school hours. The student in *D.C.* checked herself out during school hours in violation of school policy. It was a foreseeable risk that the student might become the victim of one of the criminals who often frequented the area (*D.C. v. St. Landry Parish School Board* 2005).

The importance of school board-adopted policy and the duty to implement policy cannot be overstated. Under common law negligence claims, violation of established school district policy is a breach of duty owed to parents of minor children. In a
negligence claim against a school board, parents of minor children must prove the school board has a duty to conform its conduct to a specific standard of care, that the duty was breached, the substandard conduct was a “cause-in-fact” and a legal cause of the claimed injuries, and that actual dangers were sustained (J.M. v. Avoyelles Parish School Board 2009).

A violation of established policy on sexual harassment occurs when a female child is touched inappropriately by one or more male classmates (J.M. v. Avoyelles Parish School Board 2009). In determining whether the cause-in-fact element is satisfied, inquiry involves whether the incident would have occurred, but for the defendant’s alleged substandard conduct. In J.M., the child-victims were pre-kindergarten aged. The Louisiana Appellate Court noted that it had recognized previously in Romero v. Little Britches Day Care Center, Inc. that “the laws of evidence recognize that children may not have a clear understanding of what has happened to them” and that the tier of fact must then evaluate the evidence in view of the child’s “level of understanding and normal incapacity” (Romero v. Little Britches Day Care Center, Inc. 2000). There is a duty on the part of boards of education and school employees to protect vulnerable children from harm in the educational setting and at school-sponsored events.
CHAPTER 3

RESTORATIVE JUSTICE: DEFINITIONS, PRINCIPLES, AND GOALS

RESTORATIVE JUSTICE PRACTICES

Restorative justice practices are an effective and valuable means to resolving conflict by accepting responsibility for wrongdoing and making amends for resulting harm. It is a type of victim-offender encounter that aims to calibrate an offender’s moral compass through dialogue. Restorative justice practices not only endeavor to resolve a conflict, but also to repair harm that has resulted from offending behavior. Various types of restorative justice practice include conferences, mediation, and import panels. The Navajo have used horizontal decision-making Diné Peacemaking for centuries. Restorative justice practices have also been successfully used in the adult criminal justice system. The overwhelming majority of books on restorative justice practices concern the criminal justice field. Only somewhat recently has there been recognition of its value in the school setting. The use of restorative justice practices in the adult criminal justice system assist the offender during the sentencing, probation, and parole stages by addressing the causes and effects of the criminal behavior and focusing on the harm caused to both primary and secondary victims. The intent of restorative justice practices is to foster empathy and understanding on the part of the offender and decrease recidivism of the offending behavior.

Restorative justice practices of mediation and arbitration are commonly used in marriage counseling, divorce proceedings, labor-management negotiations and disputes, and in civil cases where the parties are willing to dialogue in hopes of resolution rather than proceeding to trial. More recently, restorative justice practices have been used in the
juvenile justice system as a means in both the transformation and rehabilitation of juvenile offenders in preparation for their re-entry into society. Victim offender conferencing/victim offender reconciliation in the criminal justice system brings victims and offenders together in a face-to-face meeting led by a trained facilitator. In this meeting, dialogue about the impact and consequences of the criminal act takes place. The conference occurs in a safe location such as the courthouse. This type of restorative justice practice may also be called a victim-impact conference. Conflict management or conflict transformation, another type of restorative justice practice, is a framework for an exchange regarding the underlying causes and forces involved in a conflict, and the process addresses the context and structure of a relationship. It is used especially in domestic matters.

Restorative justice practices are not primarily about forgiveness, but about understanding through dialogue and openness. They focus on harm resulting from offenses and address the needs of both the offended and the offender, as well as the obligations resulting from those harms. The use of restorative approaches in the educational setting is extremely valuable since they may be used in lieu of traditional punitive disciplinary practices and as interventions to deescalate hostility and aggressive behavior.

Restorative justice practices seek to repair the harm resulting from wrongdoing without retribution or humiliation. They are a type of moral repair without revenge. A major goal is to reach understanding through civil dialogue with all participants on equal footing. Through dialogue and emphasis on the dignity and respect owed to others, another goal is to reduce the potential for reoccurrence between the same offender and
offended and to prevent harm to future victims. These practices reinforce proper moral standards and normative behavior.

RESTORATIVE JUSTICE AND SCHOOLS

From the theoretical philosophical views on justice, we now move into the practical application of the principles of justice in social relationships with one another. The need for justice in our society has never been more evident. With the rights of children to personal safety and bodily integrity (physical, as well as emotional) not always recognized or protected by responsible adults, school authorities and the school community as a whole have a duty to implement safeguards to protect those rights. There is also a corresponding duty to repair the harm resulting from violation of those rights. Transforming the ethos of an aggressive, disrespectful, and uncivil educational environment to one of respect and recognition of the dignity of each child through restorative justice practices is key to a safe educational environment where children can reach their full emotional, physical, and intellectual potential.

The term “restorative justice practices” is a general one that includes alternate dispute resolution processes such as mediation, arbitration, and conferencing. Restorative justice practices in the educational setting may include peer mediation, an informal one-on-one meeting between the teacher, the offending student, and parents/guardians. Peer mediation involves the training of students to function as mediators during the school day when minor disputes arise. Parent-teacher-student conferences are another means of resolving disciplinary concerns. The Navajo Peacemaking process is particularly adaptable to and can easily be implemented in the school setting. It involves respectful and peaceful dialogue among the participant-stakeholders affected by
offending behavior and its harmful effects with an emphasis on horizontal decision making where all participants are on equal footing. The participants bring a conflict to resolution. The Diné Peacemaking mode of restorative justice also presents a teaching opportunity for respectful and open discussion which addresses the underlying causes of a dispute, resolves the conflict, and repairs the harm caused by the offending behavior.

The traditional school disciplinary process is quite simple: a determination is made concerning what behavior code has been violated, who is the violator, and what punishment should be received or not received. This process generally does not involve the victim of the proscribed behavior, nor does it address the why of an offense, the underlying cause, or the needs of the offender or offended. It amounts to “swift justice” that does not lend itself to discourage reoffending or recidivism. More than likely, the student-offender will be suspended or removed from school and lose educational benefits. When reentry of the offender to the school setting occurs, the unresolved differences and underlying causes usually escalate. Traditional school discipline does not always discourage reoffending, but rather often reinforces the need on the part of the offender to not get caught the next time.

Through restorative justice Diné Peacemaking, offending students are provided with an opportunity to take responsibility for their actions, realize the harm caused, and acknowledge the need to change their behavior. Restorative outcomes in the school community include not only the repair of the harm caused to the offended student, but restoration of a school community’s civility, respect for others, and recognition of the entitlement of all persons to dignity and respect. The reaching of an agreement by the participant-stakeholders in restorative justice practices involves affirmative action to be
taken by all stakeholders, especially by the offender. The accomplishment of accountability and responsibility through personal involvement in a collaborative process has powerful results. Offenders can be reintegrated into the school community as valuable, contributing members, a caring, healthy school climate is created, and victims can be restored to a position of dignity and respect.

Restorative justice practices in general aim towards accountability for one’s behavior, respect for fundamental human rights and human dignity, restoration of property loss and personal safety, compassion, caring, peace, civility, recognition of duties toward one another, apology, remorse over injustice, and forgiveness. As Plato emphasized in *The Republic*, the form of government in schools is fundamental to the successful education of every child. A student-centered school system aims to provide a safe and supportive environment for the comprehensive education of the whole child and to prepare children for a lifetime of learning in a diverse, democratic, global society. Restorative justice practices are a successful tool in accomplishing these goals.

Before restorative justice practices are implemented, preparation is necessary in the form of assessing the conflict, problem, or aggressive behavior to determine initially if the process is appropriate to the offense. After determining that the process is appropriate, the next step is to identify all primary stakeholders who have been directly harmed by the harmful behavior as well as secondary victims. Selection of a professional such as a guidance counselor or school psychologist as the facilitator is ideal since the duties of these two positions do not include adjudication of the school code of conduct. A school principal or assistant principal is generally the decision-maker in the school disciplinary process. A restorative justice practice lends itself best to the counselor and
school psychologist who can be neutral facilitators and whose professional training focuses on students’ needs and reasons for misbehaviors.

The facilitator assists the participants in developing guidelines, goals, and values for the discussion/dialogue. In most restorative justice practices, the facilitator becomes more involved in the resolution process in guiding the participants in a more structured manner by directing them toward resolution through agreement. Ideally, the facilitator never controls the process, but opens the session, sets the respectful and calm tenor desired, and explains the simple procedure to be used. Then the dialogue begins. The role of the facilitator may include, by necessity, that of an authority figure who reminds participants to remain respectful, to listen carefully to what others are saying, and to refrain from accusatory or defensive comments. This is a time for respectful personal expression consistent with a non-adversarial proceeding. The focus is on harm and repair of that harm while relationships are built or restored and underlying causes of the conflict or harm are gently probed. No participant is required to speak. All restorative justice processes end with a collaborative agreement and resolution. The terms of the agreement are intended to be met, and the issues leading to the conflict are intended to be resolved completely.

Restorative justice practices are cost effective and consume less time than traditional school disciplinary processes. Most importantly, however, restorative justice practices have the capacity to change individuals and the entire school atmosphere because they involve dialogue among the parties about the occurrence and its past and future implications. Relevant members of the school community, as well as parents/guardians are also involved to help offended students in their total recovery and
to rehabilitate and transform offenders. The process includes discernment of the reason for the offense, the dialogical component, and a resultant agreement addressing the active steps needed to minimize a repeat of the harmful behavior with the same offended student or others. Restorative justice practices in the schools can avoid “assembly-line justice,” which is conducive to repeat offenses and does not address the moral harm involved. The three R’s of restorative justice practices in the school setting are: Restore the trust, Renew the hope, and Repair the harm.

Through restorative justice practices, offending students are provided with an opportunity to realize the effects of their actions and the need to change their behavior. Restorative outcomes in the school community include not only the repair of harm caused to an offended student, but restoration of a school community’s civility, respect for others, and recognition of the entitlement of all persons to dignity and respect. The reaching of an agreement by the stakeholders partaking in a restorative justice session involves affirmative action to be taken by all stakeholders, especially by the offender. Participants devise and reach consensus on appropriate measures to be taken. In the school community, the ultimate outcome includes behavior changes through dialogue which reinforces a peaceable school environment. Intended outcomes include genuine and voluntary apologies, reparation, restitution, healing, forgiveness (if and when the offended student is ready and able), repair of damaged relationships, and school community reintegration of both the offender and offended student.

As Plato would agree, any learning experience involving moral and good behavior should start early in a child’s life and be reinforced continuously in the school curriculum and at home throughout the child’s education. The practices should begin with the very
young and continue through secondary school. Just as philosophy seeks knowledge, truth, and understanding, so do restorative justice practices in the schools through dialogue, understanding, and consensus.

Restorative justice practices in schools encourage understanding of the harm caused by an offense and the development of empathy for both the offended student and the offender. The accomplishment of accountability and responsibility through personal reflection in a collaborative process can have a powerful result. Offending students are reintegrated into the school community as valuable, contributing members, a caring, healthy school climate is created, and offended students are restored to a position of dignity and respect. The restorative justice process requires the training of facilitators who possess specific skills and values, including but not limited to the ability to listen, be non-judgmental, be respectful, foster a positive rapport among all parties involved, and to be compassionate, warm, and patient. These leadership qualities comport to the education of guardians as emphasized by Plato in *The Republic.*

COMPONENTS OF RESTORATIVE JUSTICE PRACTICES

Contemporary restorative justice programs in the criminal justice system have developed from victim-offender reconciliation programs, now called victim-offender mediation programs, conferencing sessions, and circles, all having the purpose of bringing together those who have been affected by a crime. The encounter, one of the components of restorative justice, involves the offender, the victim, and community members. It has five key elements: the meeting, the dialogue or narrative, the emotion arising from interaction of the participants, mutual understanding, and the resultant agreement. The meeting and the agreement comprise the format aspect of the process,
while the narrative, emotion, and understanding are the core components of the communication aspect.

During the understanding phase of the encounter component, through dialogue, the parties come to understand one another as they work toward their goal of making things right. The emotion stage contributes to understanding as the parties prepare to design an agreement specific to the offending behavior and the resulting harm (Van Ness 2000).

Another component of restorative justice involves amends. This is the most distinctive part of the process during which the wrongdoer takes steps to repair the wrong caused by offending behavior. Among the varying means of making amends, restitution is certainly one way. There are four key elements involved when offenders make amends for the harm they have caused their victim:

- A genuine apology acknowledging wrongdoing.
- Changed behavior or steps to avoid recidivism.
- Restitution in the form of a monetary payment to the victim, return of property, or in-kind services.
- Generosity when an offender goes beyond the concept of proportionate restitution (Van Ness 2000).

A basic core value of restorative justice is the goal to reintegrate both victim and offender into their communities as contributing members without stigmatization. Reintegration involves the three key elements of respect, material assistance, and moral/spiritual direction which address both the victim and the offender. In the school community, reintegration can occur after either traditional school discipline is imposed,
after a restorative justice process has been utilized, or after an offending student is released from the juvenile justice system.

Inclusion, the most important of restorative values according to Van Ness, provides the victim, offender, and affected community the opportunity for meaningful participation in the restorative justice process. The three key elements of inclusion are the invitation for the affected parties to participate in the restorative justice process, the acknowledgment of the interests of the parties with the opportunity to pursue those interests within the process, and the acceptance of alternative approaches in addition to the particular restorative justice practice being utilized to reach an agreement (Van Ness 2000). Inclusion in the school community is of vital significance since exclusion is denial of full participation in the academic and social aspects of the school experience and is emotionally damaging.

When addressing the meaning of restorative justice, Gerry Johnstone and Daniel Van Ness describe the reparative aspect of the process as the need to “put things right” when a serious wrong is committed against another. The restorative aspect is two-sided -- reparation necessary to repair the harm done by wrongdoing and the need to repair or restore relationships. The significance of repair also restricts any desire for retribution against the wrongdoer. Imposing pain upon offenders, Johnstone and Van Ness explain, may provide a “slight and short-lived sense that justice has been done,” but, as a rule, falls short of delivering an “enduring experience of justice” (Johnstone and Van Ness 2007, 12).

RESTORATIVE JUSTICE AND TRANSFORMATION

Another goal of restorative justice, as Johnstone and Van Ness point out, is transformation of the way we lead our lives. To live a lifestyle of restorative justice, they
submit, is “to abolish the self” and understand ourselves to be connected to and identified with other beings in society (Johnstone and Van Ness 2007, 15). It is through self-criticism that we eventually become transformed (Johnstone and Van Ness 2007, 16). Respect for self and others is very much an integral part of transformation. Johnstone and Van Ness emphasize that respect is not only treating others with dignity and recognizing their worth, but also acknowledging the wisdom and valuable contributions others have to offer (Johnstone and Van Ness 2007, 19).

According to John Paul Lederach, there are four interrelated goals involved in achieving conflict transformation. A personal goal is aimed at minimizing the destructive effects of social conflict while simultaneously maximizing the potential for growth and well-being. Maximizing understanding and communication are the relational goals. Understanding is a means to addressing the root causes and social conditions that give rise to violent and other harmful expressions of conflict, as well as a means to identifying and understanding the cultural patterns that contribute to it (Lederach 2003, 27). The structural goal is to understand and address the causes and conditions which give rise to conflict.

Lederach finds that conflict not only affects a person’s physical well-being, but also self-esteem, emotional stability, capacity to accurate discernment, and one’s spiritual integrity. He distinguishes between the widely-accepted restorative justice term of resolution and the comparative term of transformation. He suggests that the goal not be resolution to conflict, but transformation which initiates change and emphasizes “guiding ideas” (Lederach 2003, 28-29). Resolution, he maintains seeks a conclusion, while transformation directs one toward change. As does Walgrave, Lederach maintains that the transformational aspect of conflict resolution involves intentional intervention in
order to minimize the damaging effects of social conflict. Transformation also maximizes the potential for personal growth (Lederach 2003, 24). Transformation looks to the underlying causes and results of conflict and goes beyond the visible and palpable tensions of the conflict. Transformation is a personal change involving what a person perceives, desires, and how one wants to structure individual or group relationships (Lederach 2003, 24-25). Also a proponent of intervention, Lederach proposes that through intentional intervention in a conflict situation, transformation involves communication and mutual understanding. It is an essential component to any conflict resolution by bringing to the forefront the fears, hopes, and goals of those involved (Lederach 2003, 25). Transformation, according to Lederach, also brings about structured organizational changes by focusing attention on how organizations and institutions are developed, sustained, or changed by conflict. This is a key point when restorative justice practices are considered for use in schools. The structure of school policy concerning discipline is the critical component that needs to be addressed. This is accomplished through school board adoption of policy and curriculum.

The transformational component of restorative justice conflict resolution is essential in resolving disputes in the school setting. The continuing emotional growth and development of school-aged youth require guidance toward changing unacceptable behaviors. The school setting is by its very nature a social setting where students learn to interact appropriately with one another. It is the socialization of every child that forms a basic component of public and private schools. However, both social skills and academic skills are of equal importance. Conflict in the school affects the entire school community and over a period of time, if not addressed, can negatively change to one of distrust and
aggression. How students and teachers respond to conflict is critical to changing a negative culture in the school setting to one of peace, respect, and civility. Transformation aims to assist those involved in conflict to promote resources and mechanisms within the school community in order to respond constructively to addressing social conflict situations (Lederach 2003, 26). An intervention strategy enables transformation to promote goals aimed at understanding and the building of relationships (Lederach 2003, 26).

RESTORATIVE JUSTICE “CIRCLES”

Kay Pranis recognizes the contributions of indigenous people of North American of what she refers to as the “Circle process” used for resolving issues. The Circle, Pranis submits, lends itself to the solving of community processes and the reconnecting of relationships among individuals (Pranis 2005, 3). She acknowledges the positive effects of the Circle process in the criminal justice system and recommends the restorative justice process in the schools for the resolution of behavior problems and creation of positive classroom climates (Pranis 2005, 4). Through the medium of dialogue, there can be an expression of care and concern leading to a better understanding of one another. Pranis again refers to this process as the “simple Talking Circle” common among the indigenous people of North America (Pranis 2005, 7).

Pranis references Howard Zehr’s peacemaking Circle where everyone is respected and gets to speak without interruption. In the Peacemaking Circle, she emphasizes, every participant is on equal footing (Pranis 2005, 8). A succinct summary of the key elements of a peacemaking process, according to Pranis, include ceremony, a talking piece, a facilitator, guidelines, and consensus decision making (Pranis 2005, 11). According to
Pranis, the key elements of Circles, ceremony, guidelines, a talking piece, a facilitator, and consensus decision making, are structured on the foundation of those shared values (Pranis 2005, 33-39). Pranis maintains that opening ceremonies of the Circle process assist participants to remain cognizant of core values. The opening ceremony coupled with the closing ceremony provides “opportunities for cultural responsiveness” (Pranis 2005, 33-34). The guidelines are commitments made to one another by participants about their individual behavior in the Circle. Pranis notes that guidelines are intended to meet the needs of Circle participants and include active listening, respectful speaking, and a degree of confidentiality. The duty to implement Circle guidelines rests with all participants, not just the facilitator (Pranis 2005, 34).

The talking piece can be any object which is capable of being passed along from one Circle participant to another. All others are silent when one member holds the talking piece, but no one is required to speak. The talking piece serves as a symbol and reminder of the shared values (Pranis 2005, 35).

THE CONCEPTS, PRINCIPLES, AND VALUES OF RESTORATIVE JUSTICE

Although Pranis acknowledges that writing about values is challenging, she highlights in her writing the contributions of process and individual values, such as respect and honesty, as the foundation of the restorative justice movement. Pranis regards inclusion as a relevant value to the restorative justice process and maintains that both individual and process values are vital for transformative outcomes (Pranis 2007, 60). There is agreement among writers on restorative justice that the process is inherently value-laden, even though each author emphasizes different values. The
importance of values is an integral part of the philosophy of all restorative justice practices which serve as a guide for the well-being of others (Pranis 2007, 66).

Pranis points out, as do others, that just as there is no agreed upon definition of restorative justice, there is also no single definitive list of values. Citing a number of values identified by other writers, Pranis proceeds to compile a list of restorative justice values that includes:

- respect
- inclusion
- self-determination
- equality
- truth telling
- listening
- understanding
- humility
- responsibility
- safety
- renewal
- reintegration
- honesty
- mutual care
- accountability
- trust
- participation
- interconnectedness
- empathy
- mutual understanding
- restitution
- truth
- fairness
- compassion
- holistic
- inclusion
- reconciliation
- community
- hospitality
- democracy
- reparation
- affirmation of the dignity and worth of every human being
- reparation
- healing (Pranis 2007, 61-62):

Pranis emphasizes that communities are responsible for the good of the whole, which includes the well-being of each community member. This she attributes to an ancient understanding of indigenous peoples worldwide. She further explains that mutual responsibility between an individual and the community is not a passive responsibility to do no harm. She notes it is an active responsibility to support and
nurture the well-being of another in meeting each person’s individual needs (Pranis 2007, 65). Through participation in restorative justice processes, many experience “unexpected changes of heart” (Pranis 2007, 68). This comprehensive transformation is also an integral part of Simone Weil’s writings on justice. Pranis maintains that values are not only the foundation of restorative justice, the yardstick for assessing action, but provide common ground for dialogue concerning harm, repair, and prevention. Values are the expression of our hopes and aspirations, not just current reality (Pranis 2007, 72-73).

In their overview of literature on the topic of restorative discipline in the school setting, Lorraine Stutzman Amstutz and Judy Mullet discuss Conflict Resolution Education (CRE) with its peaceable schools component being introduced into peer mediation programs to integrate a conflict resolution practice into the educational setting. Through CRE, students assist one another through negotiation and mediation skills. Selected students receive specific peer mediation training (Amstutz and Mullet 2005, 18-19). There is no emphasis, however, on repairing the harm resulting from the conflict.

Amstutz and Mullet acknowledge that relationships are central to the school community. Restorative discipline strengthens relationships and involves students in the process of identifying values and principles to live by in their schools. It establishes a system to address misbehavior and focuses on the harm done rather than only on the rules broken. The individuals who suffer harm are given a voice during collaborative problem-solving, which enhances responsibility and provides understanding the impact of one’s behavior on others (Amstutz and Mullet 2005, 26-28).
Amstutz and Mullet discuss the principles and values of restorative justice and the importance of a totally peaceable and restorative justice environment. They mention “whole-school training” approaches but not school board adopted policy for use district-wide of restorative justice practices as an alternative to traditional school discipline. In public sector school districts, the elected board of education adopts school policy, rules, regulations, and curriculum. It is the board of education that is statutorily duty-bound to govern the school district. Amstutz and Mullet also mention a sampling of restorative justice approaches, including secondary level short-term training sessions for students and teachers over four school days, as well as an individual classroom project as opposed to an age-graded curriculum for use district-wide from kindergarten through grade twelve (Amstutz and Mullet 2005, 46-52).

A second educational movement discussed by Amstutz and Mullet is Character Education (CE), which is comprised basically of a relationship-building element. It was primarily developed to teach and encourage positive values and behavior. This movement does not focus on specific options in conflict situations, nor does it focus on how such situations can transform behavior. CE materials center on teaching the core values of responsibility, respect, trustworthiness, friendship, and how to care for oneself (Amstutz and Mullet 2005, 19). A third educational movement referenced by these authors is Daniel Goleman’s Emotional Literacy, which addresses both the affective and cognitive components crucial to learning in a diverse society (Amstutz and Mullet 2005, 19).

Howard Zehr is to be credited with his early recognition of the value of restorative justice practices in the criminal justice community. Zehr focuses on the harm and
consequent needs of victims, the community, and the offenders. He also addresses the obligations resulting from harms caused by criminal acts and the use of collaborative and inclusive processes with victims, offenders, and other affected stakeholders. All of these principles are rooted in respect for others (Amstutz and Mullet 2005, 25-26). Use of restorative justice practices in the criminal justice system are limited by a number of factors, including approval by the courts regarding sentencing, probation, or parole and the availability of stakeholders due to the serious nature of criminal acts and the willingness and unwillingness of victims to face their abuser.

Dennis Sullivan and Larry Tifft, as do other authors writing on restorative justice processes, consider the “definitional problem” with respect to what restorative justice is and what it is not (Sullivan and Tifft 2010, 40). This core concern places an unnecessary emphasis on form and appears to disregard the foundational substance of the values and outcomes of restorative justice – the dialogue, the goal of understanding and truth, relational harmony, and transformation. There has been far too much discourse over definitional differences of restorative justice and on an inclusive list of its values, as opposed to the lesser disputes over the principles and values the restorative justice process presents as the potential for resolving conflicts, restoring harmony, and repairing harm. The key, but minimal difference, among authors on restorative justice is whether or not retribution has a place in the restorative justice process. The overwhelming number of authors and practitioners find that both retribution and shaming are counterproductive to making things right and the resulting harmony and re-integration of the stakeholders. A substantial number of books have been written on restorative justice practices that attempt to establish an inflexible, rigid process by deemphasizing the critical importance of
open dialogue and discussion. The emphasis appears to be on the process more than on the involved participants who should be accomplishing resolution of their conflict with minimal direction and guidance. That in a nutshell is the value of Diné Peacemaking.

Since restorative justice practices are most frequently used in the sentencing or parole segments of the criminal justice system, there are few constitutional concerns about an offender’s “rights.” When considering the use of restorative justice prior to resolution of a criminal act through the criminal justice system, however, there are definitely constitutional concerns including the Fifth Amendment right not to incriminate one’s self and admissions against interest. Juveniles also have constitutional rights to be considered prior to resolution of violations of school codes of conduct which may also be criminal acts referable to the juvenile justice system. Lode Walgrave states that the restorative justice process is by preference confidential (Walgrave 2008, 60). Most writers on restorative justice practices in general make no specific mention of confidentiality, but the right against self-incrimination must be considered. Although voluntarism is a critical component of restorative justice practices, consideration must be given when offensive behavior is also a criminal act which will be referred to the juvenile justice system.

It is advisable that issues that will not be referred to the juvenile justice system be the subject of restorative justice in the schools, since participants are expected to engage in open and respectful dialogue and not remain silent during the session (see J.D.B. v. North Carolina 2011 regarding custodial police interrogation in the school setting, Miranda implications, and age objectives). In such instances, restorative justice practices would be best implemented for the re-entry stage of an offender into the school setting.
As a result of these legal concerns for juvenile offenders in the school environment, there are two options that are available when restorative justice is considered: 1) Use restorative justice practices solely for violations of school codes of conduct which are not or will not be referred to the criminal justice system (e.g., selected misdemeanors) such as petty theft, harassment, bullying (when not also a criminal act), fighting where injury does not occur, defamatory statements about another, truancy, tardiness, verbally aggressive statements, certain threats, taunting; 2) Use restorative justice practices for re-integration of a juvenile offender to the school community after juvenile justice proceedings are completed.

Sullivan and Tifft point out that, despite differences in views about restorative justice, it is agreed that restorative justice is a process concerned “about meeting human needs,” as well as a process of personal healing and personal growth (Sullivan and Tifft 2010, 167) as a result of the underpinnings of restorative justice practices: the dialogue and active listening, respect, and repairing of harm. It appears, however, that the dispute over definition, values, and principles of the restorative justice process can impede its practical application.

In addition to restorative justice concepts, Van Ness and Strong address three key principles comprising the systemic process of restorative justice. The first principle is: “Justice requires that we work to heal victims, offenders, and communities injured by crime” (Van Ness and Strong 2010, 43). This first principle requires that all victims, including the communities that have been harmed by wrongdoing, be involved in the restorative justice process.
The second principle is: “Victims, offenders, and communities should have the opportunity for active involvement in the justice process as early and as fully as they wish” (Van Ness and Strong 2010, 45). This principle is focused on the criminal justice system but has generic value for the school community, as well. When the ethos of a school community is peppered or even saturated with aggression and disrespect, not only do individual offended students experience harm, but all staff and student members of the school community are victims, as well. However, they also have exceptional means to build a “pro-social value system” and also to repair the harm to primary victims (Van Ness and Strong 2010, 46).

The third principle of restorative justice, as stated by Van Ness and Strong, is: “We must re-think the relative roles and responsibilities of government and community: in promoting justice, government is responsible for preserving a just order and the community for establishing a just peace” (Van Ness and Strong 2010, 46). Peace requires the commitment of the community to respect the rights of its members and to be an active part of resolving conflict that exists among those members. As Van Ness and Strong state, order and peace are a means to securing “public safety” (Van Ness and Strong 2010, 46). A peaceful and disciplined school ethos is a duty of school officials. Public schools, in particular, as political subdivisions of the state, have a public duty to maintain an orderly and peaceful school environment, not only for the safety of staff and students, but for learning to take place.

Van Ness and Strong propose the following “operational values” to guide restorative justice practices:
• Amends – responsibility for repairing harm to the extent possible.

• Assistance – affected parties become contributing members to resolving the results of wrongdoing in a community.

• Collaboration – affected parties are invited to participate in finding solutions to conflicts through mutual and consensual decision making.

• Empowerment – affected parties have a real and genuine opportunity to influence the response to an offense.

• Encounter – affected parties are provided the opportunity to meet in a safe environment and dialogue.

• Inclusion – affected parties are invited to share and engage in the restorative justice process.

• Moral Education – reinforcement of community standards as values and norms in determining appropriate responses to wrongdoing.

• Protection – secure the physical and emotional safety of the parties.

• Re-integration – provide the means and opportunities for the parties to re-join their communities as whole and contributing members.

• Resolution – the underlying issues of an offense and the resulting harms are addressed (Van Ness and Strong 2010, 49).

Making amends by an offender include apology, changed behavior, restitution, and generosity. The first element of amends is acknowledgement by an offender – admission of the commission of a wrongful act. The second element is the offender’s statement and demonstration that the offender is troubled by commission of the offense. This two-fold expression of regret can lead to a validating, healing experience (Van Ness and Strong 2010, 83-86).

Van Ness and Strong submit that restitution is a formal way of requiring accountability on the part of an offender whereby the offender makes recompense to the victim for harm endured as a result of an offense. It can be accomplished by the return or
replacement of property, financial payment, or performance of direct services for the victim (Van Ness and Strong 2010, 87). They further maintain that generosity is the final component of making amends by exceeding the demands of justice and equity. In addition to making the victim whole once again, generosity goes beyond the minimal demands whereby the offender does more than required (Van Ness and Strong 2010, 88).

The transformational element of restorative justice is critical to the process. Genuine behavioral change involves two components: *changed values* exhibited in *changed behavior*. These components are not mutually exclusive, but are intertwined and mandatory (Van Ness and Strong 2010, 86-87). In addition to the transformation of an environment through healing, dialogue, reconciliation, the transformation of participants is also a goal of the restorative justice process. It is essential “to turn the lens on ourselves” and on “our treatment of and attitudes toward others.” Restorative justice invites us to reflect and renew communities, individuals, and programs. Transformation involves our “values, behavior, mindset, and character” (Van Ness and Strong 2010, 78-80). In the school setting, the transformation from inappropriate behavior to appropriate behavior is a core value of the restorative justice process. It is offensive behavior which initiates the need for the restorative justice process, and through a multitude of equally important values, the behavior transformation is completed. In the school setting, inclusion is of critical importance, especially since socialization is such an integral part of the educational system.
George Pavlich views restorative justice, combined with a very specific area of ethics, as the thinking and theorizing about “how people should live” in order to restore relations after the occurrence of injustice (Pavlich 2007, 615). He finds ethical certainty to be problematic since ethics is a domain shaped by unpredictability without regular law. He finds an emphasis placed on universal principles to be not only misplaced, but counter to the goals of restorative justice (Pavlich 2007, 616). He posits that it may be important to oppose the concept that we must arrive at universal ethical principles to guide our actions and provides the tragedies, wars, genocides, and social catastrophes of recent times which have not been avoided by general ethical principles (Pavlich 2007, 617). Pavlich’s assessment of restorative justice focuses solely on the criminal justice dimension where authors place their emphasis on punishment and its use as a deterrent to continual criminal behavior along with its repressive, coercive, and adversarial values.

Pavlich cannot focus on justice per se without considering what Plato expressed about ethical behavior in The Republic, Part 5, Book 4, where he states that ethical knowledge is “…where we learn how to live virtuously as harmonious selves who are equally in harmony with others in society….“ Pavlich views restorative justice, combined with a very specific area of ethics, as the thinking and theorizing about “how people should live” in order to restore relations after the occurrence of injustice (Pavlich 2007, 615).

Pavlich faults the diversity of counterproductive results of meta-narratives claiming an ability to declare universality of definition, principles, and values. A modern
ethical ethos founded on grand principles crumbles, he maintains. Pavlich is critical of the diversity of restorative principles and maxims which provide no certain means to decide between competing values, such as restoration versus transformation. He submits that this leads to a dissonant chorus of ethical voices (Pavlich 2007, 620). This drive of an “ethical grammar” based on deriving maxims from unshakeable principle, Pavlich stresses, breeds an unpredictable ethical predicament (Pavlich 2007, 621). He takes issue with what he views as a restrictive format for the restorative justice process, a form over substance approach is reprehensible to him. Pavlich sees, however, the possibility to develop an open ethical language not based on universal principles by formulating ethics to think about “how to be with others by using a grammar inspired by the analogy of a host welcoming a guest to his home” (Pavlich 2007, 623). His approach is certainly interesting, but does not eliminate the complexity he attempts to eradicate.

Pavlich considers the “new restorative justice paradigm” to involve restorative justice’s compassionate, restitutive approach and the different ethics of justice and expressions of the core features of restorative justice. These features, he notes, involve the parties affected by crime – the harm and needs resulting from a criminal act. Pavlich sees this approach to be a reflection of “particular kinds of ethics which establishes the foundational and universally applicable restorative principles” (Pavlich 2007, 618).

In addressing the dialogical aspect of restorative justice practices, Pavlich suggests that through critical dialogues between responding subjects, the stage is set to grapple with the injustices and limitations of the past (Pavlich 2007, 626). Through concrete dialogue, he argues, ethical subjects might dissociate with the “mode of being” unjust and become sufficiently driven by the promise of an infinite justice to be just with
each other. To Pavlich, it is the promise of just relations and the call of justice that become the means to transform injustice to justice (Pavlich 2007, 626).

After Pavlich completes his critique and ethical analysis of the meta-theory, he proceeds to consider how critical ethics or the way of thinking about how to be with others would work within the context of restorative justice. He admits that his analysis on this particular point is “a game opening to this difficult, but potentially important, area of analysis.” He cautions, however, that his analysis is not to be considered as a general blueprint (Pavlich 2007, 624-25). He argues that “ethical subjects” are not to be considered as “immutable, pre-existing absolutes who confront one another as iconoclasts.” Pavlich maintains that such a view would revert ethics to ontology or even universal rights. He further maintains that the ethical self or subject comes to be as a result of responding to being with others in given encounters and who, as a result, becomes responsible to them (Pavlich 2007, 625).

Pavlich appears to have little hope for the present and only for the future. He maintains that restorative justice discourses are underdeveloped and, perhaps, “even silenced by attractions to formulate universal ethical principles in a modern mode.” He openly acknowledges that his beliefs are disquieting to those in search of universal justice. It is counterproductive to continue to debate terms, definitions, and principles. It is time to acknowledge and accept the real possibilities that restorative justice practices present to us – the values and principles upon which these practices are founded. We need to move on to the practical application in settings other than the criminal justice system because using restorative justice practices, especially Navajo Peacemaking, as an intervention tool with the young will result in personal transformation. This
transformation coupled with compassion for others and the repair of harm can establish ethical norms. We need to acknowledge that continuing a debate over an acceptable general definition or selection of a few agreed upon values or principles will keep us mired in injustice. There is no better time than now to teach and learn this in our schools where staff act in loco parentis to the children entrusted to them and where school codes of behavior already set the norm for acceptable conduct.

With each author, restorative justice takes on a particular meaning which differs from those of other authors. It is amazing how a single concept, restorative justice, can result in such varying opinions about its goals, foundational values, and principles, as well as its format and process. The simple, age-old, and effective restorative justice process of Navajo Peacemaking becomes so significant as a result.

VARYING APPROACHES TO RESTORATIVE JUSTICE PRACTICES

Although there are some basic elements of restorative justice agreed upon by authors on the process, authors have divergent views on many of its aspects. It is well accepted that there is no one agreed upon definition of restorative justice or acceptance of principles. These diverse views, however, do not diminish its value or effectiveness.

The author, Howard Zehr, of The Little Book of Restorative Justice is a recognized scholar in the field of restorative justice. He is one of the early writers on restorative justice in the criminal justice system and is widely respected as a key advocate of the process. According to Zehr, restorative justice provides a framework for thinking about wrongdoing. He questions whether restorative justice is victim oriented or motivated by a desire to work with offenders.
Zehr begins his writing with the query concerning the societal response to wrongdoing and criminal behavior. After a crime occurs, Zehr asks, “What does justice require?” (Zehr 2002, 3). He traces the history of restorative justice from its successful use in New Zealand in the juvenile justice system. He maintains that restorative justice was developed in the 1970's from case experiments in several large Mennonite communities, but does not state that the process owes a debt to Native Americans of North America and the native people of New Zealand (Zehr 2002, 3-4; 11-12). Its roots, however, are as old as human history and are based on Navajo Peacemaking.

Zehr also acknowledges that there are many "approaches" or processes to restorative justice in addition to uses in the criminal justice system. Until recent years, restorative justice has been used in the criminal justice system to give victims an opportunity to be heard in the sentencing and probation/parole phases. He acknowledges that the various approaches and practices are spreading to schools, the work place, and religious institutions (Zehr 2002, 5).

Zehr emphasizes that restorative justice is not mediation. Instead, many restorative justice programs are designed around facilitated meetings or encounters between victim and offender. These “circles” of stakeholders may even be expanded to community members. Mediation, on the other hand, involves “shared responsibilities,” and shared blame is not always true in criminal cases where victims have no degree of fault (e.g., rape victims and burglary victims). In the restorative justice process, Zehr argues that wrongdoers must admit to some level of responsibility for the offenses and must acknowledge the wrongdoing (Zehr 2002, 8-9). Zehr states that there are three pillars of restorative justice in addressing accountability:
A focus on harm

Obligations resulting from harm

Promotion of engagement or participation

Restorative justice is about “making things right,” both concretely and symbolically. The core value of this aspect of the restorative justice process is respect for all stakeholders. Without respect, restorative justice does not function. The author focuses on suggested workable principles and practices for making restorative justice both possible and useful. Restorative justice is a work-in-progress, ever evolving for those who have a stake in a specific offense and to identify and address harms, needs, and obligations in order to heal and make things as right as possible (Zehr 2002, 22-25). Zehr stresses that restorative justice is not a specific program or blueprint, but a flexible various program (Zehr 2002, 10). In this respect, his views are consistent with Navajo Peacemaking.

Zehr further suggests that the phrase “restorative justice” is occasionally diluted or confused and diverted from its principles since it can become solely victim-oriented or can be motivated by a desire to work with only offenders. Zehr deviates from flexibility of the process when he further suggests that a clear vision of its principles and goals is needed.

Zehr explains restorative justice as a process with the foundational concept based on how society should respond to wrongdoing. The focus of his work, as with the other authors, is the criminal justice system and not the schools. Zehr, however, views restorative justice as either a choice within the legal system or a process running parallel to it (Zehr 2002, 3-4).
Zehr emphasizes that, in his viewpoint, restorative justice is not primarily about forgiveness or reconciliation. It is not mediation, nor is it primarily designed to reduce recidivism or repetitive offending behavior (Zehr 2002, 8-9). He distinguishes a reduction in recidivism to be a by-product of restorative justice practices. In addition, he maintains that restorative justice is not intended to replace the legal system. He again acknowledges that restorative justice practices have a valid use in the school environment with the focus on who has suffered harm, what are the resulting needs, and whose obligation it is to address the needs (Zehr 2002, 21). In order to put things right, Zehr submits that it is essential to address harms resulting from and the causes of wrongdoing through balancing concern for all (Zehr 2002, 30-31). By empowering offended students and encouraging offenders to understand and carry out their obligations through dialogue and respect for all parties, restorative justice practices involve the community through collaboration (Zehr 2002, 40). Consistent with the views of the limited authors writing on the value of restorative justice practices in the schools, Zehr supports its use but goes no further. Familiarity with the legal and authority structures within our schools is vital to the implementation of restorative justice practices. School boards adopt policy, codes, and curriculum, and school administrators implement all three.

Although Lode Walgrave also focuses on the implementation of restorative justice practices in the criminal justice arena, his discussion on its scope and its definition is valuable, especially since the use of restorative justice practices has been more extensive in the criminal justice system than elsewhere. Walgrave makes it very clear that his definition of restorative justice excludes practices in schools. Even though his emphasis is on the description of the restorative justice process from the definitional aspect, his
work also focuses on a foundational framework for restorative justice practices. Walgrave sees restorative justice as a primary path towards a more just and socially constructive way to respond to crime (Walgrave 2008, 9). This view is readily adaptable to social reconstruction of damaged relationships in the educational setting. The goal of Walgrave is to provide more clarity concerning the concepts of restorative justice and its socio-ethical foundations (Walgrave 2008, 2). He notes that restorative justice is less about a justice system promoting restoration than about doing justice through restoration (Walgrave 2008, 5). Although Walgrave so emphatically speaks of restorative justice only in the criminal justice system, his perspective can be valuable in the school setting because of his view that it consists of a more flexible framework than a rigid one.

Walgrave uses an outcome-based definition of restorative justice. He views it as voluntary processes and as crucial tools to achieving the maximum possible restoration following offending behavior. Since he is addressing the use of restorative justice in the criminal justice system, Walgrave includes the possibility of imposing judicial sanctions as part of the restorative component. Walgrave includes all direct stakeholders in a response to an offense. This inclusion is contradictory to the state’s monopoly over criminal acts (Walgrave 2008, 5) where more often than not the victim’s needs are not considered.

Even though Walgrave’s emphasis is on restorative justice in the criminal justice system, he does generally acknowledge the early use of restorative justice in First Nations and with indigenous people. Once again, as with other authors, he does not credit the Navajo Nation and its Diné Peacemaking process for the foundational components of restorative justice practices. Indigenous populations and the implementation of
restorative justice practices, he concedes, currently have a strong voice in the United States, Australia, and Canada as opposed to the common law system in Anglo-Saxon countries (Walgrave 2008, 7). Walgrave submits that restorative justice is a complex “unfinished product” composed of varying and very different, and sometimes opposite, beliefs. He sees it as a “field on its own” and not easy to define (Walgrave 2008, 11). This view may be why restorative justice practices are not more widely used.

Walgrave references Johnstone and Van Ness when he discusses the varying definitions of restorative justice and states their belief that restorative justice is a deeply contested concept, as well as the subject of debates and differences in opinion (Walgrave 2008, 16). Walgrave further points out, in addition to Johnstone and Van Ness, the varying definitions of the restorative justice process in his reference to Tony Marshall, Howard Zehr, Dignan/Marsh, and Van Ness/Strong. Walgrave interprets Marshall’s definition of restorative justice as a process whereby all parties with a stake in a particular offense come together to resolve collectively the aftermath of an offense and its implications for the future. Walgrave submits that Howard Zehr defines restorative justice as a process to involve, to the extent possible, those who have a stake in a specific offense and to identify and address harms, needs, and obligations in order to heal and put things as right as possible. Dignan and Marsh define restorative justice as any approach or program that emphasizes an offender’s personal accountability to those harmed by an offense, which may include the community, as well as the victim (Dignan and Marsh 2001, 85). It is an intensive decision-making process that encourages participation by the participants with the goal of putting right the harm caused by an offense. The process seeks redress for victims, recompense by offenders, and re-integration of both within the
community (Walgrave 2008, 18-20). Bazemore and Walgrave, on the other hand, define restorative justice as an option to do justice after an offense with a priority towards repairing individual and social harm caused by the offense (Bazemore and Walgrave 1999, 48).

In response to the varying definitions, Walgrave cites Howard Zehr’s comment that restorative justice is a compass, not a map (Zehr 2002, 37). This flexible approach merges even closer to its practical application, especially its use with the young and in schools. Walgrave considers the key characteristic of restorative justice to be its deliberative process. He maintains that processes that do not lead deliberatively to outcomes that contribute to the repair of harm caused by criminal acts are not restorative justice (Walgrave 2008, 21-22).

Karen Strong and Daniel Van Ness address the varying definitions of restorative justice and the apparent difficulty at arriving at a single commonly-accepted one. Towards the practice application stage, Van Ness and Strong refine the definition of restorative justice as a different way of thinking about crime and our response to it. They focus on the harm caused by crime by repairing the harm done to victims and reducing future harm by preventing crime. Restorative justice, they maintain, requires offenders to take responsibility for their actions, as well as for the resulting harm. The answer, they posit, is that restorative justice is a deeply contested concept (emphasis added). They maintain it is a complex concept that continues to evolve (Van Ness and Strong 2010, 41).

Strong and Van Ness identify three basic concepts upon which restorative justice is founded. The first is the encounter concept, which centers on the meeting of
stakeholders, which leads to dialogue, which leads to understanding. The second is the *reparative* concept whereby the harm caused by wrongdoing must be repaired. The *encounter* provides the mechanism for addressing the harm. The third is the *transformation* concept, which goes beyond the harm to broken relationships which prevent a harmonious and healthy living environment (Van Ness and Strong 2010, 41-42). This clear and uncomplicated definition exponentially increases its potential for success.

In his acknowledgement of the various definitions of the term “restorative justice,” Van Ness suggests that when discussing restorative terminology, “restorative living” be used when guidance by restorative values is under discussion, the term “restorative practices” should be used when collaborative encounters are involved, and “restorative justice” when the values and practices are implemented within the context of the criminal justice system. He further suggests that when we apply restorative values in all parts of our lives when we try to respectfully listen to others, act with civility, and pause to remember that all persons have intrinsic values and relationships are not merely allegiances, the appropriate terminology might be “restorative living.” He suggests that restorative practices might be the more appropriate terminology when dealing with classroom problems.

Walgrave opines that school “problems” do not have the same public dimension of other offensive behavior since he maintains that offenders within the school context do not live in a “close local community” and the intervention is “largely pedagogical.” He posits that these differences in the school context require intervention which is primarily pedagogical. Nothing would be “closer” than a school community of youth who are
learning on a daily basis to make responsible decisions in their own social environment which will also be valid choices in a larger social setting. Walgrave continues, however, to state that differences in the school community from the larger social community require “slight adaptations” to the underlying philosophy, theory, and practices of restorative justice. These practices, he maintains, are extremely worthwhile since they contribute to the wider socio-ethical movement. Walgrave acknowledges that school conferencing and family group conferences following offenses are “mutually inspirational,” yet he maintains they are not the same (Walgrave 2008, 17).

Interestingly, however, Walgrave nonetheless maintains that small communities cannot afford exclusion and, therefore, have a need for cooperation and to find constructive solutions to internal conflict. This appears to be a valuable insight into the school community, even though Walgrave was not speaking directly about schools (Walgrave 2008, 12). The harm resulting from offensive behavior in the school setting can be more damaging than crime in a larger social community setting. The young age of students, their trust in school officials to maintain a safe environment, and any betrayal of that trust compounds the offending behavior and its resultant harm encountered by an offended student. That harm not only negatively affects the school community, but is carried into the wider social community when the harm is not addressed early on.

There does not appear to be a real need to arrive at a commonly-accepted definition of restorative justice practices, and, perhaps, one is impossible due to the varying conflict resolution practices often included under the umbrella of the term, including Alternative Dispute Resolution (ADR), mediation, conferencing, and arbitration. Agreement on one definition of a vague term seems not only impossible,
but undesirable. It seems that all the disagreement over definitions of restorative justice is a distinction without a difference that keeps the process bottled up in the theory stage and impedes its evolution into the practical application stage. This is why traditional Navajo Peacemaking is the appropriate restorative justice practice for use and implementation in the educational setting as an effective means for resolving and/or preventing conflicts.

Strict adherence to a uniformly accepted definition of restorative justice and being wedded to an inflexible format for restorative justice conflict resolution practices are without merit. By selecting the flexible Diné Peacemaking process or format for use in the schools at all grade levels with the appropriate curriculum and training of staff, this restorative justice process will prevent and will resolve conflict, while emphasizing moral values and social ethics. It is a teaching tool. Let’s forget the importance of a commonly accepted rigid definition of restorative justice and get right to the basics: the teaching of acceptable social norms and the transformation of a school community to one of civility and respect for self and others.

The restorative justice process must be viewed as an interdisciplinary process which goes far beyond disagreements over definitions and pontification upon whether its values are socio-ethical or ideological. Instead, restorative justice must proceed directly to practical application in the real world. We need to get down to the business at hand – the respectful and open dialogue of stakeholders affected by offending behavior, whether criminally, civilly, morally, or socially unacceptable, with the goal of repairing the harm and transforming the behavior of individuals. Walgrave finds that conflict can be stopped by powerful intervention. He goes further and states that if a climate of mutual respect is
imbedded in an environment, there is a “considerable chance” that negotiations will lead to peaceful solutions (Walgrave 2008, 93). Even though Walgrave definitively states that his writings exclude schools, restorative justice practices is a tool that is needed and can be used successfully in the educational setting.

RESTORATIVE JUSTICE CONFERENCING

Gordan Bazemore and Mara Schiff, authors of books on the criminal and juvenile justice systems and restorative justice principles used with offenders, believe restorative justice practices to be a value and principle-based model with a set of core principles serving as the guiding framework (Bazemore and Schiff 2005, 20). As with most authors on restorative justice practices, Bazemore and Schiff also acknowledge there is no uniformly-accepted definition of the term, but further acknowledge that each definition contains a common thread. All agree that restorative justice focuses on the presence of a face-to-face encounter involving the participation of stakeholders in a conflict situation with the intent to repair the harm caused by wrongdoing. There is a wide array of types of restorative justice practices used in the civil, juvenile, and criminal law areas, including group conferencing and victim-offender mediation, and Bazemore and Schiff maintain that the restorative justice framework cannot be restricted to any one form of intervention (Bazemore and Schiff 2005, 30). Through their focus on the variety of restorative justice practices in civil and criminal matters, the positive results are diminished.

Bazemore and Schiff also describe differing essential elements of restorative justice practices from their perspective:

- Meaningful encounters allowing for respectful dialogue to accomplish repair.
• Involvement of individual stakeholders in a process that empowers communities, systems/governments, and professionals in a facilitative rather than decisive role.

• An emphasis on a non-adversarial process and approach.

The authors emphasize that restorative justice is not restricted to any one particular approach but is applicable to any program with the following characteristics:

• An emphasis on the offenders’ personal accountability by key participants.

• An inclusive decision-making process that encourages participation by key participants.

• The goal to put right the harm caused by an offense (Bazemore and Schiff 2005, 32).

Bazemore and Schiff cite Van Ness and Strong’s three broad principles of repair, stakeholder participation, and the government/community role in transformation towards re-structuring the community following acts of criminal behavior:

• The Principle of Repair – justice requires that we work to heal victims, offenders, and communities injured by offending behavior.

• The Principle of Stakeholders – participation by victims, offenders, and communities for opportunities of active involvement in the justice process as early and fully as possible.

• The Principle of Transformation – community and government roles and relationships and the re-thinking of relative roles and responsibilities of both in promoting justice (Bazemore and Schiff 2005, 32-33).

Adherence to these principles, rather than protocols or criteria, provides initial standards for differentiating various restorative justice practices from other forms of intervention. The authors maintain that since no practice is inherently restorative, the above three principles assist in identifying restorative justice practices consistent with restorative values and goals (Bazemore and Schiff 2005, 33-34). Restorative justice provides norm
affirmation, the capacity of collectives to identify, and clarify shared values (Bazemore and Schiff 2005, 77).

After the selection of the appropriate “case,” Bazemore and Schiff state that a restorative justice practice begins on a *terra firma* safe space for all participants and with the establishment of ground rules established by the facilitator of the restorative justice process. Telling the story of the conflict is the most essential phase of any restorative justice process, they maintain. The offended student and offender or their advocates present the story of the conflict. The community stakeholders provide validation and input, as well as reflection on how they have been affected by the harm. The offender may also take the opportunity to apologize during the “conference.”

When addressing restorative justice in the schools, Bazemore and Schiff appear to assume that restorative justice conferencing is the type of restorative justice practice that is best suited for the school environment. Bazemore and Schiff point out that sometimes the offended student asks the offender why he/she was chosen as the object of the offending behavior. A goal of the process is a written agreement or contract which is developed to delineate the obligations of an offender and to clarify the roles of other stakeholders and the facilitator in accomplishing the elements of the Agreement (Bazemore and Schiff 2005, 146-47). The primary goal of a restorative conference is, they stress, to repair harm (Bazemore and Schiff 2005, 154, 159, 166).

The contents of a resulting Agreement include the restorative justice conferencing objectives, what and how amends will be made to the victim and by whom, any issues of personal safety for any of the participants, and relationship building objectives (Bazemore and Schiff 2005, 172-73). Bazemore and Schiff note that Agreements
resulting from school conferencing, a type of restorative justice practice, may change whatever behavior caused the peer-peer or student-teacher conflict, with the stated stipulated amends focused on the cause leading up to the conflict. Although the process leading up to the Agreement, Bazemore and Schiff suggest, may be even more important than the contents of the Agreement itself (Bazemore and Schiff 2005, 173). However, the responsibilities of all participants should be clearly stated in the Agreement (Bazemore and Schiff 2005, 178).

Some conference guidelines suggested by Bazemore and Schiff include:

- Careful listening.
- Providing all participants with an opportunity to speak.
- Encouraging participants to use “I feel” statements.
- Stressing that the proceeding is non-adversarial and non-judgmental.
- Achieving the goal to identify and repair harms.
- Requiring respectful dialogue (Bazemore and Schiff 2005, 163).

In any restorative justice process, the victim’s suffering must be addressed from the on start. The offender needs to demonstrate understanding, as well as acknowledgment of responsibility for the offending behavior and the harm caused (Bazemore and Schiff 2005, 166). Diné Peacemaking is the appropriate restorative justice practice for effective use in schools to develop and reinforce moral character and values. Until this fact is acknowledged, restorative conferencing, “circles,” and peer mediation will remain in the theoretical and never progress to practical application and transformation.

Declan Roche’s perspective on restorative justice practices takes a negative turn on restorative justice meetings and conferences. Although he acknowledges that the use of
restorative justice practices was spreading beyond the criminal field, his emphasis is also on criminal justice. He acknowledges that meetings and opportunity for dialogue provide for participants the opportunity to resolve conflict in ways that “display some of the best human qualities,” including empathy, reconciliation, apology, and forgiveness. Roche sees a problem, however, with the informality that allows participants to show their worst side by scolding, stigmatizing, dominating, demoralizing, and humiliating other participants (Roche 2003, 2). Although these behaviors are observed in the sentencing phase of criminal justice, such behavior is counter to the principles of restorative justice.

Just as there are various definitions of restorative justice, there are varying restorative justice processes appropriate for various offending behaviors. It is critical that the most effective restorative justice process be selected for particular wrongdoings. Should a restorative justice practice disintegrate into an offensive process, re-victimization intensifies the harm already experienced by the victim. The facilitator of a session should set a respectful tone by reviewing the ground rules, goals, and objectives of the restorative justice process before the dialogue begins. It is essential, therefore, that analyses of success or lack of success of restorative justice practices cannot be made in generalities. Roche’s comments are supportive, however, of selecting the proper restorative justice practice in attempts to repair harm and resolve conflicts.

REPAIRING THE HARM AND RESTORING THE TRUST

In moral and human terms, it is essential to respond to wrongdoing and resulting harm adequately and promptly. This is especially critical in the school community where victims are young and school officials are in an *in loco parentis* relationship with students. Margaret Walker has examined the “unavoidable human task of moral repair”
(Walker 2006, 6). She defines moral repair as the process of moving from the situation of loss and damage to a situation where some degree of stability in moral relations is regained (Walker 2006, 6).

Walker emphasizes the responsibilities that communities have to demand and support repair, not only to assist the victim of wrongdoing, but to repair the communities affected (Walker 2006, 7). In the school community, victimization of a student affects the entire ethos of the school, especially students who have witnessed the harmful behavior or have been similarly victimized. Walker notes that wrongdoing may shatter the sense of security of individual community members (Walker 2006, 7).

Walker does not deny that appropriate and humane punishment is one response to wrongdoing, but she posits that “…there are a lot of alternatives … and the need to use them…” (Walker 2006, 9). She further states that restorative justice is one such alternative to achieve justice after wrongdoing (Walker 2006, 14). The emphasis of restorative justice is on repairing relations by acknowledging a victim’s needs and requiring accountability on the part of those responsible for the harm. This is accomplished through “truth telling, apology, restitution, or compensation” (Walker 2006, 15).

Walker also uses the phrase “moral repair” which she defines as the task of restoring or stabilizing a moral relationship (Walker 2006, 23). Since a major purpose of public or private education is teaching children socialization skills with both authority figures and peers, when trust is broken as a result of harmful acts, moral repair through restorative justice is not an option, but a requirement.
Walker views moral repair as encompassing six tasks:

- Place responsibility on wrongdoers and any others who share responsibility for the harm.
- Acknowledge and then address wrongs or threats to individuals and communities.
- Authoritatively instating or reinstating moral terms and norms in communities where wrong may have caused fear, confusion, cynicism, or despair about the authority of such standards.
- Replenish or create trust among individuals in recognizing shared moral standards and response to them, as well as the support and enforcement of the standard.
- Ignite or nourish hope that those responsible for supporting the moral standards are worthy of trust.
- Connect or reconnect in an adequate moral relationship to the extent possible with those who have caused harm and those who have been harmed and where not possible, strengthen a moral relationship among the community (Walker 2006, 28).

When addressing the harms that exist in the school community, we cannot and must not shy away from the terms “moral” or “values.” In the 1970’s, public schools in particular were encouraged and pressured by some to remove value and character development in the schools for concern that this educational component was religion based. To the contrary, a value-based education of children is completely non-sectarian. It is human-value based on the respect owed to the dignity to which every person is entitled. Without an appropriate education component fostering human moral values, children are left to determine the proper norms without direction. This is, indeed, a formidable task for persons of any age. Holistic education, the education of the whole child, goes beyond pure academics.
If we heed Walker’s six tasks of moral repair, we will notice the obvious immediately – these are not religious in nature but are morally acceptable norms for the fostering of a respectful community and society and appropriate for the public or private school community.

The first task is complementary to the tenets of Navajo Peacemaking in its goal of encouraging the wrongdoer to accept responsibility for his/her harmful behavior. Walker’s first task, however, goes beyond the single offender and acknowledges that there may be complicit behavior of more than one wrongdoer. Walker next urges authority figures to acknowledge the wrongs or threat of harm and to follow through with corrective actions in order to accomplish the third and fourth tasks of instilling or re-instilling moral values and norms – a teaching moment at its best and thereby re-establishing trust that has been broken by unresolved harmful acts. Walker’s fifth task focuses again on the support of moral standards without which the “norm” that it is only wrong to get caught runs rampant. Her sixth and final task focuses on the repair or development of human relationships in a community. In a school community, this is essential to an environment conducive to learning and the development of each child’s individual gifts and skills.

Walker is right on point when she states that “moral repair is always a communal responsibility” (Walker 2006, 29) and especially so in the educational setting where students are accountable to school authority for their behavior and participation in the academic curricula. Educational communities are not an exception to the mandated responsibility to announce the need for changes in any community standards that are found to be disrespectful (Walker 2006, 30). If a school “standard” is to ignore
aggressive or any victimizing behavior, then that indifference must be changed. When it is, the entire school ethos will change for the better as well.

Walker state that communities in general are responsible for seeing that injustice to victims does not go unaddressed, as well as acknowledging that the harmful behavior of the wrongdoer is unacceptable in the community (Walker 2006, 32). This applies especially to the school community where bedlam will reign if victims are left to protect themselves, or it will simply destroy the child victim and others who are part of and experience an aggressive, disrespectful school community ethos. School officials must recognize, foster, and, if need be, re-establish the boundary between what is and what is not acceptable behavior and treatment of one another. Restorative justice Peacemaking can do this in a cost-effective and very effective way.

Wrongdoing is behavior that must be set right – a duty and responsibility of not only school authorities, but of each member of the school community, as well as through parent/guardian partnerships with school officials. Walker sees the repair of wrongdoing as a moral claim (Walker 2006, 34). It is really both a moral and legal duty, as well as a moral claim.

Walker does not recommend specific processes by which her six tasks are to be accomplished. Restorative justice practices, and in particular Navajo Peacemaking, can and do provide that procedure. Without restorative justice practices and resolution, wounds fester and last a lifetime, trust is an anomaly and unattainable. Without trust, we cannot expect others or even ourselves to comply with moral standards, nor can accountability exist. It is essential, therefore, that school authorities acknowledge moral standards, enforce them, and in so doing, restore trust. When violators are not held
accountable for their behavior, trust is endangered if not destroyed. Through Diné Peacemaking curriculum, moral norms are reinforced and developed.

Making amends by the wrongdoer to the offended is an integral part of restorative justice practices. Forgiveness, a hopeful result, cannot be “forced” on any victim. It is an “event” which occurs when the victim’s needs are appropriately addressed, when amends are sincerely given, and when trust is restored.

Practical justice can be a difficult concept because responding to injustice is not a cookie-cutter process. However, the restorative justice practice of Navajo Peacemaking makes harmony through moral repair the dominant goal. As a result, “doing justice” falls into place when responsibility is accepted for one’s wrongdoing, the underlying causes of a conflict are discerned through dialogue, amends are made, and relationships are either developed or restored.

AMENDS, ATONEMENT, AND RECONCILIATION

While atonement on the part of an offender is an integral component of moral repair, forgiveness is not a requirement but certainly a desired goal. Linda Radzik in her book on moral ethics addresses the appropriate action in dealing with wrongdoing once it occurs (Radzik 2009, 3). She aptly points out that the effects of wrongdoing often continue on to upset the lives of those affected. Resentment and even the desire for revenge plague primary and secondary victims of harmful behavior. Radzik believes that all wrongdoing can be resolved.

Radzik points out that philosophical research concerning the moral issues that arise following wrongdoing include forgiveness, mercy, justice, and reparation. This research involves reparation for historical injustice, as well as transitional justice in
societies which emerge from periods of repression or conflict. Radzik believes that morality places demands on the wrongdoer for both theoretical and ethical benefits (Radzik 2009, 3).

Through atonement, Radzik states, moral change is possible, and we become better persons (Radzik 2009, 4). Through atonement, she proffers, repair and restoration are possible. The concept of atonement suggests reconciliation as a goal of the wrongdoer through undergoing some sacrifice for wrongful acts (Radzik 2009, 6). One role of the wrongdoer is to distinguish the moral issue of atonement from the common discussions of punishment. Radzik characterizes atonement as a completely voluntary act on the part of the wrongdoer (Radzik 2009, 7).

There are two related, yet different, aspects for consideration when reparation is discussed. One is atonement through making amends on the part of the wrongdoer, and the other is forgiveness on the part of the offended. In recognizing these two components of moral theories, Radzik notes philosopher Michael Wyschogrod’s contention that Kantian moral theories cannot support a theory of atonement because in Kantian ethics, it is the moral law itself that places demands on each person. Since moral law is not a person, it cannot forgive anything, just as mathematics cannot pardon someone who adds incorrectly. It is the lawgiver who is wronged when the law is broken (Radzik 2009, 11). Wyschogrod’s interpretation of Kant’s philosophical theories of respect and justice may not be totally correct, however. Kant clearly presents his theory that moral law is known a priori to all beings and that we are not to treat ourselves or others as a means to an end but, instead, as an end in and of itself.
It is at the point of retribution that I leave Kant’s philosophical view of moral duty and repair. Kant so strongly believes in punishment of the wrongdoer as the means of reparation that his moral philosophy at that point clearly becomes punitive and retributive. He allows no place for restorative justice concepts of reparation, repair to the victim, and transformation. His moral philosophy does not allow for personal atonement, reparation, and transformation, but fosters “swift justice” through a controlled punishment for the offender.

Radzik emphasizes that most instances of wrongdoing involve a victim with proper standing to forgive a wrong. She points out that Kantian ethics does not involve a “personal lawgiver.” She points out that Kant tells us that as rational individuals “we give the moral law to ourselves” (Radzik 2009, 11). In furtherance of her goals of her book to outline the moral obligations on the part of wrongdoers in response to their mindsets, Radzik states that some argue that retribution may be just for God, but it should play no role whatsoever in human beings and the relations we have with one another (Radzik 2009, 12, 20). Radzik points out that Kant argues for retribution based on his belief that not to do so would treat a criminal as something less than a responsible person (Radzik 2009, 38). Kant takes a much stronger approach to punishment than Simone Weil, who believes that punishment is purificatory.

Radzik points out there are definitions of atonement which include retributive self-punishment, payment of restitution, personal reformation, and transformation of the meaning of the past. However, none of the conceptions of atonement individually serve as a complete moral theory of atonement, yet each contains an important but limited usefulness. In her compilation of a “coherent framework” of atonement, Radzik states
that it cannot be limited to merely “paying something back” since not all harmful acts can be addressed in terms of debt. When we concentrate on financial compensation of victims, we lose track of the wrongfulness of an offense and the wrongdoer’s role in it. In response to retributive theories of atonement, she stresses that focus should not be on punitive suffering for the wrongdoer, since we then overlook the suffering of the victim. Atonement, she says, cannot consist solely of the wrongdoer’s “moral transformation since much more is in need of repair” (Radzik 2009, 75). Atonement for moral wrongdoing certainly involves not only extension of acknowledgement by the wrongdoer and a genuine apology and reparation to the primary victim, but also apology to the secondary victims of the offending behavior. In the educational setting, appropriate amends often need to be made to the school community affected by the wrongdoing.

Radzik points out that proper atonement depends on a comprehensive view of what wrongs have been done to victims (Radzik 2009, 76). She further references the Kantian idea of a moral agent in clarifying her position on atonement. Kant’s moral agent, she asserts, is someone not only capable of judging right and wrong, but also capable of making choices on this basis. She maintains that in accordance with Kantian theory, capacity for moral autonomy is the very source of a human being’s moral status, a value held by all human beings equally (Radzik 2009, 81-82, 85). Kant’s moral philosophy is based on human beings or persons. Children are not excluded and always possess moral standing and moral agency as well. By school age, they certainly can determine right from wrong.

When it comes to apologies as part of atonement and reparation, genuine and respectful forms of dialogue and communication, as well as a wrongdoer’s regret and
acknowledgement of the commission of a wrongful act, are required. On the part of the victim, Radzik maintains, if reconciliation is a desired goal, there must be a willingness to forgive and to morally reconcile (Radzik 2009, 111). Although the willingness to forgive may be present, actual forgiveness cannot be demanded. In the restorative justice process, the resolution of the conflict is essential. Forgiveness and healing are by-products of restorative justice practices.

Radzik distinguishes between moral reconciliation and forgiveness. Reconciliation, she submits, is usually considered to be a mutual relationship, whereas forgiveness is an “attitude” held solely by victims toward a wrongdoer. It is Radzik’s position that to forgive, is to overcome a resentment and any other negative emotions held by a victim such as anger, contempt, disappointment, or even hatred. However, a decision to forgive is not an automatic result followed by the dissolution of negative emotions. She suggests that a victim can forgive an offender without reconciling with the wrongdoer (Radzik 2009, 117). The question remains whether victim and offender can reconcile without forgiveness. Radzik maintains that a victim’s response to offers of atonement by a wrongdoer is critical to the resolution of offending behavior since wrongs are social in nature (Radzik 2009, 120).

According to Radzik, there is also an ethical consideration to be addressed concerning whether a victim can rightfully withhold moral reconciliation with a wrongdoer who has made appropriate amends. According to Radzik, some moral philosophers consider it wrong for a victim to accept monetary reparation but refuse to relinquish part of a moral claim against an offender (Radzik 2009, 126). Since forgiveness on the part of a victim and atonement and reparation on the part of an
offender cannot be demanded but must be genuine and voluntary, there can be no demands on either party. This is the essence of Navajo Peacemaking where every aspect of participation is voluntary. Restorative justice Navajo Peacemaking resulting in an Agreement addresses the scope of the parties’ reparative terms and is capable of resolving the forgiveness-reconciliation facets of any conflict, if the parties agree. This may come early in the conflict resolution process or be a work-in-progress.

As Radzik points out, a concept of forgiveness is that it is a gift which is freely given yet never deserved. It cannot be controlled by a duty (Radzik 2009, 127).

RESTORATIVE JUSTICE AND FORGIVENESS

Lode Walgrave found forgiveness to be a gift from the victim of wrongdoing to the offender because it conveys the victim’s trust that the offender will refrain from causing further harm. Forgiveness, he maintains, serves to give hope for a constructive relationship in the future (Walgrave 2008, 117). According to Walgrave, forgiveness is also a gift from the victim to the community as a whole since the community will benefit from cessation of an enduring conflict. Forgiveness, as a one-sided step, goes beyond self-interest and any hope of reciprocity. However, it may lead to “a better reciprocal dialogue” (Walgrave 2008, 117).

The notion of forgiveness involves a complex philosophical system of hurt and healing. The concept of forgiveness varies substantially from person to person but is a powerful healing tool for victims (Freedman 2008, 93). Suzanne Freedman in her chapter entitled “Forgiveness Education With At-Risk Adolescents” in Women’s Reflections on the Complexities of Forgiveness advances the position that there is a definite need for forgiveness education and counseling. She posits that by focusing on
real-life experiences, the knowledge about forgiveness moves beyond theory to actuality (Freedman 2008, 93). She cautions that any facilitator of an intervention needs to know that harm resulting from hurt is both deep and personal. Educational settings are where this deep sense of betrayal can and should be addressed. Unresolved feelings resulting from hurt can cause an adolescent to be at risk – a danger to himself/herself or others (Freedman 2008, 94). It is essential, therefore, that angry and negative feelings be addressed to enable victims to cope with harm (Freedman 2008, 95). Forgiveness can assist individuals who have been harmed in dealing with the healing process. Overcoming negative feelings and thoughts, as well as behaviors toward an offender, cautions Freedman, should not be confused with reconciliation (Freedman 2008, 96).

Freedman emphasizes that the school environment is an ideal setting to teach adolescents about forgiveness (“forgiveness education”). It is a place where options to aggressive behavior can be provided. These options can also provide the basis for a productive society (Freedman 2008, 100).

As another chapter author in *Women’s Reflections on the Complexities of Forgiveness*, Sandra Rafman discusses children’s perspectives on forgiveness and justice, as well as their moral development (Rafman 2008, 218). She states that research is supportive of the view that early on, children form moral judgments and experience moral dilemmas. Forgiveness not only plays a vital aspect in an adult’s life, but also in the life of a child due to conflict and violence in our society. Citing J. G. Smetana and C. Daddis, et al, Rafman states that children are more critical in their judgment of moral transgressions than violations of social-conventional rules (Rafman 2008, 218-19). In their play, children attempt to resolve moral dilemmas which have destroyed the moral
continuity in their young lives. They struggle to build a moral order they can affirm (Rafman 2008, 229). When a moral order can no longer be relied upon, when a promise has been betrayed or a legal system despoiled, children feel unprotected and sad (Rafman 2008, 230). This speaks to the importance of leadership on the part of school administrators and teachers, as well as the prevention of conflict and early intervention in disputes.

RESTORATIVE JUSTICE AND RETRIBUTION

Although retribution is contrary to restorative justice philosophy, Walgrave addresses the retributive position of Duff who believes, states Walgrave, that offenders should suffer punishment (Duff 2002, 123). Duff, he maintains, favors what he calls “constructive” punishment. When the offender recognizes the wrong committed, Duff maintains, according to Walgrave, that repentance should be painful. Duff, he states, believes the process must be burdensome for the offender (Walgrave 2008, 51-52). Duff’s retributive theory of painful repentance, according to Walgrave, is diametrically opposed to the respectful, supportive climate of the restorative justice process, especially Navajo Peacemaking.

Walgrave himself finds punitive retribution to be unethical. He further states that retribution (or deontologism) is inherent in moral conduct according to the Kantian categorical imperative. Walgrave posits that retributivists look for principles in order to implement the categorical imperative in the most just way possible. He finds retributivism to be untenable because it has no place for human relations (Walgrave 2008, 55) and posits that retributive theories have been developed to justify personal revenge (Walgrave 2008, 57).
Walgrave asserts that the basis of the retributive theory is inherent to the Kantian principle that wrongdoing is a categorical imperative. Kant, according to Walgrave, believed that punishment is inherent in morality and that the proper response to any injury is harsh treatment – the offender must be punished because he deserves it and that punishment is morally obligatory. Punishment does not have to rise to the level of painful repentance or retribution. Acknowledging responsibility for one’s wrongdoing and repairing the resulting harm to others can be “punishment” for wrongdoers. It is the process used that is so critical.

Retribution, Walgrave states, is based on two arguments:

- The transgression of a norm must be censored.
- The restoration of moral balance requires that grievances are addressed only if the offender is also distressed (Walgrave 2008, 58).

In addressing retribution and its relationship to restorative justice practices, Declan Roche sees a problem with the distinction and dichotomy by “penal theorists” between the two. Roche maintains that retributive justice is viewed by theorists as a backward-looking, duty-based theoretical approach to justice developed in particular by Enlightenment thinkers, Kant and Hegel (Roche 2007, 77-78). Kant’s views are consistent with the Enlightenment Period. Roche states that, according to a retributive theory of justice, all wrongdoing must be punished on the grounds that wrongful acts deserve both condemnation and punishment (Roche 2007, 78). In refuting such a narrow definition of retributive justice, Roche emphasizes the definition of the term by Howard Zehr, one of the earliest writers on restorative justice in the early 1990s when little was written on the topic. Zehr describes retributive justice in the criminal justice area, according to Roche, not as
just a particular approach to punishment, but as the system for delivering punishment (Roche 2007, 78).

Roche maintains that more recently the meaning of restorative justice has not only expanded, but has been even further distorted. To many, he maintains, “retributive justice” in the hands of critics is a term to be used for all the numerous faults and failings of punishment practices and not as a theory of punishment. As retributive justice is used interchangeably with vengeance, revenge, and retaliation, all that is left is a choice between “humane restorative justice” and “barbarian retaliation” (Roche 2007, 78). Roche expounds and clarifies that retributive justice finds its roots in the idea that a wrongdoer has taken an unfair advantage in committing a crime, and this lack of fairness can only be corrected by punishment. He cautiously points out that this differs from “simple revenge.” This view may be fallacious since Roche references contemporary restorative justice practices in the criminal justice system and fails to acknowledge the true roots of restorative justice in traditional Navajo Peacemaking. Roche, relying upon Duff and Garland, maintains that according to retributive justice, punishment must be imposed according to strict limits: the guilty deserve to be punished only if the punishment inflicts suffering they deserve – the “just deserts” criminal justice model of the 1970’s (Roche 2007, 78). Roche fails to emphasize the distinctly different concepts of retributive justice and restorative justice.

Roche points out that Duff argues that restoration is compatible with retribution since only retributive punishment can help achieve restoration. The bottom line, Roche submits, is that restorative justice is not an alternative to punishment, but an _alternative form of punishment_ (Roche 2007, 83). He further argues that this alternative depends on
a definition of punishment. He states that censure or criticism can cause pain and, therefore, be a form of punishment. Any type of pain, he maintains, should reaffirm standards (Roche 2007, 83).

Roche points out further that Duff submits that the goal is not to make an offender “suffer” simply for the sake of suffering, but “to induce an appropriate kind of suffering—the suffering intrinsic to confronting and repenting one’s own wrongdoing and to making reparation for it.” People are accountable in any number of ways, especially in how harm is repaired. Roche maintains that according to Duff, accountability must be painful to be effective, and further, that to resolve a harm in a manner that is not painful to anyone is not punishment. This does not mean that pain is an end in itself nor as a “crude” deterrence, but it is an essential component of restorative justice (Roche 2007, 85). Roche attempts to reconcile these views and emphasizes that these views are variations that intervention can both restore and punish. Roche credits Duff’s work with allowing supporters and critics alike of restorative justice to move closer to achieving common ground (Roche 2007, 84). It is now time to reach common ground and move on to theory application or to reject the need for common views and implement the restorative justice practice that best suits a conflict.

Concerning retribution in the criminal justice system, Zehr aptly points out that a focus on inflicting pain can interfere with the admission of guilt because offenders are reluctant to admit the truth. Much to his dismay, Zehr acknowledges that the threat to inflict pain on those who disobey the law is recognized as the basis of criminal law, essentially a retributive model which is at the root of many problems (Zehr 2005, 76-77, 82). Such an approach cannot effectively transfer to the implementation of restorative
 justice practices in the school environment. Zehr supports a “new lens” to justice, a restorative lens, when considering what the law requires after an offender violates it. A new framework for punishment determines the solution. What has happened must be interpreted according to relevant factors and possible and appropriate responses (Zehr 2005 177-78). The selection of the proper lens for viewing the issue is critical. Will it be a “slow lens with a small maximum aperture,” “a wide angle lens which is highly inclusive,” or a “telephoto lens which is more selective and incorporates fewer objects within the frame?” As Zehr points out, the choice of lens determines the relationships and proportions of the elements included (Zehr 2005, 178). One size does not fit all.

Restorative justice, on the other hand, considers criminal behavior a violation of people and relationships. It recognizes obligations and the need to make things right. It involves not only the victim and offenders, but the community in the search for solutions which promotes repair and reconciliation (Zehr 2005, 181). Restorative justice recognizes people as victims and the importance of interpersonal dimensions and relationships which are fractured by wrongdoing (Zehr 2005, 184). Making things right is central to restorative justice.

Zehr argues that punishment should not be the focus of justice, but raises the question whether there is room for some aspect of punishment in the process. He emphasizes that some options for making things right, such as restitution, are understood by some as punishment, however, although a more logical form of punishment. Accepting responsibility for wrongdoing can also be painful and regarded as punishment. Zehr addresses the issue straight on when he states that the real question is not whether some individuals experience some elements of restorative justice as punishment, but
whether “punishment intended as punishment has a place” in restorative justice (Zehr 2005, 209). He submits that perhaps punishment cannot be eliminated completely from a restorative approach, but it should never be normative. Its place in restorative justice certainly would not be central (Zehr 2005, 210).

Declan Roche’s approach in providing a compendium of viewpoints on restorative justice, when coupled with retributive justice, contributes in great part to the fact there is no uniformly accepted definition of restorative justice or of its principles, which appears to be overemphasized by numerous authors. It is this theoretical approach to restorative justice practices that restricts its practical application. He is obviously troubled by this factor. However, once again, too much emphasis is placed upon form and less upon substance and results. Expanding restorative justice to the non-criminal arena allows the process to flower and flourish with an opportunity for results to repair harm and to restore relationships. More often than not in the criminal justice area, there was no relationship to begin with and/or none desired. No more intellectual disputes over definitions, principles, and values. The real world demands a practical approach.

APOLOGY AND FORGIVENESS

Although written primarily for the use of restorative justice in the criminal justice area, Heather Strang addresses issues important to victims of wrongdoing in her book on repair or revenge. Strang maintains that victims desire a less formal process where their views count. Although, as she notes, in the criminal justice system, the restorative justice process often has been taken out of victims’ hands by the state, virtually leaving victims without an opportunity to assert their rights (Strang 2002, 8-9). Victims of wrongdoing have a real need to participate actively in processes involving the issue of their
victimization and to tell their side of the story without being subjected to rigid and inflexible rules (Strang 2002, 3, 9-10, 12). It is crucial that such a process mandates the respectful and fair treatment of victims. Fairness requires a process in which victims can place their trust and expect unbiased treatment. In addition, victims desire restoration and repair of the harm they have encountered (Strang 2002, 13-15), whether that be material or otherwise.

Strang points out that the offer and acceptance of a sincere apology are the *sine qua non* of a successful resolution to an offense and restoration of the participants in a restorative justice process. She further emphasizes that the absence of an apology is a consequence of a “dominant retributive paradigm” and points out that a restorative justice process requires dialogue between the victim and offender (Strang 2002, 20). An apology minimally involves acknowledgment by an offender of the legitimacy of a code, rule, or norm coupled with its violation. Strang notes in her reliance on Tavuchis that “apologetic discourse” has the capacity to join the offender and offended in “a ritual of reconciliation, with the apology as a gift which must be accepted through an expression of forgiveness, each party needing a response from the other before social harmony can be restored” (Strang 2002, 20-21; Tavuchis 1991).

Jeffrie Murphy maintains that revenge and forgiveness are, in fact, competing values – a tension between the satisfaction of getting even versus the belief that a virtuous person should be loving and forgiving, not vindictive (Murphy 2003, 4). Murphy states that it is essential to have a clear understanding of what forgiveness is before we begin to consider the ways it may be in conflict with other values, including self-respect and self-
defense (Murphy 2003, 7). In defining forgiveness, Murphy cites Bishop Joseph Butler’s sermon on “Forgiveness of Injuries” (Murphy 2003, 12).

Murphy maintains that Bishop Butler defines forgiveness as a moral virtue – one of character, a matter of the heart and the inner self. It involves a change in one’s inner feeling based on moral grounds more than a change in behavior (Murphy 2003, 13), a transformation. A forgiving person has overcome vindictive attitudes for a “morally credible” reason such as being affected by repentance of a person by whom one has been harmed (Murphy 2003, 13). Forgiveness is the affirmative act of overcoming on moral grounds the vindictive passions of anger, resentment, and even hatred which often occur when someone has been deeply wronged by another (Murphy 2003, 16).

Bishop Butler, according to Murphy, interestingly notes in his sermon “Upon Resentment” that there is a case for the legitimacy of resentment and other vindictive passions. He argues that a just and loving God would not have implanted those passions within his creatures unless they served some valuable purpose (Murphy 2003, 18). Murphy asserts that Butler sees forgiveness as a moral virtue (Murphy 2003, 13) but views resentment as a passion (Murphy 2003, 18).

Murphy posits that forgiveness can be viewed as a healing virtue that brings great blessings to those who can forgive. It can free an individual from anger. It has the capacity to check tendencies toward cruelty and, in some cases, can lead to restoration of relationships (Murphy 2003, 34). Some harm is so great, however, that victims will not be “moved” by any message from the wrongdoer or, perhaps, see the harm as being so grave or to be “unforgivable” (Murphy 2003, 44).
Murphy contends that it is not unreasonable to make forgiveness contingent upon sincere repentance of an offender, which can also lead to reconciliation. If contingencies are set as a basis for forgiveness and these contingencies are not met, re-offending can occur. Premature forgiveness can also serve as a catalyst for further victimization according to Murphy (Murphy 2003, 80). There should be no attempt to coerce repentance, however, as a condition for forgiveness and reconciliation. Both should be voluntary. Disingenuous repentance may degrade and re-victimize the offended (Murphy 2003, 36-37). The voluntariness expressed by Murphy is also a requisite of restorative justice Peacemaking. Murphy views repentance as an interior act which is a remorseful acceptance of responsibility for wrongdoing and repudiation of that evil coupled with the sincere resolve to extirpate it (Murphy 2003, 41).

When resolution is reached by the parties in restorative justice practices, neither amends nor forgiveness can be “written” into the Agreement. Both are part of the personal transformation of the participants expected as one of the results in the process. Diné Peacemaking desires harmony, understanding, and respect as the basis for resolution of conflicts. When the parties reach a consensus on a disputed issue, they memorialize their horizontal decision making in an agreement. It is the agreement which brings final closure to a conflict and its underlying causes. Without this finality, atonement, forgiveness, and repair are merely tentative.

RESTORATIVE JUSTICE, DISCIPLINE, AND IMPACT IN THE SCHOOLS

In a study which has taken a first-of-a-kind statewide analysis of 6.6 million discipline records of Texas seventh grader for the years 2000-2002 with additional tracking for six years or more beyond the initial measurement, the researchers determined
that harsh discipline is not always the reflection of students, but can be driven by school administrators. Donna St. George, a writer for *The Washington Post* reported in an article published July 19, 2011 that the study takes “an unprecedented look at discipline” in the schools.

The study and report were sponsored by the Council of State Governments Justice Center and Texas A & M University’s Public Policy Research Institute. One of the co-authors of the report, Michael D. Thompson, states that the “bottom line is that schools can get different outcomes with similar student bodies. School administrators and school superintendents and teachers can have a dramatic impact” (St. George 2011).

St. George reports further that the results of the study demonstrated that suspension or expulsion exponentially increased the likelihood for a student to be held back a grade, drop out of school all together, or have contact with the juvenile justice system. The study also demonstrated that 97% of students disciplined were for serious fights, classroom disruption, and insubordination. Less than 3% were removed from school for “state mandated” zero tolerance offenses, such as weapons or drugs (St. George 2011). The study reinforces the need for appropriate intervention and reconsideration of all-or-nothing swift justice based only on normative codes of student conduct which are purely punitive and favor removal from the classroom or school community.

School codes of conduct which are usually a part of a printed student handbook issued to each student at the beginning of each school year often involve progressive discipline or “penalty steps” for repetitive acts of misconduct for first, second, and third offenses. Penalty steps more often than not do not encourage transformational behavior,
but actually can be a catalyst for multiple offenses to end prior to a more serious incremental penalty, such as expulsion.

Punitive school discipline does not lend itself to determining the underlying causes of misbehavior, nor does it address the harm caused to others by offending conduct. Its values are based on obedience to rules and resulting punishment for disobedience. Traditional school discipline is swift justice with minimally required due process which focuses on the code of conduct violated, the identification of the violator, and the determination of the penalty.

Restorative justice Peacemaking addresses the “why” of misconduct, as well as the harm it has caused, along with the need to make amends and repair. It is a value-infused process. Peacemaking can be effectively used independently and in place of traditional school discipline or in conjunction with it as a means of rebuilding the school community. Peacemaking can be used following the imposition of punitive school discipline when the offending student re-enters the school community.

Some offenses in school codes of conduct which are readily conducive to Peacemaking include:

- Misconduct in the classroom
- Truancy
- Tardiness
- Class cutting
- Insubordination or disrespect for school authority
- Scholastic dishonesty
- Lying
- Coercion
- Ethical, social, or religious slurs
- Verbal abuse
- Derogatory and offensive remarks
- Disruption of the school environment
- Fighting and aggressive behavior
Theft  

Internet intimidation  

Bullying  

Retaliation  

Harassment  

After nearly twenty years of a zero-tolerance culture in American schools, an increasing number of educators and elected officials are “scaling back discipline policies that led to lengthy suspensions, expulsions, and increased drop-out rates for such mistakes as carrying toy guns or Advil” (St. George 2011).

Higher suspension rates, along with pressure from the community, litigation, research, and a substantial number of “high-profile cases” concerning severe punishments resulting from “childhood misjudgments” have fueled this re-thinking. As a result, “a more calibrated approach to school discipline” is underway (St. George 2011). This “more child-centered approach” is the equivalent of a significant overhaul of school discipline policies. Views of discipline and student behavior are leading to a strategy known as “positive behavior support,” which includes “structural methods for teaching behavior” and using intervention methods for prevention and resolution of conflict. The bottom line is that this new wave of thought on school discipline is the recognition of viable options to traditional school disciplinary methods of suspension and expulsion, which do not improve student behavior. Educational specialists, however, see there is much to be accomplished with two diverse trends in school discipline, one where reform is taking place in some school districts, while increased suspensions and expulsions are occurring in others (St. George 2011).

The need for reform in school disciplinary policies is obvious, and reform is slow. More than “positive behavior support” strategies are needed. Alternatives to traditional
punitive school disciplinary policies are needed. The implementation of restorative justice peacemaking is such an alternative that is not only effective, but cost effective, as well.

Restorative justice practices are successful in the school setting because they promote values and principles that use inclusive collaborative approaches which validate the experience and needs of all members of the school community, in particular, those members who have been marginalized or harmed. Restorative justice practices foster healing rather than alienation (Amstutz and Mullet 2005, 15).

Restorative justice Navajo Peacemaking is an uncomplicated, effective process which includes stakeholders and fosters partnerships in a conflict. It is founded on an “It Takes A Village” concept. It is indisputable that schools alone cannot resolve all conflict issues. School communities and family members are essential to conflict resolution, the transformation of misbehavior, and addressing the underlying conflict which usually began outside the school community or spills into it.

The English Commonwealth nations have been more receptive to restorative justice practices in schools. Brenda Morrison acknowledges that harmful behavior happens daily in schools and that various types of restorative justice approaches have been used in the educational setting in Australia, New Zealand, Canada, and England, including community group conferencing, healing rituals, concentric circles within circles to address classroom concerns, and family conferencing. Schools have “struggled” with terminology since they have adopted the process from judicial restorative justice. Terminology such as “offender” and “victim” were problematic to some (Morrison 2007, 326). Morrison states that restorative justice conferencing has been used to address a range of harmful behavior,
including bullying, assaults, drugs, property damage, theft, bomb threats, and even possession of weapons in school (Morrison 2007, 326). The goal is not only to repair the harm resulting from aggressive behavior, but also to go a step further in the school setting by being proactive and building social and emotional intelligence and skills in order to realize safe schools (Morrison 2007, 326).

Citing L. Cameron and M. Thorsborne, Morrison states that the lesson for our education system is to introduce restorative measures into the schools as early as pre-school in order to build on creating a climate which emphasizes relational values and translates them into “pro-social” behavior by every member of the school community (Morrison 2007, 328). As with other authors who recommend the use of restorative justice practices in the schools, Morrison does not provide a template for its use.

The earlier a restorative process is introduced in the schools, the more successful its results, especially transformation, not only of individuals, but of an entire school ethos and community. For this reason, a “top-down and bottom-up” implementation of restorative justice practices must take place as a school board-adopted policy approving its use both in the classroom through curriculum which introduces the process and through active use in each school within a school district. This implementation will serve as the means to teaching emotional intelligence and social skills, as well as the transformation of persons, emphasizing respect and civility, and repairing harm and making reparation. A curriculum is a proactive approach to preventing conflict, and the implementation of restorative justice practices is the opportunity to respond to harmful behavior after conflict has occurred. Student codes of conduct, as regulatory, are formal.
establishments of normative behavior. If transformation of wrongdoers is to take place, something more than a normative code which imposes punishment is needed.

It would be naïve to suggest that restorative justice Peacemaking is a “cure all” for school violence or aggressive behavior in the educational setting. However, it is a process which is based on principles and values which focuses on moral and character development to prepare students not only for their present membership in the school community, but is also foundational to their membership in a larger social community. Restorative justice practices provide an alternative to conflict and violence and fosters dialogue, agreement, and the need for correcting unacceptable behavior. The process also aims to bring closure to conflict which often tends to re-surface, especially among the youth. Its goal of inclusion envisions a real community in the educational setting. Through intervention, conflict can be prevented or resolved, and relationships can be repaired.

Morrison recommends the practice of restorative justice on a “whole-school framework” to manage behavior and relationships. Her recommendation is limited to an individual school approach dependent on enlightened school administrators who would announce expectations for acceptable behavior and encourage the development of skills to achieve it. My vision goes beyond this recommendation. It is my thesis that intervention and pro-action on the part of a governing board of education require the adoption of policy and a Diné Peacemaking curriculum applicable to all schools in the school district that goes beyond the discretionary choice of an individual school administrator and is mandatory district-wide. Restorative justice Peacemaking must be adopted in the form of school district policy for district-wide implementation as an
alternative process to traditional formal normative discipline which focuses on exclusion through suspension and expulsion rather than upon inclusion and re-entry of wrongdoers. The curriculum adopted by the board of education provides the framework for teaching and reinforcing restorative justice principles from kindergarten through grade twelve.

Schools cannot focus on the academic growth of students without simultaneously developing their social skills and emotional well being through also focusing on the peaceful ethos and physical safety of a school building which is conducive to learning and respect for self and others. If implemented properly, the restorative justice process can transform individuals’ behaviors and the school community as a whole.

The education of the whole child – academically, socially, and emotionally – is a formidable duty that must be accomplished in a safe environment where all students are able to develop their gifts and talents in a peaceful and stable environment. The school community must enable students to be successful academically and socially in the building and repair of relationships.
CHILDREN AND MORALITY

Émile Durkheim, the nineteenth and early twentieth century French sociologist often considered the founder of modern sociology and who formally establishes academic discipline, distinguishes two stages of childhood. The first, he maintains, takes place within the family or in nursery school, and the second occurs during elementary school where the child experiences an expanded environment. It is in the second stage, Durkheim posits, that the discussion on moral education occurs as does what he calls the “critical moment in the formation of moral character.” It is during the second stage that a child acquires the intellectual foundation needed to comprehend the complex ideas and sentiments of morality. However, these moral conceptions are limited. Durkheim submits that if these moral foundations are not established at this second stage of a child’s life, they will never be (Durkheim 2011, 59). Once the moral foundation exists, the refining of moral sensibilities continues. Based on Durkheim’s theory of morality, schools cannot miss the earliest opportunity to instill or reinforce moral values in students.

Durkheim not only narrows his discussion to moral education during the second stage of childhood, but affirms the importance of moral education. He narrows the scope even more to public schools which he believes should be “the flywheel of national education.” He further maintains that moral education of the child does not fall chiefly within the family, but states that it is the task of greatest importance to the school. It is the family, he maintains, that evokes and organizes the sentiments relevant to personal
relationships, and that the educational agency is not responsible “to train the child in terms of the demands of society” (Durkheim 2011, 59).

To influence a child morally, Durkheim maintains, proper methods that adapt readily to particular circumstances of life should be developed for use in the schools. Since teaching methodology is synonymous with curricula and courses of study, an age-appropriate curriculum centered on right choices meets this criterion. An apparent reference to Immanuel Kant’s Categorical Imperative, Durkheim submits that in significant life situations, a person does not refer back to a “general principle of morality.” He further submits that a moral act ought to be the same tomorrow as it is today regardless of the disposition of an individual. Morality implies a certain ability to develop habits, a need for regularity.

The school, Durkheim proffers, is the “locus par excellence” for the moral development of children through a rational moral education which excludes all principles emanating from revealed religion. It is not only a possible task, but a necessary one (Durkheim 2011, 60). Schools rely upon curriculum to teach subject matter, and the vehicle for teaching values and morals in the educational setting is a curricular format.

Durkheim discusses the close bond between morality and religion, yet cautions that if we eliminate all things religious without providing a substitute, we risk eliminating essential moral ideas and sentiments. He also notes that the characteristic of justice is not founded on reason. As a result, it is essential to re-discover the moral forces basic to all moral life (Durkheim 2011, 60). Educators are entrusted with this objective.

According to Durkheim, morality does not involve a listing of all or even its most important virtues. To influence a child morally, he submits, is to develop by appropriate
methods the general dispositions that adapt themselves readily to particular circumstances of life. In the school setting, the school board adopted curriculum is the medium for developing children’s morals. Durkheim mentions that an obstacle to the development of morality in children in the school setting is the lack of time for the teacher to address the various moral elements of culture, customs, and sentiments due to the “fleeting moments when the child is under the teacher’s influence” (Durkheim 2011, 61). Durkheim further maintains that we cannot regulate the education that we owe our children on the basis of purely academic conceptions, for example, such as economics, military, or scientific interests (Durkheim 2011, 61-62). The critical importance of a Navajo Peacemaking curriculum and school board adopted policy endorsing Peacemaking as an alternative to traditional school discipline are evident. A curriculum that reinforces right choices, responsibility for one’s actions, and consideration and compassion for others develops children’s social skills and moral values. It is Navajo Peacemaking and its horizontal decision-making process which fits totally the demand for the development of a correct moral compass in our youth.

Durkheim discusses the aspect of moral behavior based on pre-established rules or norms which determine what conduct is acceptable in a given instance before one acts. This he refers to as the “domain of duty – the duty of prescribed behavior” (Durkheim 2011, 62). In the school setting, codes of conduct are prescribed norms of acceptable behavior. When an act is not contrary to a pre-established norm, it is not immoral. Morality, therefore, consists of a system of rules of action that pre-determine conduct, according to Durkheim. To behave properly is to obey conscientiously.
Most moralists, according to Durkheim, consider morality as entirely contained in a very general, unique formula and readily accept the view that morality resides entirely in the individual conscience. A simple glance within ourselves reveals it. Morality, states Durkheim, consists of an infinity of special rules, fixed and specific, which order conduct in different, frequent situations. Some of these maxims are set forth in law, while others are “etched in the public conscience,” often sanctioned by the stigma attached to their violation rather than a formal punishment. “There is no rule, no social prescription that is reorganized or gains its sanction from Kant’s moral imperative…,” he posits. What people refer to as “the general law of morality,” states Durkheim, is more or less a satisfactory shorthand statement of characteristics common to all moral rules (Durkheim 2011, 63).

Durkheim maintains that in significant life situations, we do not refer back to the “general principle of morality” to learn how it applies in a specific case to learn what we should do. It is not necessary to look back to some ultimate source of morality to deduce what conduct is implied in such circumstances. He maintains that there are clear and specific ways of acting that are required of us. Durkheim submits that “law and morés prescribe our conduct.” He finds morality to be the totality of definite rules – like molds into which we must pour our behavior. We do not need to construct rules at the moment of action. They already exist (Durkheim 2011, 63). In other words, morality is not rocket science. We find it within ourselves and around us. That is why during the formative years in a child’s life, the school cannot ignore the development and reinforcement of a proper and correct moral compass in each student.
Durkheim states that morality “presupposes a certain capacity for behaving similarly under like circumstances, and, consequently, it implies a certain ability to develop habits, a certain need for regularity.” There is such a close “connection between custom and moral behavior that all social customs almost inevitably have a moral character” (Durkheim 2011, 64). Through reinforcement in a Peacemaking curriculum, sound moral habits are developed in students. Durkheim submits, however, that “customs are forces internalized in the person.” He maintains that they unfold themselves within each of us spontaneously. A rule, however, he maintains, is not a simple matter of habitual behavior. It is essentially something outside the person beyond personal preference built upon the concept of authority (Durkheim 2011, 64). The school setting, therefore, is a perfect storm for the reinforcement of moral values in students.

According to Jean Piaget in his book chapter entitled “The Two Moralities of the Child,” there are two extreme types of social relations: relations of constraint and relations of cooperation. The characteristic of constraint, he maintains, is to impose upon an individual a system of obligatory rules, while the characteristic of cooperation is to create within a person’s mind the consciousness of ideal norms as the basis of all rules (Piaget 1965, 395).

Piaget posits that moral constraint is characterized by unilateral respect which is the source of moral obligation and the sense of duty. In fact, he states, every command emanating from a respected individual is the beginning of an obligatory rule. An example of an obligatory rule is the obligation to speak the truth and not to steal. Obligatory rules are not innate to the child, he maintains, but are commands coming from the adult and accepted by the child. Therefore, it is “right” for a child to obey the will of the adult and
“wrong” to have a will of one’s own (Piaget 1965, 195). In this ethic, Piaget opines that there is no room for what moralists have called “the good” in contrast to “the right” or pure duty. This is so because the good is a more spontaneous ideal and one that attracts rather than coerces the mind (Piaget 1965, 195). According to Piaget, moral realism is rooted in its entirety in the “child’s spontaneous, yet it is consolidated and stylized in a hundred ways by adult constraint” (Piaget 1965, 193).

Piaget opines that the relations of constraint characterize the predominant features of society, in particular the relations of the child in adult surroundings. Equality and mutual respect are inherent in the relations of cooperation (Piaget 1965, 395). Equality and mutual respect are also inherent in Peacemaking.

Piaget finds a parallel kinship between logical and ethical norms with logic being the morality of thought and morality being the logic of action (Piaget 1965, 398). Socialization is necessary if an individual is to become aware of how his mind functions and to become able to transform into norms that are essential to all mental and vital activity (Piaget 1965, 400). Without guidance, Piaget maintains that an individual remains egocentric. It is essential that an individual must distinguish what belongs to others (Piaget 1965, 400). Through contact with the judgments and evaluations of others, an individual does eventually yield to the pressure of collective logical and moral laws (Piaget 1965, 401). The Navajo Peacemaking curriculum reinforces right choices and responsibility for one’s actions, as well as compassion for others.

Piaget believes that the relations of constraint established between child and adult are contributory factors in the formation of a first type of logical and moral control. The child stops affirming his/her own preferences and assumes the opinion of those around
the child (Piaget 1965, 401). “The self’s good pleasure is simply replaced by the good pleasure of a supreme authority” (Piaget 1965, 402). Since a child believes in the adult’s omniscience, Piaget maintains, consequently, the child believes in the absolute values of the directives he receives. Through this unilateral respect on the part of the child, a basic sense of duty is formed, as well as the child’s first normative control (Piaget 1965, 402). Piaget submits that only cooperation will suppress and correct the egocentric thinking of the child (Piaget 1965, 403). It is cooperation that brings about transformation of the child (Piaget 1965, 404). The foundational basis of a Peacemaking session is cooperation and understanding, with goals of resolving conflict, repairing harm, and achieving harmony in broken relationships within each participant.

**SCHOOL DISCIPLINE, STUDENT SOCIALIZATION, AND MORAL AUTHORITY**

The examination of the relationship between obedience and authority is not new. Émile Durkheim and Max Weber focused on these issues more than a century ago. “Émile Durkheim related authority specifically to morality and developed the concept of moral authority specifically in the context of formal schooling” (Arum and Way 2003, 167). According to Durkheim, “one of the most important tasks for the school is the socialization of children. Schools should not only teach socially appropriate behavior but must also inculcate a general respect and obligation toward social rules. Durkheim referred to this social authority of rules as moral authority because moral authority was internalized, self-control was generated. For Durkheim, a successful school was one that did not need to enforce rules and dole out heavy punishment because students had internalized school rules and, thus, did not challenge authority in the first place. When infractions occurred, sanctions served not so much as an individual deterrent but, rather, as “an instrument that
prevented the erosion of moral authority threatened by the public violation of social norms” (Arum and Way 2003, 168).

Durkheim further posits what matters is that misconduct be vigorously censored and not that a child suffer. He continues to stress that the disapproval of misconduct alone makes for reparation. As a result, severity of treatment is justified only to the extent required to have unequivocal disapproval of a given act. A primary means of child socialization is the instillation of respect for “impersonal law” (Arum and Way 2003, 168). According to Arum and Way in reference to issues of student safety and school authority, if students feel that school administrators cannot protect them, then students question why they should respect school authority (Arum and Way 2003, 173).

Ron and Roxanne Claassen are proponents of a Respect Agreement to foster cooperative classroom behavior. This focus is not a school district-wide approach. They suggest that at the beginning of each school year, the class be divided into groups of four or five students who begin independently within the group to draft a summary of what is personally important about respect for one another and individual duties to foster respect. Once the individual students within a group have completed their summary list, then they convene as a group to draft a composite list of duties to foster respect for one another. The classroom teacher then re-convenes the class and drafts a composite list compiled from the group summaries which composes the classroom Respect Agreement (Claassen 2008, 42-45).

The classroom composite Respect Agreement usually includes school rules, as well as the following:
• Not talking out of turn
• Active listening to one another
• Respect property of others
• Be polite
• Not making fun of classmates
• Not disrupting class
• Ask before borrowing another’s property
• Not using offensive or crude language (Claassen 2008, 46).

The Claassens explain that active listening involves “hearing” and understanding what classmates have to say, not rushing to judgment, respecting others’ points of view, and using non-verbal ways to let classmates know you are open to their thoughts and feelings (Claassen 2008, 59).

The emphasis placed on restorative justice in the classroom as urged by the Claassens relies solely upon the initiative of individual classroom teacher without the endorsement of the board of education and the enactment of policy and curriculum which then becomes mandatory district-wide.

Richard Arum maintains that while educational achievement in many public schools leaves room for improvement, discipline and student socialization have been ineffective and the cause of widespread public anxiety (Arum 2011, 533). His research as detailed in Judging School Discipline: A Crisis of Moral Authority wherein he addresses the extent to which judicial decisions have affected school discipline. Arum states that if a crisis in American schooling exists, its components include the erosion of moral authority and the ineffectiveness of school discipline in addition to low educational
achievement (Arum 2011, 533-34). Arum notes that public concern over ineffective school discipline is long standing and not a new development. Responses to public opinion polls in the 1950’s revealed an overwhelming concern that school discipline was not “strict” or “severe” enough (Arum 2011, 534). The issue does not appear to be the severity or extent of discipline, but teaching students to make wise choices, to respect one another, and to develop empathy for the feelings of others.

Arum posits that “problems of moral authority strike at the core of public education because primary and secondary schooling is as much about the socialization of youth as it is about teaching rudimentary cognitive skills” (Arum 2011, 534). Arum references Émile Durkheim’s thesis that the purpose of school discipline is not to secure “superficial peace in the classroom,” but, rather, schools are “the first social institutions outside the family responsible for contributing to the process of molding youths for adult roles in society.” Arum states that for Durkheim, discipline “is an instrument … of moral education” (Arum 2011, 534).

Arum finds in his analysis of legal cases from 1946 to 1992 that as a result of the dramatic increase of the student rights contestation period in the late 1960’s and early 1970’s, students have developed a sense of legal entitlement which has produced skepticism about the legitimacy of school discipline practices (Arum 2011, 536). The judicial system, Arum finds, has become a principal area for challenges to school authority, as well as the advancement of social interests of children. Both have produced profound changes, he finds, in school practices, including First Amendment considerations and due process rights (Arum 2011, 536, 538). He believes that when public school educators were confronted with institutional adversaries who were willing
to assert that court challenges were more effective than pre-school programs in improving educational opportunities for the poor, public schools would creatively adapt to these external legal challenges in unanticipated ways that produced unintended negative consequences. According to Arum, this adaptation negatively affected the quality of schooling for all students (Arum 2011, 540). It is far too simplistic a view to place the onus of school discipline upon litigation and the court system. The more accurate assessment would be the failure of schools to include curriculum based on holistic education of children and the neglect of moral values as part of the complete educational process.

Arum further believes that “adversarial legalism” has been so costly with regard to school discipline that the legal challenges produced not only changes in organizational practices, but also undermined the legitimacy of a school’s moral authority more generally. Schools were likely to reduce their disciplinary responses to student misbehaviors while, at the same time, students became less willing to accept school authority or discipline as legitimate. He firmly believes that legal challenges undermined school discipline in multiple ways (Arum 2011, 540-41).

Arum contends that Durkheim believed that punishment is a necessary component of school discipline because it communicates that a normative rule had been broken. He quotes Durkheim who stated in Moral Education that “it is not punishment that gives discipline its authority; but it is punishment that prevents discipline from losing this authority, which infractions, if they went unpublished, would progressively erode” (Arum 2011, 541). Arum clarifies his theories when he comments that his research suggests that “the problem is not that school discipline is either too strict or too lenient. Rather,
discipline is often ineffective – and at times, actually counterproductive or detrimental to students – because the school’s legitimacy and moral authority have been eroded.” Arum said the courts were partially responsible since they challenged the school’s legal, moral, and discretionary authority (Arum 2011, 553).

Piaget is somewhat critical of schools, which he states focus more on preparing students for competitive exams rather than for life (Piaget 1965, 405). He finds that students are isolated in individual work and studies. Although the class listens in common, the students work separately. This reinforces the child’s spontaneous egocentrism, which is contrary to intellectual and moral development (Piaget 1965, 405). Cooperation, he states, is an essential factor to intellectual progress (Piaget 1965, 405).

As the child grows up, the subjection of his conscience to the mind of the adult appears less legitimate. Unilateral respect develops into mutual respect and to cooperation (Piaget 1965, 324). The development of a child’s morality is fostered by what the child sees and experiences (Piaget 1965, 325). For this reason alone, the school environment should display mutual respect, kindness, and civility.

In analyzing justice between children, Piaget determines that peer socialization forms the basis for distributive justice and the more advanced forms of retributive justice. He finds it indisputable that there are elements of retributive justice in social life between children. However, he acknowledges a problem exists to know whether these punishments are of the same kind the child experiences with adults. Piaget appears to favor there are differences (Piaget 1965, 295).

According to Piaget, there are two types of punishment or retributive justice: expiatory inherent in restraint (rules) and punishment by reciprocity (Piaget 1965, 209).
Adult punishment forms the basis of a child’s concept of expiation – a lie means being silenced, but punishment by reciprocity gradually replaces expiatory punishment. However, it may be regarded as useless and even harmful (Piaget 1965, 295). The importance of expiatory punishment or making amends seems to decrease as the child advances in age and to the extent that adult constraint is replaced by cooperation (Piaget 1965, 263). Expiatory punishment, according to Piaget, is closely associated with constraint and authoritarian rules imposed upon individuals. When a violation of a rule occurs, Piaget maintains that the sole way to make things right again is to return the individual back to his duty, and this is accomplished by a sufficiently powerful coercive method and painful precedent (Piaget 1965, 205). Punishment by reciprocity, however, goes hand in hand with cooperation and rules of equity. For example, it is wrong to lie because mutual trust is destroyed. Piaget states, however, that the child has no need to “put things right again” by means of a painful coercion to impose respect for the rule from without. Instead, censure by reciprocity or doing to the child offender what he has done himself, restitutive punishment (paying for or replacing a broken or stolen object) or censure only without precedent, or punishment impresses upon the transgressor that he has “broken the hand of solidarity” (Piaget 1965, 206, 208-9). This viewpoint, at first, appears to be a backhanded endorsement of Peacemaking.

As a result of his case studies on the child’s development of the concept of justice, Piaget states that children who do not hit back when struck by another child are submissive by nature and are mostly the very young who rely upon an adult to protect them. They are also more eager to respect or make others respect orders or commands. He further states that children who strike back are children who are more concerned with
justice and equality (Piaget 1965, 305). Expecting children to arrive at making right choices and moral judgments without guidance and direction is illogical. The egocentricism so natural to every child will rise to the surface, and in short order, a school community becomes aggressive and uncivil.

In studying a transition between retributive and distributive judgment between children, Piaget asks the children in one of his studies why one should not cheat at games. He found that responses fell under four categories: 1) It is naughty or forbidden; 2) It is contrary to the rules of the game; 3) It makes cooperation impossible and prevents continuation of playing the game; 4) It is contrary to equality (Piaget 1965, 305).

Piaget further found that if he divided children into two groups according to age, the first from ages six to nine and the second from ages ten to twelve, it is around age nine that rules become stabilized. The younger the child, the more appealing the authority of rules. Cooperation and equality are more appealing to the older child (Piaget 1965, 306).

Piaget determined that it is impossible to see how mutual respect which is the foundation of all cooperation could possibly give rise to the idea of expiation or render it legitimate (Piaget 1965, 228). What we learn from Piaget’s research is that the moral growth and development of children requires formal guidance and direction. The Diné Peacemaking curriculum will develop proper moral judgment in children. Teaching and reinforcing values during the formative years of a child is the ideal time to guide the child’s moral judgment and moral compass and to develop trust of one another. Kindergarten through grade twelve are the years when mutual respect, understanding, empathy, and kindness can be reinforced. It is the Diné Peacemaking curriculum,
however, that helps children not only to make right choices, but to want to make right choices that do not cause harm to others. Contrary to what Piaget believes, instilling in children the values of understanding, inclusion, kindness, and mutual respect through dialogue develops a child’s moral compass and conscience based on ideal norms found in codes of acceptable conduct. Peacemaking instills values and the desire to make right choices, and codes of student conduct require proper behavior with resulting punishment for failure to comply.

THEORETICAL TO PRACTICAL, THE MORAL IMPERATIVE AND SCHOOL REFORM: MAKING A DIFFERENCE

Michael Fullan gets right to the point when he states, “Let’s be explicit. The only goal worth talking about is transforming the current school system so that large-scale, sustainable, continuous reform becomes built in” (Fullan 2003, 29.). Fullan maintains that “moral purpose of the highest order is having a system where all students learn, the gap between high and low performances becomes gradually reduced, and what people learn enables them to be successful citizens and workers in a morally based knowledge society” (Fullan 2003, 29).

Rather than a categorical imperative, Fullan is a proponent of the moral imperative of principals and their leadership within their schools and communities which he states is making a difference in individuals and making a difference in education (Fullan 2003, 31). These are the first two of four levels of what Fullan calls the “Moral Imperative” (Fullan 2003, 30). Leadership can make a positive difference in the lives of students and teachers. Moral leadership requires that educators ask, “What is my role in
making a difference in the school as a whole?” (Fullan 2003, 31). The implementation of an age-graded Peacemaking curriculum is moral leadership at the grass roots level.

The point at which moral purpose in the school environment becomes “more prominent” is when the focus shifts to engage the whole school. Fullan states that the criteria of moral purpose are “that all students and teachers benefit in terms of identifiable goals, that the gap between high and low performances becomes less as the bar over all is raised, that ever-deeper educational goals are pursued, and that the culture of the school becomes so transformed that continuous improvement relative to the previous three components becomes built in” (Fullan 2003, 31). A moral purpose in education cannot be confused with teaching religion. Moral direction and guidance are essential components of holistic education of each child which reinforce human values of civility, respect, accountability for wrongdoing, and harmonious living.

Fullan sees avoiding conflict while poor performance is taking place as an act of moral neglect (Fullan 2003, 32). Relying upon Bryk and Schneider’s findings, Fullan points out that a cohesive school community organized around a genuine regard for children is needed for school reform. Change requires that a faculty unite and collaborate to bring about not only instructional changes, but interaction with parents (Fullan 2003, 37).

A moral purpose at school is interrelated to the moral imperative of school leadership and the endorsement of the important role of the principal (Fullan 2003, 40-41). According to Fullan, “…the moral imperative of the principal involves leading deep cultural change that mobilizes the passion and commitment of teachers, parents, and others to improve the learning of all students…” (Fullan 2003, 41). It is the principal
who develops relational trust and “fosters a culture of trusted relationships” (Fullan 2003, 43). Through the adoption by a board of education of Diné Peacemaking as an alternative to traditional school discipline, as well as the adoption of an age-graded Peacemaking curriculum, school board members are leading their school districts in needed change and are empowering school administrators and teachers to respond to the moral imperative of school reform.

Fullan warns that it is critical to distinguish the differences between being a leader as a disciplinarian and the culture of discipline. It is the culture of discipline which “characterizes norms and working relationships” in the school organization (Fullan 2003, 44). The culture of discipline or an ethos of civility and respect brings about personal transformation. This can be achieved through restorative justice Diné Peacemaking.

Fullan summarizes his own thesis of the moral imperative at the school level when he states that “…leading schools…requires principals with the courage and capacity to build new cultures based on trusting relationships and a culture of disciplined inquiry and action…” (Fullan 2003, 45). He emphasizes that the moral imperative in schools depends upon how schools can be transformed. This transformation requires the school principal to apply his/her concept of moral purpose to the entire school system, as well as to the individual school (Fullan 2003, 45). The legal structure of public school districts and of education boards requires that members of boards of education adopt the Peacemaking process as an alternative to traditional school discipline and codes of conduct along with a Peacemaking curriculum to accomplish the needed transformation. The top-down leadership adoption of school district-wide policy and curriculum and the bottom-up implementation are synonymous with the moral imperative.
TRUST IN SCHOOLS

Anthony S. Bryk and Barbara Schneider lay the foundation for improvement of schools through social trust as a powerful concept for shaping thinking and behavior (Bryk and Schneider 2002, 13). They refer to James Coleman’s theory that social system relationships play a crucial role in social and behavioral phenomena and his theory that social capital develops around “sustained social interactions” (Bryk and Schneider 2002, 13). Bryk and Schneider cite Coleman’s theory of social capital and its high degree of “interconnectedness” among individuals in social networks that enables them to communicate. It is this closeness or interconnectedness that can also lead to miscommunications and personal rifts if not addressed and corrected (Bryk and Schneider 2002, 14). An uncivil school environment and the hostile interaction of students certainly give support to this theory.

Bryk and Schneider posit that long-term connections or social relationships are part of the “self-identification process whereby individuals come to define themselves as connected to my friends, my school, my community” (Bryk and Schneider 2002, 15). Trust involves a complexity of personal motivations such as in the school setting where parents entrust their children to school staff to advance valued goals. It is this duty of trust that requires schools to serve vital political, civil, and moral purposes. School administrators and staff “form students’ attitudes, values, and dispositions” while contributing to the “kind of society we are and will become” (Bryk and Schneider 2002, 16). It is the duty of trust that also requires schools to accept the responsibility of teaching and reinforcing values, attitudes, and dispositions.
Members of the school community, according to Bryk and Schneider, “…value achieving desired personal outcomes and being able to influence core organizational procedures that affect their lives. Yet, they also attend to initiate personal qualities of these social exchanges: Do they appear respectful, promote a sense of regard, affiliation, and self worth…” (Bryk and Schneider 2002, 16). Looking through a moral lens, they question whether the behavior of others advances the best interests of children. What better way to achieve these goals than to reinforce mutual respect, civility, harmony, and understanding in youth through the Peacemaking process.

Bryk and Schneider identify a form of social relations which they call contractual trust where individuals and institutions stand in a “more constrained relation to one another” and where a “contract defines basic actions to be taken by the parties involved.” They found schools not to be a good fit within this framework because parents expect schools to care for the safety and welfare of their children in the same manner the parents would do so themselves, including the promotion of social and emotional development and the inculcation of core values for responsible personal and civic life. Schools are unable to insure with certainty the successful outcomes of any procedure, according to Bryk and Schneider. However, they acknowledge that the appropriateness of a chosen procedure and the adequacy of its implementation can still be established (Bryk and Schneider 2002, 17-19).

Bryk and Schneider further point out that since social exchanges form an important consideration for any organization, these concerns take on a “heightened salience for schools” (Bryk and Schneider 2002, 19). They maintain that social relations are a valued outcome in the educational setting. This brings us to the second alternative
form of trust, which Bryk and Schneider call “relational trust” (Bryk and Schneider 2002, 19). The quality of social exchange occurring in the schools is a valued outcome and is of great human significance. Bryk and Schneider submit that a “complex web of social exchanges conditions the basic operations of schools” with interrelated mutual dependencies embedded in the daily routine among all key actors – students, teachers, principals, administrators, and parents. These dependencies create feelings of vulnerability for all involved. Recognition of this vulnerability by school officials and a conscious commitment on their part to relieve uneasiness and uncertainty can result in an intense, meaningful, social bond (Bryk and Schneider 2002, 20). Bryk and Schneider recognize the need for reinforcement of open discussion and respectful dialogue in the schools where personal conflicts can develop into aggressive and harmful behaviors with vulnerable students as the object of the aggression. The interrelated dependences in any school community require that student be taught on every age level to recognize and resolve conflict. Bryk and Schneider note that, like contractual trust, relational trust requires that the expectations held among members of a social organization, such as in a school community, be regularly validated by actions.

Bryk and Schneider refer to a “mix of motivations” which range from self-interest to taking into account the needs and feelings of others. The authors maintain that relational trust lessens when individuals perceive that others are not behaving in a manner consistent with their expectations about the other person’s role and obligations. They emphasize that it is not only necessary to do what is right, but to do it in a respectful way and for the right reasons (Bryk and Schneider 2002, 21). Relational trust involves action where normative judgments are made about how and why others go about the process of
fulfilling their obligations. It is trust founded on both beliefs and observed behavior (Bryk and Schneider 2002, 22). Relational trust is what students deal with on a daily basis in the school setting. Its’ very core is the interchange among students which needs to be civil, respectful, and according to normative oral values.

As the behavior of others is observed and interpreted in the school setting, Bryk and Schneider maintain that four considerations are an integral part of this “dynamic interplay”: respect, competence, personal regard for others, and integrity. Members of the school community use all four “lenses” in their analysis of the behavior and motives of others. If a serious deficiency involves any one of the four criteria, trust in a relationship can be undermined (Bryk and Schneider 2002, 23). The foundation of traditional Diné Peacemaking is built upon these same values.

Bryk and Schneider properly submit that the long-term process of social exchange in the school setting mandates a modicum of reciprocated respect of the school community members, including parents. Respect, they maintain, requires not only the recognition of each person’s role in a child’s education, but also the recognition of mutual dependencies of each. As in the active listening component of Peacemaking, Bryk and Schneider advocate a genuine sense of listening to what a person has to say as the foundation for meaningful social interaction. Taking into consideration others’ perspectives authenticates the dialogical process which, in turn, recognizes the value of others’ ideas. The education of children mandates that the school membership cooperatively work together (Bryk and Schneider 2002, 23).

Bryk and Schneider make the valid observation that mutual dependence and personal vulnerabilities characterize the social exchanges of schooling. Disregard for
others further increases another’s sense of vulnerability and adversely affects interpersonal trust. On the flip side, interpersonal trust grows when individuals perceive that others care about them and are willing to extend themselves beyond the formal requirements of their role in any given situation. Personal regard and respect are powerful dimensions of trust in the school context where encounters are more intimate than found in other relational communities (Bryk and Schneider 2002, 25). The importance of integrity in social relationships cannot be denied. When there is a consistency between what individuals say and what they do, they are thought to have integrity. In addressing personal conflict in the school community, integrity demands that resolutions and agreements reaffirm the primary principles of the school institution. Above all, in the school setting, conflict resolution must advance the best interests of children in the promotion of shared values and beliefs (Bryk and Schneider 2002, 25-26). Plato, as well as the Navajo People, would agree with Bryk and Schneider that good teaching and moral leadership “touch the soul.”
CHAPTER 5

THE IMPORTANCE OF DIALOGUE
IN THE RESTORATIVE JUSTICE PROCESS

GADAMERIAN HERMENEUTICS, DIALOGUE, AND THE
SEARCH FOR UNDERSTANDING THE TRUTH

Hans-Georg Gadamer reinforced the importance of interpretive hermeneutics as essential to problem solving, but his “Gadamerian hermeneutics” refines the process to one of intermediation and active listening in the search for truth and understanding. It is this phenomenology of understanding through conversation and dialogue that is of particular importance to Gadamer. Gadamerian hermeneutics emphasizes the importance of openness in questioning and the need to overcome personal biases and prejudices which interfere with the search for truth. A central element in Gadamer’s thinking is his idea of *phronesis*, or practical wisdom. Gadamer’s philosophical hermeneutics differs from hermeneutics focused on methods and methodology. Although he does not disregard methodology nor does he deny its importance, it is the phenomenology of understanding that takes center stage for Gadamer. The same flexibility forms the basis of restorative justice Navajo Peacemaking. Working within a methodology (e.g., appropriate open questions), he seeks to know how understanding is possible within man’s experiences. Similarly, the Peacemaker or facilitator does not restrict or control the Peacemaking process, but asks appropriate questions to keep dialogue open, respectful, and continuing. The same basic principles of Gadamerian hermeneutics are of equal importance to restorative justice conflict resolution processes. Receptivity and
openness as endorsed by Gadamer are skills that lead to the discovery of the underlying causes and motives behind the harmful behavior and to understanding resulting harm.

Hermeneutics is of particular importance in the school setting where conflicts often arise from misinterpretation and misunderstanding. The term “hermeneutics” has been a term used in theological, philosophical, and literary circles relating to a theory of literary interpretation (Palmer 1969, 3, 25-29), and its definition has become the topic of energetic debate. Richard Palmer in his book on hermeneutics uses Webster’s Third International Dictionary to define hermeneutics in general as “the study of the methodological principles of interpretation and explanation” (Palmer 1969, 3-4). Palmer cautions, however, that this definition is minimal, and a more detailed meaning clarifying the scope of the term is needed. Gadamer fulfills this need. Similarly, there is no single accepted definition of restorative justice, but Navajo Peacemaking with its facile and flexible process has a concise definition and a proficient method for achieving its goals of harmony, dialogue, and respect.

Palmer feels so passionately about the merits of hermeneutics that he recommends it as a required fundamental study for all humanistic disciplines (Palmer 1969, 10). After completion of this research, I fully agree. It is a process that fosters openness and dialogue in the search for truth and understanding, the same elements that lead to the resolution of conflict.

The historical development of hermeneutics addresses two characteristics: the theory of understanding in general and the hermeneutical problem. The theory of understanding involves concrete, factual thinking rather than merely an idea, whereas the hermeneutical problem always involves language and a face-to-face encounter. The
promotion of dialogue and open discussion without discord is in alignment with the centuries-old Navajo Peacemaking approach to conflict resolution. The importance of human encounters through dialogue and active listening enables us to understand one another, eliminate the causes of conflict, and resolve the problems which prevent social harmony.

The usefulness and value of the hermeneutical method are demonstrated by its broad application to research and truth claims. With its goals of promoting understanding, knowledge, and truth, the hermeneutical method is a valid tool in the search for truth and testing theses (theories). It need not be restricted to texts, however, since it is valuable in verbal dialogue and discussions. In addition to avoiding self-imposed barriers, hermeneutics encourages us to unblock barriers to our vision and insight. Gadamer, by refining the dialogical process, so effectively teaches us that language is key to comprehension, understanding, and knowledge, that prejudices can compromise research and the arrival at truth, and that openness and proper questioning are critical to valid theories.

The publication in 1960 of Gadamer’s treatise, *Truth and Method*, has been recognized as significantly important to philosophical hermeneutics. Joel Weinsheimer notes that Gadamer does not begin his work (*Truth and Method*) with the enumeration of the implications of method, but rather immediately proceeds to a history of the “non-methodical avenues to truth” (Weinsheimer 1985, 1). Gadamer quite intentionally leaves method undefined. It allows us to think outside the box in that pursuit and is vital to resolution of conflict through the flexible Navajo Peacemaking process. The Peacemaking process is intentionally flexible in methodology in order to foster free and
open discussion by participants in horizontal decision making. Achieving empathy and understanding through open discussion and respectful dialogue are common threads of hermeneutics and Navajo Peacemaking. Gadamer disdains any attempt to prescribe a system of regulations that could direct the methodical protocols of the human sciences (Weinsheimer 1985, 7).

As Weinsheimer points out, the fundamental conclusion in Gadamer’s *Truth and Method* is his theory that language is the scope of understanding, and without understanding, there can be no interpretation (Weinsheimer 1985, 213, 215). Without understanding, there can be no resolution to conflict.

According to Gadamer, the “ontology of language” is central to the meaningful emergence of the human experience. The “power of language becomes historically effective in dialogue. Gadamer’s philosophical hermeneutics is centered in the ontological question of truth…” (Ambrosio 2007, 259), which is critical to conflict resolution and reaching agreement. Francis Ambrosio points out that “…dialogue is the way that meaning emerges as living language in the experience of understanding to establish its truth claims on human existence, a claim which demands and measures the truthfulness of every human response…” (Ambrosio 2007, 266). The validity of these statements is demonstrated in restorative justice practices.

It is the “play of language” within dialogue that becomes the “to-and-fro, yes-and-no dynamics of listening and responding” in shared conversation that begins the discovery of truth (Ambrosio 2007, 269). Gadamer places an emphasis not only on dialogue, but on meaningful and authentic discourse as well. Substance is far more important than form. Restorative justice processes are also based on open and respectful
dialogue, active listening, and the “to-and-fro” responses from participants. It is Navajo Peacemaking that remains open and flexible in format in its search for truth and harmony.

Understanding for Gadamer is not a *fait accompli* but a continuing process, a lifelong learning process. This, Gadamer accomplishes through a refusal to be wedded to a method or technique in the search for understanding. He once again urges us to think outside the box. These same elements form the basis of Navajo Peacemaking. The procedural form is uncomplicated because the focus is on dialogue and understanding among participants whose common goal is achieving resolution of conflict, reaching harmony, restoring relationships, and repairing any harm resulting from the dispute. It is the emphasis on dialogue, communication, and understanding that raises Gadamerian hermeneutics above the mere interpretative element in hermeneutics in general. Whether or not Navajo Peacemaking principles and process were known to Gadamer, a contemporary philosopher, is unknown. What is curious is that each of the philosophers whose views are included in this Thesis has similar philosophical theories on justice and conflict resolution which the Navajo Nation has been using for centuries in its Peacemaking process.

Bernstein states that the key to Gadamer’s philosophical hermeneutics and to understanding of language and dialogue is Gadamer’s concept of play. It achieves its purpose when the player “loses” himself in the play with the “to-and-fro” movement. For example, Gadamer states that when we enter into dialogue with others, dialogue is conveyed further by continued dialogue. The subject matter in issue is embodied in the dialogue (Bernstein 1983, 121). Gadamerian hermeneutics with its emphasis on dialogue, communication, and genuine questioning which leads to understanding is
symbiotic with Peacemaking. The similarities between Gadamerian hermeneutics and restorative justice practices are readily discernable. At the core of the Gadamerian hermeneutical experience and understanding is the fundamental and universal “discipline of questioning and searching” which validates scientific knowledge and its “methodological objectivity” (Ambrosio 1987, 18). In Peacemaking, it is the Peacemaker as the facilitator who moves the process toward resolution when needed. Otherwise, the participants in the Peacemaking session reach resolution themselves.

The openness of a question does not necessarily mean that it has no boundaries. A question is limited by its horizon, and if it lacks this dimension, it is floating. To be exact, a question has to be posed. It has to be open but with limitations (Weinsheimer and Marshall 2006, 356-75). A valid question presents itself as possessing open alternatives with evidence for both views (Weinsheimer and Marshall 2006, 368-69). Keeping to the issue at hand is such a limitation.

No understanding is free of all prejudices, but truth can be ascertained “through a discipline of questioning and searching, a discipline which warrants the truth” (Ambrosio 1987, 17). It is the discussion among parties to a conflict that brings about agreement and resolution. Gadamer argues the validity of “questioning and searching” as “the original characteristic” of the hermeneutic experience as an objective criterion in the search for truth (Ambrosio 1987, 18). It is the flexibility of Navajo Peacemaking as a restorative justice conflict resolution process that provides the unrestricted opportunity for participants to discuss the harm caused by offending behavior and uncover the underlying causes of this behavior. The openness and free, but respectful, discussion allows for all issues in a conflict to be honestly addressed and resolved. The process, which
incorporates truthfulness and active listening, leads to understanding among or between the parties, which in turn leads to resolution.

It is this “discipline of dialogue” which is the criterion of truth in Gadamer’s hermeneutics (Ambrosio 1987, 19). For Gadamer, truth cannot be separated from questions and questioning. It is the “loose” and flexible structure of hermeneutics that advances the understanding of one another. This aspect of dialogue is so vital in the school setting where a refusal to discuss a conflict is often the first reaction. Without discussion of the issues underlying and leading to a conflict, the disharmony festers and expands the scope of the conflict itself. Often students not initially involved in a dispute “take sides.” When this happens, the civil ethos of an educational setting can rapidly deteriorate into one of hostility and more expansive aggression.

Gadamer recognizes that Platonic dialectic is “ethical” in that its theory of teaching and learning is founded on a discipline “for the praxis of dialogue.” Platonic dialectic aims at truth of the highest Good of human living – the care of the soul. It is this compassionate component in discussion that makes conflict resolution possible. Another essential element of the Platonic discipline of dialogue is the willingness to answer in response to a question made to us (Ambrosio 1987, 24). The nature of the discipline of dialogue is a “way of living whereby we do not attempt to control truth” (Ambrosio 1987, 26). This “to-and-fro” open discussion is critical to restorative justice conflict resolution.

With Gadamer’s focus on dialogue and understanding rather than on interpretation, it is important to understand that in dialogue, one does not attempt to weaken the assertions of another. Instead, one tries to strengthen them by finding in them
any truth in respect to the subject under consideration (Ambrosio 1987, 24). If the Peacemaking process were not centuries’ old, Gadamerian hermeneutics would be a blueprint for the process. When flexible methodologies are based on dialogue and open communication, understanding of one another’s views is not only an integral part of the process, but a result as well.

Gadamer’s preferred model for this process which initiates understanding is conversation. He correctly believes that in genuine dialogue, we experience the way questions play themselves out, leading to tentative answers which, in turn, generate new questions resulting in agreement or leaving us stranded “off base” in disagreement (Ambrosio 1987, 32). As noted earlier, dialogue is the linchpin not only in Gadamer’s hermeneutics, but in restorative justice processes as well. It is dialogue which breaks the logjam in understanding and allows us to arrive at truth. This element of Gadamer’s systematic approach to the discovery of truth is essential to understanding and meaning in any respectful dialogue. Understanding requires receptiveness – effort, care, and imagination. Being open to other’s opinions implies that participants in a discussion situate themselves in relation to the opinions and not the other way around (Bernstein 1983, 137). This is the beginning of compassion and empathy for others.

When conflict involves personal and individual harm, the bar is so much higher in the resolution process. When the dignity of an individual is the harm involved, the dialogue involved demands total respect, honesty, and openness in the discussions which will lead to the conflict resolution. The personal component of restorative justice conflict resolution is what makes the process different from mediation or arbitration where a
dispute is more often over liability for negligent behavior or compensation for property damage.

When restorative justice conflict resolution processes involve harm to vulnerable youth, the ante goes up exponentially. School-aged youth depend upon school officials to maintain a safe environment for them to pursue their education. School administrators and teachers function in loco parentis and are duty bound to address aggressive behavior in the school setting. The “addressing” of aggressive behavior includes addressing the harm caused to the offended student. It is through dialogical restorative justice conflict resolution processes that this is best and most effectively accomplished. Keeping dialogue open, respectful, and honest among participants of the process and through dialogue including questions and answers, understanding is achieved. This understanding encompasses the acknowledgement of the harm cause by the aggressive behavior, the desire to make amends, and through the agreement reached by the parties, a resolution that repairs the harm and brings the underlying issues of the conflict to an end.

Gadamer, through the “discipline of dialogue,” shows us how the power of language enables us to attain the highest Good which singularly yields happiness and well-being. Because language controls the process of understanding, we give up control of the “game” of seeking truth and allow truth to be discovered through questions and answers “playing themselves out in us” (Ambrosio 1987, 31). Understanding is what makes dialogue powerful.

Ambrosio succinctly submits that what Socrates taught Plato and what Gadamer learned from Plato is that truth emanates from conversation between persons. When we “follow the play” of the questions, “truth and freedom appropriate themselves to one
another.” It is then that we “care for the soul.” The power of language through dialogue in restorative justice practices is key, along with the empathy and compassion for the soul of others.

RELATIONSHIP OF LANGUAGE TO DIALOGUE AND UNDERSTANDING

As so deftly stated by Ross Mackenzie in the foreword to one of the many books authored by Ori Z. Soltes, Soltes emphasizes in his writings the importance of language in the search for truth. Soltes does this through his analysis of the main issues in the philosophy of contemporary language. Through the analysis of language, Soltes treats language as an inductive science (Soltes 2007, iii-iv). Soltes approaches language as a combination of dialogue and active listening to bolster the search for ontological bases in the search for knowledge and interpretation. Active listening results in a collection of factual truths that, when considered in their totality, lead to conflict resolution through understanding. In the Preface to his book, Soltes states that his study of language focuses on the role of Plato in developing consciousness among Greek thinkers of language as a catalyst for study, as well as Plato’s role in developing grammatical awareness and terminology (Soltes 2007, vi). It is the preciseness of language and its meaning that overcome misunderstanding and the exacerbation of disputes.

Central to Soltes’ research is the search for truth in all of Plato’s endeavors which requires language as essential to both dialogue and dialectic (Soltes 2007, xi). Soltes emphasizes that as for Plato and for any of us, the ability to think is interwoven with the ability to articulate our thoughts. Language “becomes the foundation of philosophical inquiry … and the pursuit of truth still requires language…” (Soltes 2007, xii). Language is foundational to dialogue in all restorative justice conflict resolution processes. Soltes
acknowledges the problem with definition of terms and the reliability of language as a medium of communication (Soltes 2007, 21). He recognizes the vital and critical importance of words in dialogue in reaching understanding and truth (Soltes 2007, 26-27). The questioning and answering component of dialogue can also enhance the understanding of one another’s views. It is through essential questioning and truthful responses that full understanding is achieved.

In using Plato’s *Cratylus* as a focus of his linguistic theories, Soltes expresses the ambiguities which arise from the use of terms and their differing definitions and meanings. This understanding is critical to dialogue, understanding, and the resolution of conflict. In addition to definitional ambiguities, Soltes points out that there are grammatical and syntactic ambiguities as well. These factors are crucial to any dialogue, but especially to restorative justice conflict resolution and, in particular, the Peacemaking process. The facilitator of any restorative justice conflict resolution process needs to be vigilant and step in when necessary where terms may have differing meanings to the stakeholders involved. This assures that all participants are understanding one another. Dialogue is foundational to the Peacemaking process in its search for truth, understanding, and empathy, and comprehension of one another’s verbal communication is essential to resolving conflict and in reaching consensus of the parties to a dispute through the resulting agreement.
THE NAVAJO NATION

The Navajo Nation is the largest Native American reservation in the United States encompassing 28,203 square miles of unremitting rural high desert in northeast Arizona, northwest New Mexico, and southern Utah. The distance and terrain alone provide a challenge to coordinate services to communities with a total population of approximately 250,000 Native Americans (Navajo Nation Judicial Branch 2009-2013, 2). Schools serving the students include 258 parochial, charter, and public reservation schools which are overseen by the Arizona, New Mexico, and Utah state education departments, the Bureau of Indian Affairs, private charter organizations, and the Diocese of Gallup, New Mexico (Navajo Nation Judicial Branch 2009-2013, 6).

Challenges facing the Navajo Nation are the same in all communities and include high unemployment, youth delinquencies, school truancy, and rising dropout rates. Traditional Navajo culture and teachings are becoming unknown to many youth who have succumbed to the problems of society at large. In response, the Peacemaker Youth Education and Apprentice Program turned instituted. One of its goals is to instill a deeper understanding, knowledge, and respect for Navajo culture and history in schools serving the youth of the Navajo Nation. An integral part of the Navajo culture is Peacemaking, a restorative justice practice, which has been a core element of the Indian justice systems for centuries (Navajo Nation Judicial Branch 2009-2013, 2, 5, 6). The restorative justice goals of Navajo Peacemaking are to achieve harmony through
community dialogue. These goals are a description of the Diné principle of balance or harmony that is applied in restorative justice and family group conferencing models used in some parts of the United States (Navajo Nation Judicial Branch 2009-2013, 12).

The Judicial Branch of the Navajo Nation is currently developing a Peacemaker Youth Education and Apprentice Program (“the Project”) for use in private and public schools operating within the Navajo Nation (“the Nation”). A goal of the Project is to develop a broad-based curriculum and train Peacemakers and Peacemaker youth apprentices to provide preventative and dispute resolution in school services with the intent to prevent delinquency, bullying, and curfew violations, and to intervene with at-risk and court-involved youth and lower drop-out rates (Navajo Nation Judicial Branch 2009-2013 MOU, 2-3). These are the same concerns confronting any school district nationwide.

The Navajo Peacemaking Division and school officials have independently come to the same conclusion as I have. Through the traditional Peacemaking process, school environments can be a transformational method to improving any educational system. Integrating Peacemaking into any school environment will provide techniques for addressing the daily concerns of teachers and students about preventing and resolving conflicts. The Peacemaker Program is missing the one key educational conduit necessary to teach children the values and principles of Peacemaking – a school district policy and curriculum. The Peacemaker Youth Education and Apprentice Program will train not only adults, but student Peacemakers in traditional Navajo Peacemaking by using it as a means to achieve bi-cultural skills in youth, as well as the ability to confront challenges of modern day society (Navajo Nation Judicial Branch 2009-2013 MOU, 2).
Navajo Peacemakers are civil leaders who are highly respected for their wisdom and to whom the community listens. Peacemakers are chosen annually by their own communities through a process known as “consensus governance.” Peacemakers come from professions of responsibility and are skilled counselors. They are also teachers of Navajo traditional customs. Although Peacemaking is not “controlled” by the Navajo court system, Peacemakers are considered officers of the court and receive regular training from teachers in traditional ways through the Peacemaking Program (Navajo Nation Judicial Branch 2009-2013, 24-25).

CORNSTALK DINÉ PHILOSOPHICAL TEACHING

Cornstalk Diné Philosophical Teaching, a teaching tool developed by the Judicial Branch of The Navajo Nation to assist Peacemakers, Liaisons, and Court Judges, shows a comparison between Western values, traditional Navajo values, and Diné conceptual learning. The “cornstalk” concept is a pedagogical method used in the teaching of the philosophical principles which form the basis of the Diné Way of Life in the school setting. Corn symbolizes edible seeds and growth in development of the plant. A correlation is made between corn and human growth and development. Just as corn needs to be nurtured, the cornstalk is an analogy for the nurtured growth and development of human life. Just as the growth and development of all persons requires light, air, earth, and water, so does the cornstalk (Begay 2011, 4).

Cornstalk Philosophy goals include instructing learners in the tradition of Diné life, values, and principles. The Peacemaking Program and the Judicial Court System are key topics in cornstalk education (Begay 2011, 2). The cornstalk is a sacred plant to Diné People with roots in the Emergence Stories as a mainstay of life. It has a religious
significance with its several varieties of yellow and white corn. Education is a critical component of a person’s growth for both Western Education and Diné Traditional Education. Appendix A provides a comparison of the similar and differing values of both educational experiences (Begay 2011, 16). Among the values paramount to Diné Traditional Education are wisdom, knowledge, parenthood, philosophy, moral ethics, kinship/clanship, adulthood, morals of adolescence, spirituality/prayer/reverence, respectability/appreciation, and humility/humbleness. According to The Cornstalk Philosophy, Western Education stresses core subject matter but similarly accentuates values common to Diné Traditional Education. These include attitude/behavior, the stages of mental and physical growth, and development of infancy, early childhood, and childhood, as well as moral ethics, manners, and health (Begay 2011, 3).

Cornstalk Philosophy maintains that while Western Education values manners, Diné Traditional Education stresses family, clan, kinship, respectability, and appreciation. These are the cornerstones of Peacemaking. Cornstalk Philosophy acknowledges that the values and principles of Peacemaking “fit perfectly” into Western philosophy of education with its emphasis on moral ethics, courtesy, attitude, and personal behavior. These two distinct cultures can readily combine the philosophy of the two pedagogical systems. Cornstalk Philosophy acknowledges further that the goals of bicultural teaching and disciplinary modes of Western and Diné cultures are definitely not incommensurable. Cornstalk educational methodology seeks to instill moral values and ethics in children from early childhood through adulthood. It is a holistic, life-long methodology that strives for positive growth at every stage in a person’s life. Its goals include harmony and mutual respect from kinship and clanship and to the wider social community.
Cornstalk educational philosophy aims to produce humility, discipline, and positive determination in Diné People in contemporary life (Begay 2011, 4). This philosophy of education is consistent with the values and goals of American education, especially those advocated by educators and philosophers urging moral reform. Through implementation of Diné Peacemaking in all schools, these mutual values can be reinforced and revitalized.

Spiritual principles and standards, which include sacred seasons, elements, colors, the time of day, minerals, plants, images, duties, class, and life-sustaining language, are the cornerstone of Diné traditional teaching (Begay 2011, 5). Traditional Diné teaching methodology regards education as a valued life-long learning process that begins at birth and continues through old age aimed. The development of skills and knowledge lead to “personal harmony, empowerment of the mind, and personal growth and development.” Discipline, self-respect and mutual respect are integral parts of this process (Begay 2011, 6). The Diné People recognize their own spatial existence in the universe, and they consider as “sacred the mountains and nature before acknowledging one’s self as a human being.” In contrast, the Diné People find Westerners to place a higher importance on wealth and prosperity than on achievement and education of one’s mind (Begay 2011, 10-12). The commonality of value placed by both cultures on moral ethics, courtesy, attitude, and behavior, however, provides the basis for implementation of the Peacemaking process in schools, regardless whether public, private, or Diné.

NAVAJO COURTS AND NAVAJO COMMON LAW

Traditional Navajo law is founded upon transcendent legal principles that foster harmony, peacefulness, solidarity, and kinship between all living beings and nature. The
Navajo courts were created in 1958, and Navajo common law became official court policy in the 1980s when Navajo traditional Peacemaking with its emphasis on Navajo normative precepts was reestablished (Austin 2009, 37). Although Anglo-American law constitutes a compelling part of the twenty-six titles that comprise the Navajo Nation Code and Regulations which serves as guidance for the departments of the Navajo government, Navajo common law is cited primarily in the written decisions of the Navajo Nation Courts (Austin 2009, 37).

For much of the twentieth century, the United States Federal government implemented policies through the Bureau of Indian Affairs, but these policies were abandoned in 1961. Approximately twenty years later, the Navajo Court judges endorsed the use of traditional laws and customs in the Navajo Nation courts. Navajo judges determined that the Navajo Nation was in need of an alternative to Western jurisprudence since Western adversarial and adjudicatory jurisprudence is not compatible with Navajo ways of life. Traditional Diné Peacemaking was the answer to this dilemma (Austin 2009, 38-39). In 1982, the Navajo judges revived traditional Peacemaking and the Navajo Peacemaking Court, now called the Navajo Peacemaking Division, which is autonomous under the Navajo court system. This traditional Diné dispute resolution system has always been and continues to be a significant component of Navajo justice (Austin 2009, 39).

Navajo higher law includes fundamental customs and traditions, rights established in the Treaty of 1868, the Navajo Bill of Rights, the Judicial Reform Act of 1985, as well as the Title II Amendments of 1989. The three doctrines of fundamental Diné customs and traditions known as hózhó, K’éí, and K’é, are not basic legal principles, and they are
not applied directly to legal questions in litigation. The three doctrines are similar to the Anglo concept of natural law (Austin 2009, 39-41). Fundamental Diné laws serve as guidance to the Navajo courts and leaders of the Navajo Nation as decisions, laws, and policies are enacted. The fundamental laws have a firm grounding in Navajo creation scripture and Journey Narratives, which are sacred to the Navajo (Austin 2009, 42).

Diné terms and doctrines are significant as they relate to the balance and harmony in Navajo life (Appendix B). Hózhó, the first of the three doctrines, represents peace, harmony, and balance where all things are in their proper place and functioning harmoniously. Hózhó is best illustrated by Peacemaking. Harmony is critical to Navajo life since the Navajo believe that everything in the universe is interrelated, interconnected, and interdependent. The second doctrine, K’é, represents kinship and solidarity, and the third doctrine, K’éi, represents the clan system which is so very important to the Navajo People (Austin 2009, 53).

The hózhó doctrine is pervasive by the very nature of the term, and this all-encompassing aspect makes it difficult to define accurately. This normative doctrine includes the values of harmony, balance, beauty, goodness, blessedness, perfection, ideal, and other positive attributes. Right and wrong are expressed by the terms hózhó (good) and hóchxó (bad), the wellspring of Navajo normative precepts (Austin 2009, 59) and form a foundation of the Peacemaking process. Hózhó best describes the Navajo goal to live life in harmony and in solidarity with kin. Hózhó organizes and guides a person’s thinking, speaking, behavior, and interactions with others and the natural world on a daily basis. It serves as a guide toward the ultimate good of living in perfect harmony with one another (Austin 2009, 54-55).
Navajo jurisprudence can besummarily described as follows:

**NAVAJO JUSTICE**

\[ \text{hózhó} \rightarrow \text{hóchxó} \rightarrow \text{hózhó} \]

harmony, balance, peace disharmony harmony restored

The Navajo jurisprudence model is used not just to resolve legal issues, but also to restore parties to harmony (Austin 2009, 62-63). It is a complete and total resolution to violations which lead to conflict, underlying causes, and resulting harm. When Navajo Judges and Peacemakers use the Navajo jurisprudence model, dispute resolution becomes a traditional Navajo justice ceremony (Austin 2009, 62-63).

The case captioned *Navajo Nation v. Kelly* best exemplifies the procedure used to restore harmony among the Navajo People and the entire community (Austin 2009, 63). The traditional Diné approach of dispute resolution morphs into the Peacemaking Program. Peacemaking is based upon participation by all who are affected by wrongful acts, both in the criminal and civil venues. Consensus or agreement is essential to dispute resolution, as is complete voluntary participation. Resolution takes place when the participants give “their sacred word” that they have reached a decision and will abide by it. It is the resolution reached through voluntariness and consensus that restores harmony (*bee hózhó náhodoodleel*). The finality to the Peacemaking process is the agreement by the parties that all issues and concerns have been “comprehensively resolved in the agreement” (*Navajo Nation v. Kelly* 2006).

The implementation and practice of Peacemaking by the Navajo courts demonstrates that conflict must be addressed in its totality and not piecemeal. The conflict needs to be resolved, but can only be achieved when harmony has been restored
among the parties (stakeholders) and their communities. The use of Peacemaking recognizes that the harm caused by wrongdoing affects more than just the individual directly involved. It impacts the overall community. The harm caused by wrongdoing must be transformed into harmony among all those affected by the wrongdoing. Peacemaking is intended to resolve the underlying reason for a conflict and also its wide-reaching effects which can be the underlying reason for continuing or new conflict among not only the specific parties, but the community affected.

Restorative justice Peacemaking is a conflict resolution process. Conflict resolution and problem-solving are ways of life with the Navajo. This method is embedded in the Navajo Creation Scripture and Journey Narratives. These narratives are the Navajo People’s oral history beginning with the primeval universe. The ultimate goal of the traditional Navajo dispute resolution Peacemaking process is to make things right and to return disputants to harmony with one another, their families, and their communities. A state of hózhó exists when individuals are right with each other and with their surroundings. Total transformation from disharmony to harmony is a requirement. It is all about maintaining positive, harmonious relationships, a deeply embedded Navajo value. The traditional Navajo doctrine of hózhó brings finality to a dispute (Austin 2009, 66, 69). Peacemaking encompasses the deeply held values and norms of the Navajo. These values, however, should not be unique to the Navajo, but should be an integral part of Anglo values and norms, as well. For certain, these values and norms should be an integral part of every school community.

Dialogue is a critical component of the traditional Navajo civil procedure of “talking things out” in order to identify the underlying root causes of conflict issues, as
well as a means to alleviate tensions and repair relationships through apology and forgiveness (Austin 2009, 69-70). When conflicts are settled through the “talking things out” process, it is expected that the resolution is final and the matter remains settled (Austin 2009, 70). When the same issues arise again after the Peacemaking process reaches resolution, it is considered to be highly disrespectful to all participants in the Peacemaking session. This doctrine of finality is critical to the Peacemaking process and dispute resolution. The foundation of the process centers upon apology, forgiveness, reparations and amends, and the repair of shattered relationships (Austin 2009, 70). Diné Peacemaking is the ultimate restorative justice conflict resolution process. Its foundational values are respect for one another, honesty, personal, family, and community harmony, balance, peace, repair, amends, and forgiveness. It is a process where the use of the term “closure” is not a cliché.

In Manning v. Abeita, the Navajo Supreme Court noted that since the Navajo courts were established, decades of efforts have gone into explaining and incorporating Diné tradition and custom into the Navajo court processes. The Navajo Supreme Court, citing the 1991 Navajo Nation Code of Judicial Conduct, stated:

While the Navajo Nation courts generally follow the state model of justice, i.e. the adjudication method (where a judge decides the comparative merits of the arguments of two or more parties), that system is alien to the Navajo common law. Traditional Navajo justice methods rely upon adjusting the differences of equals, in mediation and the free discussion of problems, to resolve them by consent. It does not rely upon a superior decision-maker, who imposes decisions upon others. It does not use coercion or force, and is instead based upon an agreed need for harmony in the community. (Manning v. Abeita 2011)
In *Manning v. Abeita*, the Navajo Supreme Court, citing *Navajo Nation v. Platero*, noted that the court has stated:

Since time immemorial the Navajo people have applied their customs and traditions in dispute resolution. Even with the Navajo Court of Indian Offenses, the Navajo judges of that court, under often adverse circumstances, continued to apply Navajo customs and traditions in cases brought before them. Navajo courts of today are no exception, they apply customs and traditions as the laws of preference. (*Manning v. Abeita 2011; Navajo Nation v. Platero 1991*)

In the school setting, it is logical that Peacemaking on the same issue should occur only once, since finality is expected. If the same wrongdoing occurs a second time, there has been a violation of the process and especially of mutual respect. At that point, traditional school discipline may be the response depending on the individual facts of each transgression.

### DINÉ PEACEMAKING: GENERAL PRINCIPLES AND GUIDELINES

Central to Navajo or Diné Peacemaking are harmony of self and in relations with others, peace, respect, solidarity, and repair of harm resulting from wrongdoing. Participation in Navajo Peacemaking is voluntary on the part of all participants. It is a horizontal decision-making process where all are participants are on equal footing. Understanding through respectful and open dialogue, or “talking things out,” is essential to reaching resolution and agreement by consent. Total transformation from disharmony to harmony is an essential component of the process.

A Peacemaker who is respected in the community is selected to facilitate a Peacemaking session. The Peacemaker does not in any manner control the session but serves as a facilitator who sets the stage for civil and respectful dialogue in the Invocation where the rudiments of the process are explained to the participants. Confidentiality of
the issues discussed in the session is of vital importance and binds all participants. Storytelling as an integral part of Peacemaking is a different kind of listening. It relaxes the participants and sets the tone for Peacemaking with its emphasis on moral lessons applicable to the particular dispute in issue.

The concept of Peacemaking ("H0zh=ji K'4 N1h0odlee") goes back to the beginning of time ("a time immemorial"). Its foundation is the journey narrative of the fundamental laws of Diné of the Navajo Nation. Diné tradition recounts the course of the journey of the Holy People through the four worlds and the problems which confronted them on this journey. Those problems had to be resolved before the journey could continue. Remedies, including the use of prayers, songs, offerings, and dialogue, were incorporated into Diné Traditional Ceremonies, including the Healing Ceremony. The dialogue or “talking” remedy morphed into the Diné Peacemaking process.

The Diné traditional dispute resolution process ("H0zh = = j7 nahat’l") is loosely translated to mean a reparation or mending of controversies resolved through reaching harmony of individuals. The Diné Peacemaking of today has been adapted from the traditional Peacemaking process which is said to be approximately four hundred years old and preceded the Navajo court system.

Diné Peacemaking is not mediation or arbitration, but a horizontal decision-making process. It is the foundation of modern restorative justice practices and conflict resolution. It fosters and emphasizes the respect for participants in Peacemaking through dialogue which leads to understanding. This focus makes it a unique and effective process. Participation in the Peacemaking process is entirely voluntary. Participants or parties are invited to attend a session to seek resolutions to disputes. Before the process
begins, voluntariness of all participants or parties is essential. In the Navajo Nation, the Peacemaking system utilizes the Navajo Nation Council’s enacted law (“Fundamental Law of the Diné”), which has as its foundation the teaching, concepts, principles, and rules of the Holy People (Navajo Supreme Court 2011, 1:A).

Peacemaking stresses respect, responsibility, and good relationships by encouraging horizontal problem solving through open communication. Rather than focusing on the individual who acts offensively, Peacemaking instead focuses on acts and resulting consequences. All parties are on equal footing. Instead of criticism or punishment, Peacemaking substitutes healing. It is focused on achieving balance and harmony through healing the mind, body, and spirit rather than use of power, force, and punishment. Participants in the Peacemaking process are encouraged to take ownership of their problems and achieve healthy relationships. Peacemakers who conduct the sessions hold positions of respect and influence and possess exemplary leadership skills (Navajo Supreme Court 2011, 1:B).

The cornerstone of Diné Peacemaking is the fundamental concept of K’é (universal relations) and the use of the “K’4 Bee i”, which loosely translated means “working together through relations.” K’é is based on respect, relationships, and responsibility and utilizes good communication to achieve peace of mind for self and others (Navajo Supreme Court 2011, 1:C). The importance of dialogue in the Peacemaking process cannot be overemphasized.

While Peacemaking is not mediation, arbitration, or an alternate dispute resolution forum, it also is not an adjudicatory or adversarial process. Peacemaking is intended to promote the principles of the Diné traditions and is an alternative to the court process. A
Peacemaker who serves as the facilitator of the process does not function as an adjudicator and does not sit in judgment of the disputing parties. The process is flexible, as opposed to formal rules which govern litigation in the courts (Navajo Supreme Court 2011, 1:D). Peacemaking, being informal, flexible, and free of rules and restrictions, encourages resolution based on consensus of participants who engage in the process voluntarily. The process retains the attributes of Diné traditionally structured dispute resolution, with its foundations based on harmony, equality, justice, and fair play (Navajo Supreme Court 2011, 1:E). The underlying goal of Peacemaking is to maintain an informal, flexible process which is not equivalent to a court process.

The Guidelines were not originally intended to be used in the school setting, but Peacemaking is readily adoptable to the educational environment. School code violations which lend themselves to Peacemaking include bullying, harassment, threats, fights, name-calling, theft, and Internet and social media harassment.

Peacemaking uses the term “party” and “participant” rather than offender or offended to further the goal of keeping all on equal footing during the Peacemaking process. The party who commences the Peacemaking process is known as the Initiating Party, and the party asked to participate in the session and whose substantial interests will be affected by any outcome, resolution, or agreement involving the controversy is known as the Responding Party. Any person with an indirect or related interest in the outcome of the Peacemaking sessions is known as an Other Interest Person. Family members or relatives of the main parties are included in this term. No attorney or “legal practitioner” is allowed to be a part of any Peacemaking session unless his/her personal, family, or business interests are the subject matter of a Peacemaking session. An attorney
or legal practitioner may always participate as an Initiating Party, Responding Party, or Other Interested Person (Navajo Supreme Court 2011, 2:1 A-D). The Peacemaker serves as the facilitator whose goal is to reach an Agreement to resolve conflict.

The process known as the *Peacemaking Session* begins when a person submits a written request for Peacemaking or when a governmental or private agency or entity makes a referral to Peacemaking. Since Peacemaking is a division of the Navajo Court system, although not controlled by the Court, a Court may order referral to Peacemaking or to a diversion program in a criminal, civil, or juvenile proceeding. Upon receipt of the written request by a party for Peacemaking, a Peacemaker liaison or other designated person may be appointed to process the request by the Peacemaking Division. The completed Diné Peacemaking request form includes data such as the names, clans, mailing addresses, and telephone numbers (if any) of all parties and other interested persons to the controversy, as well as a brief description of the controversy or conflict and relief desired. Parties may also be required to bring documents, data, and information to a Peacemaking session. Other information requested includes the name of a preferred Peacemaker, the preferred location of the sessions, and whether the Initiating Party will notify all parties (Navajo Supreme Court 2011, 2:2 C). A Peacemaker is selected for qualities of fairness, wisdom, respect, and planning ability and also has a reputation in the community for integrity, honesty, and humanity (Navajo Supreme Court 2011, 2:7).

Whether a subject matter or conflict advances to Peacemaking depends upon the voluntary, mutual agreement of the parties to the dispute (Navajo Supreme Court 2011, 2:3). All information and discussions in a session shall remain strictly confidential and
shall not be disclosed unless all participants in the session agree (Navajo Supreme Court 2011, 2:4). In addition to resolution of conflict, the healing of relationships and individuals is a primary goal.

The Diné Peacemaking process sets forth the authority, duties, and responsibilities of a Peacemaker. The duties include opening a Peacemaking session at a place, date, and time most convenient to the parties and other participants. As many sessions as deemed necessary by the Peacemaker may be held to address the controversy and reach a complete resolution. Above all, a Peacemaker must promote fairness and harmony in sessions and ensure courtesy and respect for one another by all participants (Navajo Supreme Court 2011, 2:9 B, 1-2).

The Diné Peacemaking process provides that Diné services shall be made available to all who desire to resolve conflicts in a non-adversarial and harmonious manner. Established principles guide a Peacemaker’s facilitation of Peacemaking sessions:

- A Peacemaker is expected to maintain high standards of personal conduct and be free of conduct that would bring the character or reputation of the Peacemaker into dispute.

- A Peacemaker should be committed to serving the best interests of all participating parties in the Peacemaking sessions.

- A Peacemaker is expected to maintain respect for all participants and foster mutual respect among the parties.

- A Peacemaker should never coerce or impose personal beliefs, values, or preferences upon the parties, but seek common ground upon which a resolution can be founded.

- A Peacemaker should respect the privacy of all parties and keep confidential all information discussed in Peacemaking sessions.
A Peacemaker should strive for further education and expansion of personal knowledge and skills.

Peacemakers may educate and counsel on traditions and culture ((Navajo Supreme Court 2011, 2:9 A, 1-7).

A Code of Ethics is imposed upon all Peacemakers who cannot ignore responsibilities to others, cannot abuse the process or individuals, nor attempt to influence to force an outcome. Coercion is absent from the Peacemaking process. A Peacemaker shall always uphold personal integrity and the integrity of the courts, as well as the Peacemaking program. All duties of the Peacemaker shall be performed in a diligent manner using the traditional form of K'é (kinship unity through positive values). A Peacemaker is required to comply with ethical proscription and to refrain from all activities or circumstances which may result in an actual conflict or the appearance of one. Association with parties to the Peacemaking process facilitated by a Peacemaker is prohibited, and a Peacemaker shall not communicate separately with individuals or groups who are part of a conflict without the knowledge and express consent of all parties. Ex parté (one party only participating) proceedings are strictly prohibited. All established protocols of the Peacemaking process are mandatory (Navajo Supreme Court 2011, 2:10 A-F).

The Diné Peacemaking process, although flexible in the dialogue stage of a Peacemaking session, has established order or steps which are to be followed in a Peacemaking session. A prayer may be said to open the session if the parties do not disagree. An Invocation by the Peacemaker explains the process and begins the discussion in the Peacemaking session. The Peacemaker then proceeds to permit opening remarks by each party to include a statement of the conflict and the desired relief.
The Peacemaker should establish that the participants understand the process, the controversy in issue, the underlying cause of the problem, and the desired relief by asking questions to clarify points for discussion. This dialogue helps the Peacemaker select ways to reach resolution. Once the Peacemaker decides that the controversy and desired relief have been sufficiently stated, open and respectful discussion begins with all participants permitted to join the discussion in accordance with the cannons of ethical conduct to be followed during the session.

The Peacemaker must assure that sessions remain informal, harmonious, and respectful and maintain proper decorum and control. Sessions are to be free of adversity and hostility, and participants must be courteous and respectful toward one another. If any participant’s conduct violates the spirit of Navajo Peacemaking and the cannons of conduct, the Peacemaker may expel an individual from the session (Navajo Supreme Court 2011, 2:11 B-C, 1-3).

The Peacemaker ensures that the principal parties are given full opportunity to address comments from the other parties and other interested persons in a non-adversarial and respectful manner. The session is not an adversarial proceeding. It may be necessary to continue a session on a second day to ensure the opportunity for all parties to express their position. The dialogue continues until all parties have been provided an opportunity to speak. Once discussions are complete, the Peacemaker then moves the session toward a resolution or Agreement. Discussions focusing on remedies proceed in the same manner as discussions of the controversy. Once all discussions centered upon the conflict and the remedy are complete, the Peacemaker directs the dialogue toward a specific resolution, once again permitting full opportunity for discussion and input. The
Peacemaker does not coerce, but guides the parties toward an Agreement. Peacemaking is a horizontal decision-making process. If an Agreement is reached, the Peacemaker provides a full summary of its content and then reduces it immediately to writing or may defer the written Agreement for no longer than ten days. The principal parties acknowledge the Agreement by their signature on the document. A closing prayer may conclude the session (Navajo Supreme Court 2011, 2:11 A, 1-10).

Any Agreement reached in a Peacemaking session is a result of consensus and is completely voluntary. It is emphasized in the Peacemaking Guidelines that a Peacemaking Agreement is not a judgment. Since all Peacemaking sessions are confidential, no fact, statement, disclosure, or other admission of any kind made by the parties in the Peacemaking session may be disclosed or used as evidence in any forum. Peacemakers and participants shall have the “deliberative privilege” which prevents such person from being compelled to disclose the process used in arriving at a decision or Agreement in Peacemaking (Navajo Supreme Court 2011, 2:15 A-C).

Should any aspect of the Peacemaking Guidelines be violated, the first and preferred option is to use the Peacemaking process to resolve the violation. Alternatives may include administrative remedies or the court process. Since violations of the Peacemaking Guidelines may also be a violation of Navajo Nation law, punishment may include a fine, incarceration, exclusion from the Navajo Nation, public censure, removal or other sanctions (Navajo Supreme Court 2011, 2:15 D).

Restorative justice Diné Peacemaking in the schools as an alternative to traditional punitive school discipline can be used for all school discipline code violations or for those violations which are not also criminal acts which might nonetheless lead to
referral to the juvenile justice system. Special concern must be given to the student’s Fifth Amendment right against self-incrimination. By nature of the restorative justice Diné Peacemaking process, openness and dialogue require truthfulness and completeness, as well as acknowledgement of harm caused to others.

In violations where law enforcement may become involved, restorative justice Diné Peacemaking is also very valuable as a re-entry process after the student has completed the judicial process. School officials can work with juvenile court probation officers to assist in the re-entry of the juvenile to the school environment.

NAVAJO PEACEMAKING AND TRADITIONAL SCHOOL DISCIPLINE: RESOLVING CONFLICTS IN THE SCHOOLS

Traditional school discipline is punitive in nature and does not generally address the underlying causes of a misbehavior/code of conduct violation or the resultant harm to the victim of a disciplinary code violation. Typically, the traditional approach to school discipline involves identifying the behavioral code which has been violated, revealing the identity of the violator, and implementing resultant punishment which may include detention or in-school or out-of-school suspension or expulsion depending on the seriousness of the violation or repetitive violations of the same or numerous codes of conduct. The underlying conflict may never be addressed or resolved, leaving the repetition of the unacceptable behavior more likely.

Restorative justice Peacemaking, however, aims to resolve not only the conflict itself, but the underlying causes which led to a dispute or prohibited behavior. Through voluntary participation in a dialogue-centered process, restorative justice Peacemaking aims to restore relationships, repair harm, and transform misbehavior to civility through
discussion, understanding, acceptance of responsibility for one’s actions, and respect for self and others.

Diné Peacemaking is not peer mediation as many of the conflict resolution methods used in schools tend to be. It is an uncomplicated process that is readily adaptable to schools. The facilitator of a Navajo Peacemaking session in the schools ideally would be either a school psychologist or guidance counselor whose job duties do not involve adjudication of traditional school disciplinary matters resulting in suspension or expulsion. Use of the Peacemaking process throughout a school district as adopted by board of education policy rather than solely upon teacher discretion in classroom situations will have a district-wide and uniform effect. It will serve to develop and maintain a peaceful and civil educational environment centered upon mutual respect and understanding through respectful dialogue and open discussion. The parties to the conflict bring about resolution under the direction of the facilitator. Just as student disciplinary measures in the schools are confidential, so are the Diné Peacemaking sessions and the information revealed.

The traditional public school disciplinary procedure for unacceptable and proscribed behaviors requires due process of notice and hearing before discipline may be imposed (Goss v. Lopez 1975) or any additional procedural due process safeguards ensured by school policy or codes of conduct or applicable state laws, which generally include the right of appeal. The proceedings are of a quasi-judicial nature since public education is a state right that cannot be denied or taken away without constitutional safeguards imposed by the Fourteenth Amendment to the United States Constitution.
Private sector schools are bound by the terms of their student handbook and school policies. At the very least, a student who is about to be suspended or expelled from a non-public school is entitled to the reason for intended disciplinary action and an opportunity to refute the charges.

In both public and non-public school disciplinary proceedings, generally, the victim of any disciplinary code violation is seldom a part of the process. Hearsay is permitted in such proceedings, and school administrators are not required under most state laws involving public sector schools to reveal the identity of the sources of their information. As a result, traditional school disciplinary procedures do not address the underlying causes of conflict and do not address the needs of the offended or the offender.

In Peacemaking, the parties are voluntarily present together in the process and individually express their “side of the story” on the conflict or confrontation through respectful and open dialogue. This process is, therefore, especially beneficial in matters concerning theft, vandalism, aggressive behavior, bullying, harassment, and disagreements which lead to physical conflict.

CASE STUDY APPROACH AND DINÉ PEACEMAKING

The case study research method is used in the final segment of this Thesis on Diné Peacemaking. This research method is not an empirical or evidence-based method and has only somewhat recently come into use. This particular research method was selected because scientific methods are not considered to be adequate in understanding how people behave. Although questionnaires are not usually part of case study research (Gillham 2000, 59), that approach has been used here because of the strict confidentiality of a Peacemaking
The case study method is the appropriate method that will provide a truer picture of human conflict resolution (Gillham 2000, 1).

The foundational principles of the case study method focus upon a human activity that is imbedded in the “real world” in the “here-and-now context” of the activity (Gillham 2000, 11). This method can focus on a single individual, as I have chosen. Selection of key persons in authority is vital to the collection of valid data (Gillham 2000, 62). Open questions and appropriate probing with complete respect for the culture is critical as well. An individual interview is preferable for data collection rather than group interviews for reason that group interviews can distort the data collection (Gillham 2000, 75). As a result, the case study research method is best suited to the traditional Diné Peacemaking method of restorative justice because of its centuries-old use with both individuals and multiple parties to a conflict.

The case study method format involves answers to specific research questions which seek a wide scope of different kinds of data which must be abstracted and collated to ascertain the best possible answers to the research inquiry. Through the case study method, the Navajo Peacemaking process is explored from its beginning and continuous use for centuries. The collected data explains the theory of how this successful, effective conflict resolution process works.

The case study approach involves prepared questions submitted to a key individual knowledgeable about Diné Peacemaking as a restorative justice conflict resolution process. The case study involved both oral and written responses to a detailed questionnaire. Attorney Josephine Foo was selected. Attorney Foo of the Office of the Chief Justice of the Navajo Nation for the Navajo Supreme Court is the author of a grant
application to the United States Department of Justice, Washington, D.C. for federal funding for the Peacemaker Youth Education and Apprentice Program. Attorney Foo has been employed by the Navajo Supreme Court of the Navajo Nation for twelve years. Her position duties involve providing legal advice to the Navajo Peacemaking Program in Window Rock, Arizona. The objective of the Peacemaking Program is to provide services to at-risk students and juveniles age eleven to seventeen and their families with a focus on the reduction of truancy, drop-out rates, and recidivism. The Program engages families and aims to empower youth to be problem solvers using traditional Navajo methods.

In response to my questionnaire (Appendix G), Ms. Foo explains the origin of Diné Peacemaking, the process, its values, and its goals. In addition, I personally have observed the Navajo culture. I spent two week with the director, co-director, and researcher for the Peacemaking Division of the Navajo Nation as we traveled through Utah, Colorado, Arizona, and New Mexico where the Navajo Nation Reservation is located. During that time, I met with school officials of the school districts where the children of the Navajo Nation attend. I also addressed the Navajo Judicial Conference in Phoenix as a closing speaker to its General Assembly. My presentation addressed Diné Peacemaking in pretrial civil settlement conferencing and the use of Community Peacemakers and Peacemaking Liaisons in civil litigation. The focus was on the traditional values of Peacemaking and the Peacemaking process as a means to resolving civil litigation prior to trial.

The questions I prepared for Attorney Foo were predominately open-ended except for a few, which were geared specifically to distinguish Diné Peacemaking from conflict
resolution procedures of other indigenous communities. Over the course of nine months, through frequent and lengthy telephone conferences and via Skype, Ms. Foo and I discussed in detail the Peacemaking process. A full explanation of the purpose and the intended use of the interview were explained.

INTERVIEW SUMMARY OF ATTORNEY JOSEPHINE Foo

Navajo Nation Supreme Court Associate Attorney, Josephine Foo, Office of the Chief Justice, Navajo Nation, states that Peacemakers have been a part of the Navajo Nation justice system since time immemorial. Ms. Foo has attended Peacemaker training sessions and serves as an advisor concerning dispute resolution methods. Peacemakers serve as guides in the traditional dispute resolution process.

The following summary includes, in part, the responses Attorney Foo provided to my questionnaire, as well as my personal observations from the time I spent with the staff of the Peacemaking Division and Peacemakers and Liaisons of the Navajo Nation.

HISTORY OF PEACEMAKING

Peacemaking has been with the Diné since the Emergence. The sessions begin with oral stories re-told to fit the problems presented. The oral traditions convey the most cherished values of the Navajo and contribute to the perpetuation of the Navajo world. In the mainstream of life, the Navajo consider not only the content of the oral traditions, but also the storytelling. Embedded within the Navajo oral traditions and stories are teachings, themes, and motifs that help define and render the Navajo world meaningful. The collective memory of the Navajo through the voice of the storyteller reaches far into the past.
By respecting the full cultural context of a story, more is known and understood of the stream of life. Isolated from its cultural setting, the text of a story alone may not say all that should be known. A text may outline the foundation but cannot always speak fully for the spectrum of cultural wisdom intended to be conveyed. Diné, as a people and community, are manifested in Navajo oral tradition. The significance of the oral story is found not only in what is conveyed, the themes, and motifs, but in the proper manner of how it is told aloud. It is told for the proper reason and circumstances by one who has the right and privilege to tell, and it is told to the intended audience.

The story is told in the manner that conveys traditional wisdom that connects the People and the Earth. The story is chosen for the reason, the circumstance, the audience, and the purpose and told to be remembered. As a result, there are repetitions and rhythms, and there is art and sacredness in the telling.

Diné Peacemaking is one of the most renowned restorative justice programs worldwide. It is neither mediation nor an alternative dispute resolution, but has been called a “horizontal system of justice wherein all participants are treated as equals.” Its purpose is to pursue ongoing relationships and to restore harmony among involved parties. The goals and objectives of the Peacemaking process include repairing harm, forgiveness, making amends, harmony, and restoration of relationships. There is no coercion, and there are no “sides.” No participant is labeled as an offender or victim or as a plaintiff or defendant. The Peacemaking process is built upon harmony and mutual respect. Everyone who has an interest and who wishes to “talk things out” is welcome.

The basis and focus of Peacemaking are the Navajo traditional teachings. In Peacemaking, there is no division of spaces between the sacred and the non-sacred. The
underlying beliefs and values of Peacemaking are concerned with the here and now and with keeping the world in balance. Not only human beings, but all things in life are connected and interact according to a natural order. The Navajo not only observe this connection, but live in accordance with it based on a premise similar to the law and rules that are learned in modern society.

The Navajo Nation courts generally follow the state and federal models of justice which involves the adjudication method where a judge decides the comparative merits of the arguments of two or more parties. However, that system is alien to the Navajo common law. Traditional Navajo justice methods rely upon adjusting the differences of equals in the free discussion of problems and to resolve them by consent. Peacemaking does not rely upon a superior decision-maker who imposes decisions upon others. Instead, it is based upon an agreed need for harmony in the community.

Dialogue and understanding are all important in the Peacemaking process. The Peacemaker-facilitator uncovers the underlying causes of a dispute or conflict through “talking it out.” This method is used to probe deeper when necessary during the Peacemaking session. The Peacemaker, in uncovering the causes of the dispute, does not add coercion and is not forceful. The sessions are truly a horizontal decision-making process. Ordinarily, all participants in a Peacemaking session know one another before the session begins.

The Peacemaking session does not begin or end with a prayer. The Peacemaker’s Invocation is given to make sure participants know they are in a sacred space and are accountable for all thoughts and words. In the school setting, there would be no need for a moment of silence before beginning the Peacemaking session. The Invocation or
introductory remarks by the facilitator in a school session are similar to a bailiff concerning a court. Participants are simply reminded where they are and what they are doing. Participants are reminded they must rise to higher levels of behavior while engaged in the Peacemaking process.

Peacemaking is simple in method but complex in behavioral requirements. Values which are important to the Peacemaking process include increased empathy for others, mutual respect, harmony, and accountability for one’s actions and behavior. Peacemaking is both a process and an institution. Issues common to Peacemaking sessions include domestic violence, theft, fights, arguments/disputes, and harassment. The Peacemaking process is “user friendly” for both adults and juveniles. However, juveniles may need some additional encouragement to decide for themselves whether to participate. Peacemaking is presently being used in after-school workshops in selected schools in connection with the Peacemaker Youth Education and Apprentice Project.

Voluntariness is a prerequisite on the part of all participants of a Peacemaking session. The victim and offender are always present at the same time. There is no passing of a “talking stick,” and this horizontal decision-making process does not refer to the session as “Circles.” Participants in Peacemaking sessions need not share the same values, but they must have an understanding for the requirements of harmony, relationship, and mutual respect. Forgiveness is not a term used in Peacemaking.

No participant in a Peacemaking session is required to speak. Its method of discussion and dialogue is simple, and there are no predictable results. Each Peacemaking session is unique to the parties and the issues to be resolved. Peacemaking successes are determined and measured by the parties themselves. Customarily, there are
no observers to a Peacemaking session. All participants in Peacemaking sessions are morally bound by confidentiality concerning the discussions which occur in the sessions. If this confidentiality is broken, the participants are subject to disharmony and loss of respect.

Agreements are never coerced or required, and if a session of Peacemaking is “unsuccessful,” multiple attempts at Peacemaking may be made if the parties agree. Once an Agreement is reached, however, the terms are final. A “successful” outcome to a Peacemaking session would be a return to harmony, relationships, and mutual respect by the parties.

The Peacemaker opens a Peacemaking session with an Invocation designating the sacredness of the space and provides guidance as to what will happen during the session. Peacemakers are the institutional keepers of the methods and principles of original Diné dispute resolution, culture, and tradition in the Navajo justice system. Lawyers are not permitted in Peacemaking sessions.

There are currently 242 certified Peacemakers in 110 Chapters within the Navajo Nation. The Peacemaking Program, which is independent of the Navajo Supreme Court, provides Peacemakers with instructional support. Certified Peacemakers, however, are used by court litigation, and the format for the participants in such sessions is the same format used for traditional Peacemaking sessions. In addition to Peacemakers, Peacemaker Liaisons are located in each District Court. The Liaisons match disputants to a Peacemaker accepted by all the parties.

A Peacemaker is a principled leader who guides the parties to a resolution decided upon by the participants themselves. The Peacemaker also provides teachings through
stories applied to the issues addressed in the session. Peacemakers train others to be Peacemakers. A Peacemaker must possess principled leadership qualities, as well as personal aspects of harmony, relationship, mutual respect, and knowledge of storytelling.

The Navajo Nation Council has not ruled to exclude any matter from Peacemaking. Criminal convictions and sentencing, however, by their nature are not suitable issues for Peacemaking sessions. Also not suitable for Peacemaking sessions are matters which the parties do not agree should proceed to Peacemaking.

In 2000, the Navajo Nation Council began requiring Peacemakers to be involved in determining nályééh (restitution, reparation, or atonement for injury) in criminal cases. In 2002, the Traditional Laws of the Diné was codified. It requires that the Navajo justice system, which comprises both courts and Peacemaking, move closer to the mainstream of Navajo life. In 2003, Peacemakers were further directed by the Navajo Nation Council to offer traditional counseling, education, and advice to judges, client of the court, and the general public.

Recently, the Navajo Supreme Court made it clear that Peacemaking must be part of a civil proceeding in the pretrial phase. The Council has also provided that recommendations for sentencing can be obtained through Peacemaking and can also be provided to a trial judge. Peacemaking settlements sometime require court orders so as to be given proper deference and affect. At this point, the Peacemaking Guidelines are very relevant.

The use of Peacemaking in the school setting can uniquely address the totality of any wrongdoing and can resolve the underlying causes of a dispute, as well as repair the harm resulting from wrongdoing. Peacemaking can be used as an alternative to
traditional school codes of discipline, in conjunction with traditional disciplinary methods of detention, suspension, and expulsion, or at the time of re-entry following suspension or expulsion to monitor the concerns of recidivism or exclusion. If Peacemaking is unsuccessful in a disciplinary matter, then implementation of traditional school punitive discipline is always possible.

Through restorative justice Diné Peacemaking, offending students are provided with an opportunity to take responsibility for their actions, realize the harm caused, and acknowledge the need to change their behavior. The Diné Peacemaking process, being a horizontal decision-making format, requires the participants themselves to determine the contents and issues in an agreement. The Peacemaker or facilitator in the Diné Peacemaking process keeps the discussion open and respectful and may also ask questions to assist in defining the issue under discussion and the underlying causes of a conflict as the participants, the offending, and the offended work toward resolution.

Although some authors on restorative justice use the term “circle process” as a peacemaking process for resolving issues, there is no specific mention of the traditional conflict resolution process of Navajo Peacemaking which has used horizontal decision making for centuries. The term “circle,” however, is not used by the Navajo. The Navajo historically and continuing today use the geometric circle as a central focus. The traditional Navajo home, the hogan, is circular in shape with the heating source in the center of the hogan. The Navajo family is the center of society, and children are the center of the family. A round basket with twelve coils which converge in the center is used as a metaphor demonstrating broad, non-specific comprehension at the outer edge of the coils, and as the coils join in the center, the wisdom and knowledge begin to emerge.
As one gets closer to the center of the circle, wisdom and knowledge becomes more explicit. Diné Peacemaking as a horizontal decision-making process brings the equality of all to full circle.

The circle process described by authors who use the term is a structured one, as opposed to Diné Peacemaking which is flexible to meet the needs of the parties in each Peacemaking session. The Peacemaker serves as the facilitator and encourages an unstructured and flexible process of open, spontaneous dialogue and understanding with the only constraints being respect, openness, and non-accusatory dialogue.

The major goals of Navajo Peacemaking include addressing harm caused by wrongdoing, as well as the transformation of uncivil behavior to civility. In addition to transforming behavior, the Peacemaking process also aims to build and re-build relationships through a simple, but powerful and effective process. Navajo Peacemaking is not mediation nor is it negotiation. It is a simple, flexible process wherein the parties to a dispute are in control of their own decision making. In the school community, the process includes stakeholder who not only include the offending and offended students, but parents/guardians and any others affected by the wrongdoing. Its goals of respect, dignity, and repairing harm are truly restorative.

Voluntariness and confidentiality are core components of Diné Peacemaking. Since restorative justice practices in general rarely address confidentiality as does Diné Peacemaking, it is critical that the right against self-incrimination always be considered.

The Peacemaking process begins with a traditional Navajo story recounted by the Peacemaker which emphasizes values and norms relevant to the conflict in issue. The story relaxes the participants and sets the tone for active listening and respectful, open,
and meaningful dialogue. This fulfills the Navajo doctrine of participatory justice. It is during the Invocation or introduction segment of a Peacemaking session that ground rules, goals, objectives, and accountability clarify the complete intolerance of disrespectful, rude, and/or accusatory behavior and are discussed with the participants before the dialogue of the Peacemaking session begins.

Restorative justice Navajo Peacemaking with its dialogical component provides the wrongdoer with a process to comprehend the magnitude of the harmful effects of the wrongdoing. Peacemaking places all participants on equal footing and takes the process of repairing harm out of an adjudicatory format into one of horizontal decision making where no one is coerced or demeaned. Making amends by the wrongdoer to the offended is an integral part of restorative justice practices and especially Diné Peacemaking with its truly collaborative open dialogue.

It is my thesis that prevention, intervention, and pro-action on the part of a governing board of education require the adoption of policy and a curriculum based on the Navajo Peacemaking process, values, principles, and goals. School boards must not only adopt the policy and curriculum, but apply it to all schools in the school district. This brings moral reform to the entire school district where civility and respect for one another is enforced uniformly to bring about change and transformation on a district-wide basis.

A curriculum is a proactive approach to preventing conflict or the opportunity to respond to harmful behavior after conflict has occurred. It is the means to implement restorative justice practices, especially Diné Peacemaking, which is a simple yet proven successful process which fits best in the school setting. Diné Peacemaking is a pure form
of restorative justice with its emphasis on respect for self and others and moral substance over form. There is no conflict, as there is among authors on restorative justice, over the definition, principles, values, or goals since these have been established in Diné Peacemaking for centuries. Restorative justice Peacemaking can re-establish in the school environment the boundary between what is and what is not acceptable behavior and treatment of one another. Diné Peacemaking can do this in a cost-effective and very effective way.

Student codes of conduct as regulatory forms of normative behavior alone do not provide for the transformation of behavior to take place. That process is restorative justice Navajo Peacemaking. It is all about justice, making amends, and repair of harm. The Navajo traditional values of harmony, peace, and balance within one’s self and in relationships with others are core to Navajo Peacemaking as are healing of body, mind, and spirit.

Navajo Peacemaking is value-centered and built upon balanced, peaceful, harmonious relationships and shared values of respect, honesty, courage, inclusivity, empathy, trust, forgiveness, and love. It is clear that contemporary restorative justice practices mirror the traditional components of Navajo peacemaking.
CHAPTER 7

RESTORATIVE JUSTICE NAVAJO PEACEMAKING CURRICULUM: RESPECTING ONE ANOTHER, RECOGNIZING THE DIGNITY OWED TO EACH PERSON, RESOLVING DIFFERENCES, AND REPAIRING HARM

The board of education of a public school district is a body politic and a political subdivision of the state. As such, it is capable of being sued and filing suit, entering into contracts, and possessing and disposing of personal and real property. A public board of education shall adopt any rules and policies that are necessary for the government of the school district, its employees, its students, and all other persons who enter school property. This governing authority includes the adoption of student codes of conduct and curricula.

A Navajo Peacemaking curriculum is a proactive approach to preventing conflict or responding to harmful behavior after it occurs, as well as implementing restorative justice practices which are appropriate in the school setting. If transformation of wrongdoers is to take place, something more than a normative code of prohibited offensive behavior which imposes punishment is needed.

The following curriculum, when used in schools where Navajo children attend, will have an additional component. At the beginning of every lesson in each unit, an audio-visual color CD will be added with a recording of Navajo storytellers who tell a traditional story focused on a maxim relating to the subject matter of the lesson, its goals, and objectives. Each story will be age appropriate for the lessons in the age-graded curriculum. The stories will be told in a manner that conveys traditional Navajo values and principles and involves personal and relational balance, harmony, peace, healing of body, mind, and spirit, and resolves underlying and festering issues in a conflict.
In the continuum of progressive punitive discipline in schools, the options still rely on levels of incremental punishment. Such options range from verbal warnings, removal from class, after-school detention, in-school suspension, and out-of-school suspension and expulsion. Traditional authoritarian discipline becomes punitive-centered and relies on the notion that incremental levels of punishment and the resulting stigma results in diminished of bad behavior. Yet, for an increasing number of students, this is not the case (Lockhart and Zammit 2005, 52-53).

Diné Peacemaking was selected because of its continued use by the Navajo People for centuries. It is also an uncluttered process which is easy to understand and use, and its principles are succinct but also all encompassing. The underlying causes of conflict are identified, respectful and open dialogue occurs, and resolution is achieved along with transformation of persons and relationships.

The inclusion of restorative justice Diné Peacemaking in schools through adoption of school board policy aims to achieve a number of objectives through an alternative to traditional punitive discipline. These include:

- Support a school environment conducive to civility and respect.
- Provide an atmosphere conducive to the development of each child’s capabilities, gifts, and skills.
- Prevent tardiness, absences, and truancy.
- Reduce drop-out rates.
- Develop partnerships among the schools, families, and community.
- Promote respect for self and others.
- Address the harm caused by offending behavior.
Arthur Lockhart and Lynn Zammit in their book *Restorative Justice: Transforming Society*, are proponents of a restorative curriculum which they call a “new self curriculum” for use in schools. They state, however, that “…a whole other curriculum – curriculum of the self – needs to be taught in our schools. This curriculum serves as the basic building blocks for how we live and work together, how we respect each other, how we solve problems, how we communicate. It is this body of educational research that we may find the answers to school violence…” (Lockhart and Zammit 2005, 71). Their proposed “new self curriculum” could be based on “…resiliency factors that are indicators of how well humans can overcome adversity in their lives.…” They continue to state that a restorative curriculum should include lessons on “…relationships, independence, insight, morality, initiative, creativity, and humor…” (Lockhart and Zammit 2005, 71). In response to the need in schools for a curriculum that puts into practice the theories not only of Lockhart and Zammit, as part of this Thesis, I developed school board policy authorizing the use of Navajo Peacemaking as an alternative to traditional punitive discipline and an age-graded curriculum based on restorative justice Navajo Peacemaking principles and values.

Being a proponent of a restorative justice curriculum is the first step, but a small first step. It is essential that a curriculum template be provided to educators to begin the reinforcement and development of social awareness and value-infused holistic education of children. Such a curriculum must be developed in a format familiar to educators and must address the moral goals and values of justice, compassion, and understanding. As did Goleman in 1995, Lockhart and Zammit posit that the core of social and emotional learning underscores the need for schools to teach a curriculum that centers upon
emotional awareness, empathy, communication skills, and relationship building (Lockhart and Zammit 2005, 71). Lockhart and Zammit suggest that if students fail to learn needed social and emotional skills, they may not remain in school long enough to learn the subject matter curricula. The Peacemaking curriculum incorporated into this Thesis (Appendix H) has multiple uses and value. It can be used as an alternative to traditional school discipline or in tandem with it in order to address the values of empathy, understanding, dialogue, discussion, listening, amends, repairing harm, and forgiveness. The Peacemaking curriculum can also be of great value in maintaining a peaceful and respectful school community when a student who is suspended or expelled pursuant to a traditional school disciplinary code returns to school after serving the suspension or expulsion or, if involved in the juvenile justice system, re-enters the school setting.

A restorative curriculum, according to Lockhart and Zammit, develops students’ abilities and skills. It emphasizes self-understanding, the understanding of others, and the building of positive, healthy relationships. A restorative curriculum, they posit, views inappropriate actions and misbehavior as a violation of codes of conduct. It emphasizes that misbehavior creates duties and obligations among individuals, and it teaches students to repair the harm caused by offensive behavior and to make things right (Lockhart and Zammit 2005, 71). The restorative justice Navajo Peacemaking curriculum incorporated in this Thesis does even more. As a horizontal decision-making process, Peacemaking encourages students to take responsibility for their actions and to make needed behavioral changes, as well as to repair harm caused by wrongdoing.
Lockhart and Zammit acknowledge that by using a restorative approach to school misconduct, students are taught to understand their own feelings and behavior, as well as the feelings of others. Lockhart and Zammit aptly state that “…when we take a violent incident and turn it into a teachable moment, we create the capacity to change. When we use it as an opportunity to punish, we create something quite different” (Lockhart and Zammit 2005, 71).

A curriculum based on a restorative model addresses the needs of those who have been harmed by offending behavior and gives them a voice in the resolution of the conflict. Lockhart and Zammit maintain that a restorative curriculum provides teaching moments to promote transformation, the imparting of communication skills, problem-solving skills, empathy, responsibility, and community building (Lockhart and Zammit 2005, 71-72).

Daniel Goleman, in his best-seller book where he contends that emotional intelligence matters more than IQ, advocates early and continual education of our youth in self-awareness, self-discipline, and empathy. This persuasive argument should have been immediately welcomed and adopted by the educational community en masse. Although Goleman’s theory received immediate acclaim, it has not been implemented in our educational systems nationwide. Removing the human component from education eliminates a vital component – holistic education and compassion for others.

In his chapter entitled “Schooling the Emotions,” Goleman is a proponent of emotional literacy courses often referred to as “life skills” and “social development” courses, which have a foundational basis in the affective education movement of the 1960’s (Goleman 1997, 261-62). Goleman further recommends that emotional learning
becomes an integral part of an individual’s learning curve when repeated again and again as the brain “reflects them as strengthened pathways, neural habits to apply in times of duress, frustration, and hurt.” The outcome, he asserts, is “more critical to our future than ever” (Goleman 1997, 263). A fair and “unbiased” assessment of education over the last fifty years would certainly support an emphasis on students’ emotional development and progress, as well as academic achievements.

Concerning conflict, Goleman suggests that conflict begins when communication is lacking, assumptions are made, conclusions are reached, and people do not hear (active listening) what one another is saying (Goleman 1997, 266). He emphasizes the need to address self-awareness, feelings and reactions, alternate choices and consequences of each, taking responsibility for one’s choices, and applying these insights to decisions to issues (Goleman 1997, 268). Goleman maintains that emotional literacy courses work in public and private schools, large and small (Goleman 1997, 269). His observations are the basis of restorative justice processes. Teaching those social and emotional skills in the educational setting requires a planned approach or a curriculum for teachers to follow methodically to instill the objectives and goals of teaching our youth emotional intelligence. In other words, provide the template, and it will be used.

Goleman recommends that emotional education is best taught when lessons are blended “on feelings and relationships with topics already taught…” and when lessons are merged “…into reading and writing, health, science, social studies and other standard courses as well.” The curriculum template provided in Appendix H is both self-standing and can be incorporated into existing school courses. Goleman notes that “…programs in emotional and social skills take no curriculum or class time as a separate subject at all,
but, instead, infiltrate their lessons (my emphasis) into the very fabric of school life” (Goleman 1997, 271-72). A lesson requires a plan, and a plan is a curriculum. The curriculum is a series of lessons and is a plan with teaching and student goals and objectives. The curriculum included in this Thesis can be readily utilized in a self-contained elementary classroom and easily incorporated into any related subject matter such as reading, writing, health, science, social studies, and other standard courses as well. It is my contention that Goleman’s recommendations on emotional literacy courses fell by the wayside because he failed to include a curriculum for instant use and/or adoption by classroom teachers. Once the skills, values, and principles in the Navajo Peacemaking curriculum are developed and reinforced, they become part of the “very fabric of school life.”

Goleman proffers that another way that emotional lessons can be merged into “existing school life” is by assisting teachers to re-think how misbehaving students are disciplined. He recommends that child development programs include teaching children impulse control, how to explain their feelings, and how to resolve conflict are better ways to discipline than coercion (Goleman 1997, 272). To do this, children in the younger grades should be taught the basic lessons of self-awareness, relationships, and decision making. Children in grades four and five should be taught lessons in friendships and peer relationships by emphasizing empathy, impulse control, and anger management (Goleman 1997, 275). In sixth grade, lessons should relate more specifically to taking multiple perspectives – one’s own and those of others (Goleman 1997, 276). An inability to feel a victim’s pain allows an offender to continue offending.
Goleman views conflict resolution courses as a preventive measure to eliminate schoolyard conflicts and hallway arguments. Such programs show students they have many choices for dealing with conflicts other than passivity or aggression. Making the right choice is critical to a peaceful school ethos. Violence is replaced with concrete, life-long social skills (Goleman 1997, 276-77).

Although Goleman refers directly to mediation as an example of conflict resolution, he suggests that those involved in a conflict sit down and listen to the other person without interruption or insults, with the desired end result being a signed agreement (Goleman 1997, 277). Peacemaking does exactly this in a more effective way because it is a horizontal decision-making process that totally involves the participants in the outcome or Agreement. It is curriculum that teaches and reinforces emotional skills and values placing the emphasis on individual behaviors. The curriculum is the roadmap to emotional intelligence and reinforcement of empathy for others, the need for harmony, and mutual respect.

Goleman also views the teaching of emotional literacy as an “expanded mandate for schools, taking up the slack for failing families in socializing children” (Goleman 1997, 279). He finds the quality of each classroom teacher and how each teacher handles his/her class to be a “de facto” lesson in emotional competence or its lack (Goleman 1997, 279). This view is consistent with the proposition of this Thesis that a curriculum in Peacemaking for classroom teachers is of significant value and that each school has designated, trained facilitators such as guidance counselors or school psychologists in addition to classroom teachers who address conflict as it arises and who prevent a situation from developing into a conflict. Both the designated facilitator in each school
within a school district and classroom teachers should be trained in the Peacemaking process. In particular for the classroom teacher, training in the process and the classroom curriculum should be school district-wide adopted so that the entire school community becomes proficient in Peacemaking. The results will be of exponential value to a civil and respectful school community. In addition, the skills developed by a Peacemaking curriculum carry over into the family and community and become skills used in daily decision making.

Goleman finds that emotional literacy makes schools “more explicitly society’s agent for seeing that children learn essential life lessons and, thereby, return to a classic role for education” (Goleman 1997, 280). He advocates that “…the optimal design of emotional literacy programs is to begin early, be age-appropriate, run throughout the school year, and intertwine efforts with school, at home, and in the community (Goleman 1997, 281). The age-graded Peacemaking curriculum which is an integral part of this Thesis is exactly on point. Goleman acknowledges the need for a course of study or curriculum as the mechanism for teaching social skills. Goleman acknowledges that although an emotional literacy curriculum does not change any student overnight, as children advance from year to year and from grade to grade in the curriculum, there are recognizable improvements in the school atmosphere and tone. A “level of competence” is developed (Goleman 1997, 283).

Goleman posits that empathy advances to caring, then to altruism, and finally compassion. When one sees another’s perspective or viewpoint, preconceived biased stereotypes are broken down. This enables students to come together in mutual respect. As Goleman asks, “Shouldn’t we be teaching these most essential skills for life to every
child – now more than ever?” (Goleman 1997, 287). The values reinforced and developed by the Peacemaking process are empathy and compassion, as well as dialogue, listening, understanding, harmony, and mutual respect. This centuries’ old process is simple in format, yet complex in its results of transformed attitudes and behaviors.

School policy relating to discipline of students traditionally involves a code of conduct, rules, and regulations. Violation of these norms may result in various types of punishment including removal from class, after-school detention, in-school suspension, out-of-school suspension, or expulsion from school. Repairing the harm caused by offending behavior is not always addressed as part of the due process afforded in the traditional school disciplinary process. My research has led me to believe in alternative dispute resolution methods, specifically Peacemaking, as a means to repair harm.

The use of Navajo Peacemaking in the school setting would address a violation, the underlying reasons or factors leading to the violation, the harm caused, and the need to repair the harm. Peacemaking also emphasizes complete resolution of conflict and the need for personal transformation.

Peacemaking is cost-effective, more so than traditional school disciplinary procedures and the Fourteenth Amendment Due Process clause. It emphasizes the dignity of each individual and the respect to which all persons are entitled. Peacemaking can and should be an appropriate restorative justice practice in accordance with an adopted school district policy for use in schools throughout a school district.

The use of Navajo Peacemaking is instrumental in the formation of partnerships between the school administration and teachers with parents/guardians and extended families of the offending and offended student. Peacemaking also encourages
involvement and inclusion of stakeholders from the community who have been affected by the offending behavior. Partnerships may also include juvenile justice officials and court authorities to assist with the return of offending students to the school setting rather than students dropping out of the educational process.

The kindergarten through grade twelve age-graded curriculum included in this Thesis (Appendix H) serves as a template for school board policy to implement restorative justice Peacemaking for use in the classroom setting. The curriculum has been prepared in lesson plan format with instructional and student performance objectives and classroom activities. There are six basic units:

Unit 1: Dignity and Respect of Self and Others

Unit 2: The Restorative Justice Peacemaking Process

Unit 3: The Importance of Dialogue and Discussion: Preventing and Resolving Conflict

Unit 4: The Agreement: Resolving Conflict Through Peacemaking

Unit 5: Repairing Harm Caused by Offending Behavior

Unit 6: What Can I Do to Foster a Respectful School Environment?

The school policy and curriculum templates incorporated into this Thesis are for use in public and private schools nationwide as an alternative to traditional punitive school discipline to address the needs of all students involved in a conflict and to repair harm and relationships damaged by conflict. The templates will also specifically assist the Peacemaking Program of the Navajo Nation with the implementation of their Peacemaker Youth Education and Apprentice Program in its partnership with schools where children of the Navajo Nation attend in the states of New Mexico, Arizona, Utah,
and Colorado in the sharing of knowledge and skills to establish guidelines for the training of staff and the education of students to instill bi-cultural skills in youth.

Traditional Navajo Peacemaking will be used successfully to assist youth as they face today’s societal challenges including bullying and harassment, truancy, behavior which results in resolution through the juvenile justice system, and breaches of school codes of conduct. Through the adoption of policy, rules, and curriculum, school districts on all grade levels will be able to use traditional Navajo Peacemaking as a medium for resolving and preventing disputes, restoring harmony in personal relationships, repairing harm resulting from wrongdoing, and transforming school environments into a milieu of civility and respect.

As reported in The Washington Post by Donna St. George on September 5, 2011, “Bullying is not just a problem of individual torment. It is linked to lower academic achievement across the school” (St. George 2011). Although offended students and parents have known this based on discussions with those who have endured the physical and emotional abuse from bullying, there is now adequate data to support these conclusions based on the research by Dr. Dewey Cornell, a co-author of an investigative research project and clinical psychologist professor of education at the University of Virginia.

According to the research, as reported in The Washington Post, a bullying ethos in a school incrementally reduces the academic engagement of students and reduces by “an average of 3 to 6 percent” the passing rate on tests. The research data is based on 2007 survey questions and answers by 7,300 ninth graders and 3,000 teachers. The goal of the
survey was to assess levels of bullying and teasing in the school setting, according to *The Washington Post* article.

The Governor of New Jersey signed into law legislation which revised the state’s anti-bullying statute. According to the New Jersey *Statehouse Bulletin*, the amended law was necessary because of the failure of school officials to enforce policies to combat bullying (Zhao 2011). School officials have expressed displeasure with the law because of the financial burdens placed upon school districts to train staff concerning intimidation and bullying occurring inside or outside the school. The law also addresses bullying transmitted by electronic communication.

As Immanuel Kant so wisely states, everything has either price or dignity. When price is involved, it can be replaced by something else. If something is “exalted above all price,” it is irreplaceable. At the point of being irreplaceable, “that something has dignity” (Paton 1948, 113-14). The value of every person is priceless, and every child is entitled to dignity. School budgetary constraints cannot justify the failure to adopt policy to implement a peaceful and civil school atmosphere and the resistance to training school staff to address and prevent bullying and harassment. It is all about justice – justice owed to and deserved by our children. As Plato so aptly pointed out in *Gorgias*, less about hollow rhetoric and more about practical application. The Navajo People have had the answer for centuries: the family is the center of society, children are the center of the family, and Navajo Peacemaking is the process to use when disputes arise. It is the duty of each of us to promote harmony, peace, respect, and justice.
APPENDIX A

COMPARISON OF THE SIMILAR AND DIFFERING VALUES OF BOTH WESTERN EDUCATION AND DINÉ TRADITIONAL EDUCATION
(Begay 2011, 16)
Figure A: SA’AH NAAGHÉI BIK’EH HÖZHOÓN BEE YIS’AH / AS’AH NA’ADÁ:
Naadág’ Astsín Naníse’ Binahjí’ N’nítin

WESTERN EDUCATION EDUCATION
HOME ECONOMICS
SCIENCE
MATHEMATICS
SOCIAL SCIENCE
READING
WRITING
PHYSICAL EDUCATION
ARTS & CRAFTS
ENGLISH
GEOGRAPHY
MORAL ETHICS
MANNERS
POSITIVITY
COURTESY
HEALTH
ATTITUDE & BEHAVIOR
COMMONALITY
CHILDHOOD
EARLY CHILDHOOD
PHYSICAL DEVELOPMENT
MENTAL DEVELOPMENT
INFANT STAGE

TRAIDITIONAL EDUCATION
WISDOM
KNOWLEDGE
PARENTHOOD
PHILOSOPHY
MORAL ETHICS
K’É / KINSHIP / CLANSHIP
ADULTHOOD
MORALS OF ADOLESCENCE
LANGUAGE & CRAFTING SKILLS
SPIRITUALITY / PRAYER / REVERENCE
RESPECTABILITY / APPRECIATION
PUEBERTY: KINAAALDA’ TÁCHÉEH
YOUTH
CHILDHOOD
HEALTH / YIKÁIH NA’ADÁ
ATTITUDE / BEHAVIOR: T’ÁÁHÓ ÁJÍT’ÉIGO
HUMILITY / HUMBleness
CHILDHOOD
EARLY CHILDHOOD
PHYSICAL DEVELOPMENT
MENTAL DEVELOPMENT
INFANT STAGE

Light

Earth

Water
EMPOWERING VALUES OF THE DINÉ INDIVIDUAL
(Begay 2011, 13-14)
Empowering Values of the Diné Individual

Hózhóójíłik’ehgo Na’nítin
(Blessing Way Teachings)

Há’áhwíiníít’į̍
Be generous and kind.

K’ezhńidzin
Acknowledging and respecting kinship and clanship.

Hane’zhídindizin
Seek traditional knowledge and traditional teachings

Hoń ilį́
Respecting values

Ádá hozhioniž
Respecting the sacred nature of self.

Hazaad ba’a’hojįlyą́
Having reverence and care of speech

Ahéeshindizin
Being appreciative and thankful

Hanitsekees k’ézdongo ázh’óžin
Having a balanced perspective and mind.

Há’hózhó
Showing compassion and positive feelings towards others

Dihóodičíh yá’át’éhégįį hazh’ó bee yáįlį́ń
Expression of appropriateness and sense of humor

Ádíįlįdíį́
Maintaining strong reverence of self

Hanaanish áįįl’ínilí bizhneedį́
Maintaining enthusiasm and motivation for one’s work

Hanaanish baa hágahjinízin
Protect and care for one’s work

Áděe’hozhdziį́
Self identity

Ádá nitsįjįkées
Think for your self

Nasyée’eek’ehgo Na’nítin
(Protection Way Blessing)

Doo hoł hóyée’da.
Never be lazy.

Doo ádahozhdeeláada.
Never be selfish and impatient.

Doo t’aadoolé’é bich’į’ ni’jíjljída.
Do not be hesitant.

Doo ahání jíz’ąjda.
Retain self from easily hurt

Doo ak’e’jídlída.
Never be overly emotional

Doo ni’ na’ázhdiilt’e’da.
Do not be overly reluctant.

Dadilzinii jídísí
Respect the sacred.

Doo t’aadoolé’é áde’ájilnéehda
Do not overburden self

Ázhdiilt’iis
Having self discipline and prepared for challenges

Na’ádížhtníiáah
Asserting potentials

Doo yážhntízinda
Do not be shy.

Doo nijichxo’dá
Do not pout

Doo áčh’į’ ni’jódlíída
Do not carry expectations 
/ anticipations of negative nature and 
circumstances

Doo adáah yáįlį́ńda
Do not sass or backtalk
Finding your true being

Becoming self aware

Caring for others

To have awareness of self

To have awareness of self

Avoid overburdening self

Prohibiting self from negative doing

Prohibiting self from negative oral expressions and aggressiveness

Do not make fun of others

Do not show off

Do not be too observant / Do not Stare

Do not welcome poverty

Limit personal animosity towards others

Do not be picky and particular

Do not mock self
APPENDIX C

RESTORATIVE JUSTICE NAVAJO PEACEMAKING PROCESS
FOR USE IN THE SCHOOL SETTING

- School guidance counselor or school psychologist serves as the Peacemaker facilitator.

- When parents/guardians are participating, all participants introduce themselves to the other participants.

- Peacemaker-facilitator explains how the process works:
  - All participation is voluntary.
  - All participants are on equal footing/status.
  - Only one person speaks at a time.
  - Dialogue does not include accusations or rebuttal.
  - Discussion is respectful at all times.
  - Every participant has an opportunity to express all concerns.
  - Each participant expresses his/her feelings as a result of the underlying conflict.
  - The underlying causes of the conflict must be determined.
  - After all participants have had an opportunity to speak, the facilitator assists in reaching an Agreement of the participants to resolve the conflict.
  - The goal is not to mediate, but to reach an Agreement on understanding the points of view of each participant in order to reach a plan for resolving the conflict, repairing the harm, and restoring relationships.

- Facilitator assists in determining the conflict issues and states the conflict to be resolved:
  - Description of the conflict or problem.
  - Harm involved.
  - What will occur if the conflict is not resolved.
  - If the Peacemaking process is unsuccessful and/or if the resultant Agreement is violated, the behavior violation will be referred back to the disciplinary code procedure.

- Restoration or repair of the relationship – achieving harmony:
  - Acknowledgement of wrongdoing.
  - Expression of amends for harm caused (emotional, physical).
  - Restitution for damaged property.
• Agreement
  o Summary of Agreement
  o Follow-Up Meeting (if needed)
    ▪ How or was the Agreement fulfilled?

PEACEMAKER-FACILITATOR CHECK-OFF

_____ Are parents/guardians participating?

_____ Are juvenile court charges pending against any participating party?

_____ Is the Peacemaking process being used in place of punitive school discipline?

_____ Is the Peacemaking process being used in addition to punitive school discipline or for re-entry into the school setting following completion of punitive school discipline?

_____ Is there a pattern of similar offensive behavior involving the parties?

_____ Are any students who witnessed the offensive behavior participating?

_____ Are any teachers participating?

_____ Has the process been explained to all participants?

_____ Have the issues for discussion been clarified?

_____ Have the participants been given sufficient opportunity to express his/her concerns and issues?

_____ Has the discussion been open and the dialogue respectful?

_____ Have the underlying causes of the conflict been identified and discussed?

_____ If the Peacemaking process is unsuccessful, will traditional school disciplinary procedures be used?

_____ Has a resolution been reached by the participants?

_____ Has repair of the harm been addressed in the resolution?
APPENDIX D

TEMPLATE

SCHOOL POLICY VISION

Note: The National School Boards Association has published a vision statement for all public school districts in the Nation. The following is based on that statement.

The form of government of the public schools is fundamental to the continued success of public education. A public school district which is student-centered aims to provide in a safe and supportive environment for the comprehensive education for the whole child. By creating a vision of excellence and equity for every child, America’s school board will provide performance-based schools that meet the challenges of today and tomorrow.

Elimination of Violence and Disruptive Behavior

School boards should focus on proactive efforts to eliminate violence and disruptive behavior at school and school-sponsored events. Such behavior includes, but is not limited to “bullying,” verbal disrespect of fellow students and teachers, and other forms of harassment which reinforces fear, low self-esteem, and lower student academic achievement.

Character Development and Democratic Values Education in the Public Schools

School boards should establish policies to promote character education programs which are consistent with family and community values. As a significant link between communities and their schools, it is inherent upon school boards to create an environment in which values that are central to a democratic society are practiced (National School Boards Association 2009).
APPENDIX E

TEMPLATE

SAMPLE RESTORATIVE JUSTICE POLICY
OF THE PEACEABLE SCHOOL DISTRICT

This Board of Education of the Peaceable School District acknowledges that conduct is closely related to learning, and an effective instructional program requires an orderly school environment. This Board of Education believes that the best discipline is self-imposed, and students should learn to assume responsibility for their own behavior and the consequences of their actions. This Board of Education requires each student to adhere to the Board of Education’s adopted Code of Conduct. Students shall:

- Treat fellow students and staff with dignity and respect.
- Treat the person and property of others with respect.
- Respect the rights of others.

This Board of Education of the Peaceable School District hereby adopts restorative justice Peacemaking as a viable alternative to punitive discipline under the Code of Conduct. The Peacemaking process shall involve stakeholders (all parties affected by an offense, including the primary and secondary stakeholders and selected members of the school community). The school guidance counselor or school psychologist in each school building within the Peaceable School District shall facilitate the Peacemaking sessions.
Restorative Justice Peacemaking Session

The facilitator shall:

- Select participants/stakeholders who have a direct interest in the dispute.
- Invite participants. Set the place, date, and time.
- Set goals to be reached in the Peacemaking session.
- Assist the parties in reaching an Agreement.

Peacemaking Session Guidelines

- One person speaks at a time.
- All participants listen respectfully.
- All participants have an opportunity to speak
- Identify the harm.
- Achieve a tangible result: Agreement and how the elements will be enforced. How the agreement is reached may be more important than the content of the agreement.

Goals of Restorative Justice

The goals of restorative justice shall be followed:

- Address the needs of participants.
- Involve those affected by an offense in the final Agreement reached by consensus.
- Focus on harm and repair of that harm.
- Acknowledge obligations resulting from harm.
- Promote engagement or participation of participants.
- Restore lost dignity.
Objectives of Restorative Justice Peacemaking

The objectives of restorative justice Peacemaking shall be followed:

- Foster open and respectful dialogue among the stakeholders.
- Uncover the underlying causes of the conflict and offending behavior.
- Reach an Agreement by the parties addressing amends and transformation.
- Repair harm resulting from the wrongdoing.
- No retributivism.
- Reinforce a civil and respectful school environment and a feeling of safety within the school community.
- Redress the wrongs resulting from the offense.
Respect for all persons, including fellow students, school personnel, and authorized visitors to the school building is expected from every student, as is the observance of school rules, regulations, codes of conduct. Each person has an entitlement to respect and dignity. Students shall display civility, courtesy, and honesty toward others and other’s property. The Superintendent shall develop a philosophy of the Board of Education and procedures to implement this policy.

Peacemaking as an alternative method to school disciplinary policy involving in-school and out-of-school suspension and expulsion for violations of school rules, regulations, and codes of conduct shall be used to address appropriate conflict situations in order to address the underlying cause(s) of a conflict. Peacemaking is a restorative justice and conflict resolution process which also addresses the needs of the parties, the harm caused by the offensive behavior, and the repair of the resulting harm and broken relationships in the school setting. Peacemaking furthers the mission and vision statements of the Board of Education and assists students in achieving academic success and becoming contributing members of society.

Classroom teachers shall implement Peacemaking procedures in their classrooms as needs arise to prevent and resolve conflicts. The intent is to confront a conflict at the earliest initial stage and to promote an atmosphere of respect and civility in continuous pursuit of an educational atmosphere conducive to learning and development of each student. Peacemaking recognizes the right of each person to dignity and respect through discussion and dialogue. In order to implement Peacemaking at the classroom level, the Board of Education shall adopt an age-graded curriculum for classroom implementation in each school of the District.

For selected violations of school rules, regulations, and codes of conduct as determined by the building principal, the Peacemaking process may be used to resolve these violations and the underlying conflict in order to promote mutual respect, resolution of conflict, and maintenance of a civil and respectful school environment. The following include, but are not limited to unacceptable behaviors and violations of the Code of Student Conduct to be used in the Peacemaking process: any disruptive conduct, conduct which is offensive and causes harm to others and/or property, truancy, verbal and physical confrontations, non-lethal threats, harassment, bullying, hazing, discrimination, name-calling, and other prohibited conduct. Peacemaking may also be used for the re-entry of students to the school setting following suspension, expulsion, or release from the juvenile justice system, as well as for chronic violators of school rules.
The Board of Education recognizes that an effective and successful educational program requires an orderly and civil school atmosphere conducive to learning. The Board of Education believes that students must assume responsibility for their actions, as well as the consequences which result. Educators shall foster behavior that is socially acceptable, treats others with respect, and recognizes the dignity of each individual. The Board of Education is committed to maintaining an environment conducive to learning where each student feels and is safe and can achieve academic success and positive social progress within the school environment. Through the Peacemaking process, a partnership with families makes this goal possible.

IN-SCHOOL PEACEMAKING
PARENTAL REQUEST AND WAIVER

I/we _______________________________ the parent(s)/guardian(s) of
______________________________, a minor student attending ____________________________School
in the ____________________________School District, ____________________________,
________________________________, City ____________________________________________
________________________________, request that the matter involving my son/daughter be
State referred to in-school Peacemaking as an alternative to traditional school discipline.

I/we understand and acknowledge that should Peacemaking be unsuccessful in fully
resolving the issue, school officials will immediately implement the school district code
of conduct and disciplinary procedures.

_________________________________  ____________________________________
Date                              Signature of Parent(s)/Guardian(s)

__________________________________
Signature of Minor Student

325
APPENDIX G

CASE STUDY INTERVIEW QUESTIONNAIRE

1. What is Diné Peacemaking? Please explain its origins, the process, its goals, the uses, its effectiveness, and recidivism.

2. Have you personally participated in the Peacemaking process? If so, please explain the extent of your participation and the role you have played.

3. Regarding participants in the Peacemaking, please explain:
   a. The optimum number of participating members
   b. How members are selected or invited to participate
   c. The role of each member
   d. The selection and role of the facilitator
   e. If participation is always voluntary

4. Is there any issue which is not suited for Peacemaking? Is there an issue for which it is particularly suited and successful?
5. Is Peacemaking used as an alternative to the civil or criminal process? Is it ever used in tandem with either of those processes?

6. In Peacemaking, are the victim and offender always present at the same time?

7. Is it possible for a non-member of the Navajo Nation to view a Peacemaking session? Why or why not?

8. Is it possible for a non-member of the Navajo Nation to discuss the Peacemaking process with a Peacemaker? Why or why not?

9. Are you a trained Peacemaker? If so, please describe the Peacemaker training process.
10. Have you trained Peacemakers? If so, please describe your role in the training process.

11. Do the goals/objectives of the Peacemaking process include repairing the harm? Forgiveness? Making amends? Harmony? Restoration of relationships?

12. What are the various ways to make amends or repair the harm?

13. Have you been a participating member of a Peacemaking session? If so, were you satisfied with the results?

14. What are the underlying beliefs and values of Peacemaking?
15. Are the following issues common to Peacemaking sessions: domestic violence, theft, fights, arguments/disputes, harassment?

16. Would you consider Peacemaking to be a process or an institution?

17. Is the Peacemaking process “easier” for juvenile participants or adult participants?

18. Is the Peacemaking process different for juveniles and for adults?

19. Please explain the historic value of Peacemaking? Has it been used for over 400 years? Has it changed in any way over the history of its use?
20. Has Peacemaking been used in the educational setting? Do you believe it has value as an alternative to traditional, punitive discipline in the schools?

21. Have Peacemaking Guidelines changed over time? If so, please describe.

22. How are Peacemaking successes determined and measured?

23. All are participants in the Peacemaking session on “equal footing”?

24. Are the terms “victim” and “offender” used in Peacemaking? If not, what terms are used?
25. Is Peacemaking built primarily on self-respect and respect for others?

26. Do you consider Peacemaking a complex or a simple process?

27. Has the Peacemaking process maintained its “integrity” throughout its history from traditionalism to modernity?

28. Are there any “predictable results” in the Peacemaking process?

29. Are there criteria to be considered before a specific issue proceeds to Peacemaking?
30. How would you describe the “essence” of Peacemaking?

31. What beliefs and Diné traditions underscore Peacemaking?

32. Is a “Talking Stick” used in the Peacemaking process?

33. Must all who participate in a Peacemaking session share the same values?

34. Is any member of the Peacemaking sessions required to speak?
35. Are there any observers in the Peacemaking session or only participants?

36. Does the Peacemaking facilitator have a list of specific questions to ask participants?

37. How does the facilitator open the session?

38. Is forgiveness a primary goal of Peacemaking? Resolution? Harmony?

39. How do the December 2010 Peacemaking Guidelines differ from previous Guidelines?
40. Does Diné Peacemaking function under the auspices of the Navajo Supreme Court?

41. Are all participants morally bound by confidentiality of the discussions in the Peacemaking session? If so, what would occur if this confidentiality is broken?

42. Do Peacemakers train others to be Peacemakers?

43. Does each Peacemaker use the same format for Peacemaking sessions?

44. Does the Peacemaking process vary depending on the issue?
45. If Peacemaking is not mediation and not arbitration how would you describe it? How would you distinguish it from arbitration? From mediation?

46. Would multiple attempts at Peacemaking be made if one session is “unsuccessful”?

47. What do you consider a “successful” outcome following Peacemaking?

48. How important is the role of the facilitator in the Peacemaking session? What qualifications must a facilitator possess?

49. How important is dialogue in the Peacemaking process?
50. How important is understanding in the Peacemaking process?

51. What “values” do you consider vital to Peacemaking?

52. Ordinarily would all members of the Peacemaking session know one another before the session begins? If not, what does the facilitator do to be certain proper introductions are made?

53. How does the facilitator uncover the underlying causes of a dispute?

54. What techniques are used to “probe” deeper when necessary during the session?
55. How “forceful” does the facilitator become during the Peacemaking session, and what would determine the need to be “forceful”?

56. Is a special ceremony an integral part of Peacemaking?

57. Does the Peacemaking session begin and end with a prayer? Is it a silent prayer? Could it be a silent prayer?

58. In the public school setting, would a moment of silence be acceptable?

59. Are any of the following values important to the Peacemaking process:
   a. Increased empathy
   b. Forgiveness
   c. Degree of Support in the family and clan?
   d. Accountability
   e. Offender acceptance of responsibility
   f. Harmony
   g. Respect
APPENDIX H

RESPECTING ONE ANOTHER, RECOGNIZING THE
DIGNITY OWED TO EACH PERSON,
RESOLVING DIFFERENCES, AND
REPAIRING HARM

RESTORATIVE JUSTICE
NAVAJO PEACEMAKING

TEACHER RESOURCE GUIDE
AND
AGE-GRADED CURRICULUM

By:
Mary A. Lentz
Teacher Resource Guide

Unit 1 – Dignity and Respect for Self and Others

Unit 2 – The Restorative Justice Peacemaking Process

Unit 3 – The Importance of Dialogue and Discussion: Preventing and Resolving Conflict

Unit 4 – The Agreement: Resolving Conflict Through Peacemaking

Unit 5 – Repairing Harm Caused by Offending Behavior

Unit 6 – What Can I Do to Foster a Respectful School Environment?
Surveys demonstrate that one in four children in the United States have been an offended student of bullying in the school environment. Children need assurances that they are safe especially to, from, and at school. The creation of a positive school climate depends upon the efforts of many: administrators, teachers, students, parents, and even the community.

Bullying is a type of youth violence, although on the spectrum of violent behavior, it may be at the lower end depending upon the aggressiveness of the misbehavior. Nonetheless, the effects on the offended student can be deep and enduring. Schools should be committed and dedicated to providing an atmosphere conducive to learning with a focus on the personal worth and dignity of all persons. All efforts should be made to educate children in this type of setting.

Bullying occurs more commonly in the school setting than educators think or are willing to acknowledge. It is often a daily occurrence that causes disruption in the learning experience. Too often, school personnel ignore the harassing activities under the belief that youngsters need to learn to accept such behavior as a part of growing up. Nothing could be farther from the accepted norm. Students have the right to expect that they will be free from verbal and physical harassment. Bullying and harassment occur most frequently when supervision is absent and also in the halls, in stairwells, on the playground, in lavatories, and in the lunch area.

The negative effects on the offended student, as well as on the student population as a whole, are extremely damaging. A child’s self-esteem is always in issue, and the emotional effects, and in some cases the physical injuries, are long-term. When race or ethnicity is the focus, ethnic intimidation is the result.

To eliminate bullying and harassment, early intervention by supervising adults is vital. The school curriculum should include units aimed at eliminating such aggressive behavior from the earliest grades. Teasing and bullying can begin as early as kindergarten and increase with intensity as early as grade two. It is essential that educators include gender-sensitive units in the curriculum in the early elementary grades to address such negative behavior. Although boys and girls are the targets of bullies, boys as offended students suffer more frequently from physical abuse. Girls as offended students, on the other hand, more frequently experience teasing and exclusion. As the aggressive behavior continues to intensify with age, the harassment during the teen years can be traced back to the early grades.
How teachers and school administrators handle aggressive behavior makes the difference. School codes of conduct should include a specific prohibition against teasing, bullying, and harassment. The disciplinary code should encourage offended students and witnesses to the aggressive behavior to come forward to designated school personnel who will promptly act upon the information. The real key to re-directing and altering the negative behavior of aggressive students who demean others includes immediate investigation of allegations and appropriate disciplinary action.

It is important that all staff be vigilant to teasing, bullying, and harassment and take prompt action. If staff does not take aggression seriously, it intensifies. Teachers and administrators should:

- Be vigilant and implement rules fairly and consistently.
- Make it clear that teasing and bullying behaviors will not be tolerated.
- Reinforce positive behaviors from kindergarten through all the elementary grades.
- Stress problem-solving, anger management, and empathy.
- Utilize class time to discuss the negative effects of teasing and bullying.
- Intervene when such aggressive acts occur.
- Help students foster each other’s self-esteem.
- Stress teamwork.
- Assist students in creating rules for inside and outside the classroom that foster a climate of positive student relationships.
- Reinforce positive and appropriate behavior by making students aware that misbehavior results in consequences.

When teachers discuss the reasons behind rules of conduct, a child begins to understand the goals: personal responsibility, understanding, accepting differences, and recognizing the dignity of each other’s person. Students must learn to develop self-discipline, respect, and love for others that is demonstrated by their daily behavior.

Schools should adopt an annual theme such as “Respect the Dignity of Each Person” or “Let’s Bully-Proof Our School” or “Be a Part of the Solution and Not the Problem: Break the Silence and Report Bullying.” Through violence prevention programs, a school can partner with parents, students, and the community to prevent violence and to resolve conflicts peaceably and quickly.

All students should be taught the skills of conflict resolution. Ideally, programs would begin in kindergarten and continue throughout the elementary school grades. If there is a particular class of students in need of violence or aggression prevention programs, that group of students may also be targeted for life-skills training or anger management.
The Code of Conduct in the school handbook should specifically list bullying as a prohibited behavior, and all staff members must implement the disciplinary code consistently. Behavior modification is successful when children know there will be repercussions for unacceptable behavior. Since bullying is a learned behavior, it can be “unlearned” with proper motivation and direction.

THE EFFECTS OF BULLYING ON THE SCHOOL CLIMATE

I. Bullies – Who Are They?

a. Anyone at any given time.
b. Often, someone who needs to feel powerful.
c. No longer are all bullies considered to be suffering from low self-esteem.
d. Uses negative behavior to feel important.
e. May have an anger problem.
f. May have been an offended student of similar behavior.
g. May exhibit the following behaviors, traits, and/or warning signs:
   i. Enjoys feeling powerful and in control.
   ii. Seeks to dominate and/or manipulate peers.
   iii. Is impulsive.
   iv. Loves to win at everything; hates to lose at anything. Is both a poor winner (boastful, arrogant) and a poor loser.
   v. Seems to derive satisfaction or pleasure from others’ fear, discomfort, or pain.
   vi. Seems to have little or no empathy for others.
   vii. Seems willing to use and abuse other people to get what he/she wants.
   viii. Defends his/her negative actions by insisting that others “deserved it,” asked for it,” or “provoked” him/her; a conflict is always someone else’s fault.
   ix. Is good at hiding negative behaviors or where adults cannot notice.
   x. Stays cool during conflicts in which he/she is directly involved.
   xi. Shows little or no remorse for his/her negative behaviors.
   xii. Is generally defiant or oppositional toward adults.

II. Bully Techniques

a. Bully behavior is learned and can be unlearned.
b. The older the bully and the longer the bullying behavior has occurred, the more difficult the behavior modification.
c. A common form of bullying is teasing in elementary school, which can progress to physical abuse and social ostracism.
d. Examples:
   i. Rudeness
   ii. Meanness
iii. Destruction of another’s property
iv. Insults
v. Humiliation of others
vi. Gossip and character destruction
vii. Intimidation
viii. Taunting
ix. Threats
x. Jokes, cartoons
xi. Verbal remarks
xii. Graffiti

III. Victimology

a. Offended students of bullying often are individuals who
   i. “Don’t fit in”
   ii. Have physical or special needs
   iii. Are passive
   iv. Are anxious
   v. Are insecure
   vi. Do not report the bullying behavior

IV. Effects of Bullying

a. Physical
   i. Medical problems
   ii. Eating disorders
   iii. Sleeping problems

b. Emotional
   i. Humiliation
   ii. Self doubt
   iii. Irritability
   iv. Feeling of being powerless
   v. Angry
   vi. Frightened
   vii. Ashamed

c. Educational
   i. Absences
   ii. Tardiness
   iii. Decline in grades/reduced achievement
   iv. Attempts to negotiate
The adoption and enforcement of an anti-bullying policy are essential to the goal of a safe school environment but are not sufficient without separate training sessions for both students and staff. The identification of school locations where bullying most frequently occurs (e.g., gym, cafeteria, hallways, classrooms, stairwells) is advisable.

It is well accepted that:

- All too frequently, bullying occurs in the presence of staff and is ignored.
- Anti-bullying policies that do not result in behavior modification miss the mark.
- Policies that rely on suspension and/or expulsion as the main focus of behavior change do not remedy the misbehavior.
- Staff must be in-serviced and trained to identify behaviors which constitute bullying.
- Staff must be required to report immediately to the administration any allegations or knowledge of bullying.
- Retaliation against offended students, reporters, and/or witnesses must result in appropriate action.
- A strong immediate response to bullying is vital.
- Consistent enforcement of the anti-bullying policy is essential.
- Support of an educational environment where students feel comfortable talking to staff and reporting bullying with the knowledge that retaliation will not be tolerated is necessary.
- All complaints of bullying must be taken seriously and investigated with the appropriate remediation.

Holistic education is getting more attention with an emphasis on educating the “whole child,” not just emphasizing test scores and academic performance. Good citizenship, deportment, ethics, character development, and behavior modification during the formative years are being underscored as vital components for educating children to be of service to others and to make meaningful contributions to their community.

On the other side of the measuring stick, there is the concern for an environment conducive to learning and the development and maturation of students. Numerous state legislations require character education in the school curriculum. Empirically, concrete test scores are a more convenient evaluation instrument, with a value-focused aspect to the educational process a more abstract result to measure. School climates, however, reflect the value students place on kindness, consideration, honesty, fairness, and respect. If school climates include gang activity, harassment, high absenteeism, bullying, physical assaults, theft, and threats, an empirical study is not needed to demonstrate an atmosphere counterproductive to educational goals. All too often, this type of school climate also includes lower academic achievements across the student enrollment.
School districts are beginning to emphasize “civility programs,” “character education,” and peer mediation from pre-school through grade twelve at modest costs in the school budget. Behavior modification is incorporated where unacceptable behaviors occur, whether in the classroom, hallways, lunchroom, or playground.

Difficult tasks facing school administrators and boards of education involve off-campus behaviors which either originates in the community or in the school setting but have a definite impact on school campus. Bullying and harassment fit well into this category. Parent-school partnerships are essential to combat non-civil behaviors of students toward one another. When student-victims of aggressive and hurtful behavior attempt to level the playing field, the results are often more aggressive and even violent. Parental involvement in the school, including volunteering and attendance at school-sponsored events and parent conferences, are critical to the holistic educational approach.

Cyberbullying not only impacts school safety and the well-being of students, but also includes First Amendment ramifications. Internet bullying which originates in the school setting substantially and negatively impacts the school learning environment. Cyberbullies taunt and menace their peers with a click of a mouse. They use the Internet to make life miserable for their classmates by signing on with alias screen names. These high-tech bullies invade chat rooms, spread sexual rumors, and post on web sites such as “slam books.” Bullying is a harmful, mean-spirited behavior which cannot be accepted as “just another part of life.” It is well accepted that the effects of bullying are harmful and long lasting in many instances. The behavior aims to humiliate and even destroy the offended student’s self-esteem.

Schools need to adopt and enforce an anti-bullying policy and a Code of Student Conduct that would minimally include:

- The definition of the types of bullying, such as ethnicity, race, color, sex, sexual orientation, and disability.
- Remedial actions which may result from violation of policy.
- Mandatory reporting by staff who become aware of such misbehavior.
- Reporting procedures for offended students and witnesses.
- Investigative procedures.
- Prohibition of retaliation against offended students and witnesses.
- Appropriate use of social networking web sites by students.
- Install firewalls or software blockers on school computers to prevent access to social networking sites by students on school computers.
- Include in the school curriculum the teaching of responsible use of social networking sites and web sites.
Student achievement is related to order and control in the school environment. There is no dispute that when bullying, either physical or non-physical, occurs in the school setting and results in a negative impact on offended students including decline in grades, embarrassment, lack of confidence, or fear of harm from the aggressor, enforcement of the school discipline code is needed. Some offended students cut or drop classes and may even drop out of school.

Bullying is a harmful, mean-spirited behavior which cannot be accepted as “just another part of life.” It is undisputed that the effects of bullying are harmful and long lasting in many instances. A goal of the bully includes humiliation and destruction the offended student’s self-esteem. Although personal confrontation still remains the bully’s preferred method of harassment, cyberbullies are using the Internet to make life miserable for classmates and acquaintances. Use of the Internet to bully may originate off campus or on school computers. Threatening, hurtful messages and sexual rumors are easily communicated to a broad audience through use of chat rooms, instant messaging, e-mails, and web sites where “slam books” and “hit lists” of students can be posted. Web sites are capable of linking to numerous schools where teenagers may log on and add to the mean-spirited remarks about a targeted victim.

It is critical that offended students and their parents speak up and report the incidents of cyberspace bullying. If threats are involved and if an offended student feels that harm could result, not only school officials, but law enforcement, need to be informed immediately. Depending on the severity of the Internet messages and specificity of school district policy and codes of conduct, school administrators may be able to discipline for off-site Internet bullying especially when the communications cause disruption to the school environment.

School districts should:

- Take all complaints of bullying seriously and investigate each.
- Train staff to be aware of bullying and not to ignore it.
- Remind staff to report to the administration complaints or knowledge of bullying.
- Inform students that bullying and/or retaliation are not acceptable behavior.
- Adopt board policies which clearly state prohibited behaviors.
- Adopt board policy concerning Internet use, harassment, and bullying.
- Inform students that prohibited behavior includes cyberbullying.
- Require mandatory reporting by staff who become aware of such behaviors.
- Adopt board policy concerning reporting procedures for offended students and witnesses.
- Adopt board policy concerning retaliation against offended students, witnesses, and reporters of aggressive behavior.
Some acts which constitute harassment are also criminal acts which can result in prosecution. They may include sexual imposition, gross sexual imposition, stalking, telephone harassment, unlawful restraint, assault, hazing, menacing, and aggravated menacing.

Children have a constitutional right to personal security and to bodily integrity. These rights are protected under the substantive, as opposed to the procedural, component of due process under the Due Process Clause of the Fourteenth Amendment to the United States Constitution. This right includes freedom from sexual abuse by public school employees and peers.

**TITLE IX OF THE EDUCATION AMENDMENTS OF 1972**

A safe school environment includes the absence of sexual harassment and discrimination. The devastating and far-reaching effects of peer sexual harassment and the need to stop and prevent it are undisputed. Under Title IX of the Education Amendments of 1972, § 1681, once a public school official has actual knowledge of sexual discrimination and who, at a minimum, has the authority to address the allegation and to institute corrective measures but fails to respond, a cause of action under Title IX exists.

Title IX pertinent part states: “[n]o person…shall, on the basis of sex, be excluded from participation in, be denied the benefit of, or be subjected to discrimination under any education program or activity receiving federal financial assistance” (20 U.S.C. § 1681(a)).

Title IX is applicable to all aspects of school activity, including academic, extracurricular, athletic, and all educational and related school programs, whether on school premises, on a school bus or van, at sports events or on field trips. Title IX not only prohibits sexual discrimination in educational programs and activities, but it also prohibits peer sexual harassment committed by a student against another student. Both male and female students are protected. Same sex harassment, as well as female-to-male and male-to-female harassment are prohibited.

Title IX is intended to protect students from sexual discrimination, not to control speech. The conduct must be sufficiently severe, persistent, or pervasive resulting in a limitation of the offended student’s participation in or receipt of benefits from the educational program. Title IX protects students from a hostile or abusive educational environment. Concerning a hostile environment under Title IX, the court held that agency principles are used to decide if an employee’s knowledge of facts concerning discrimination will be imputed to the school district. The employee must have the authority to hire, fire, and discipline an alleged harasser.

Peer sexual harassment is a type of sexual discrimination which creates a hostile environment. It is important that staff and students recognize behaviors which may
constitute peer sexual harassment. Unwelcome sexual comments and advances, requests or demands for sexual favors or dates, bullying, graffiti, sexual rumors, intimidation, name calling, sexual jokes, cartoons and pictures, pornography, pressure for sexual activity, sexual conversation, sexual assault, “blocking” movements, touching, verbal comments, and hand and/or body gestures are all examples of peer sexual harassment. Sexual harassment does not include non-sexual contact such as flirting or contact occurring during sports. When peer sexual harassment is severe, persistent, or pervasive so as to limit a student’s ability to participate in the educational program as to benefit from it, a hostile educational environment exists. Gender-based, non-sexual harassment such as physical aggression, intimidation, or hostility is unlawful discrimination if it is pervasive or openly practiced.

Effects of peer sexual harassment on the offended student can be psychological, physical, and emotional. Offended students are frequently reluctant to come to school, grades drop, absence increases, and offended students drop out of school. Offended students often feel humiliated, angered, and a loss of self-esteem. Even students who are not direct targets of the abuse and who witness harassment directed at another often experience a hostile environment.

The causes of sexual harassment, while undisputed, are varied. Conduct is prohibited when it is not invited or solicited and is regarded as undesirable or offensive. Sexual harassment is unwelcome and unwanted. However, failure to complain about the conduct does not always mean that it is welcomed by the recipient. Once school personnel become aware of the harassment, they are required to take prompt and sufficient action to investigate and stop it.

Each federal department or agency authorized to extend federal financial assistance to any educational program or activity, whether it be grant, loan, or contract, is directed to enforce Title IX. The intent is to avoid use of federal resources to support discriminatory practices. The U.S. Department of Education is charged with the responsibility of administering Title IX and has enacted regulations which require each recipient of federal funds to adopt and publish procedures providing for prompt investigation of all complaints of discrimination and appropriate disciplinary action and equitable resolution following a thorough investigation. The failure to comply with regulations or to promulgate a grievance procedure does not constitute discrimination as a matter of law.

The number of reported cases involving sexual harassment of students in schools confirms that it is an all too common part of the educational experience. Every student has the right, privilege, advantage, and opportunity to enjoy all the benefits of their educational experience.

The school environment should be a friendly place and a positive experience for students. So many come from a hostile home environment, and their school may be the
only safe haven each day. Students have the innate right to expect and to be in a school atmosphere in which they feel physically and emotionally safe and one which is conducive to learning. If that atmosphere is not provided by school administrator, the courts, which customarily do not seek to involve themselves in the operation of schools, will apply the appropriate law to assure that the rights of children are enforced.

THE NAVAJO PEACEMAKING PROCESS

There is a difference between Peacemaking and mediation. Mediation attempts to reconcile opposing forces to settle a dispute and effect some agreement between the parties. Peacemaking involves:

- All parties on equal footing.
- All parties involved in resolving a conflict.
- All stakeholders are required to be open and engaging in discussion.
- Dialogue to get to the root of the conflict and cause of the aggressive behavior.
- No interruptions while a party is speaking.
- A non-adversarial proceeding.
- There is no winner; there is no loser.
- Non-bargaining.
- Reaching an agreement acceptable to all parties.
- Repairing the harm caused by the conflict.
- Replacing or restoring relationships.

Peacemaking is a vital process to personal growth and school community relationships.

The Navajo Peacemaking process can be especially effective in a small or large school district since it addresses and resolves the causes and underlying issues of conflict essential to a peaceful and civil school community. The elimination of a smoldering conflict is critical to a peaceful and civil school environment. Although Navajo Peacemaking can be appropriately used in student-to-teacher conflicts, the emphasis of this curriculum is on student-to-student conflicts as either an alternative to or in concert with traditional school discipline.

The four R’s of Navajo Peacemaking are:

- Respecting Self and One Another
- Recognizing the Dignity Owed to Each Person
- Resolving Differences
- Repairing Harm

The Diné dispute resolution process is flexible and allows a voice to the participants and gives them control over the process through a horizontal decision-making process.
Traditional methods and Navajo values are incorporated into the restorative justice Peacemaking conflict resolution process.

Diné or Navajo restorative justice Peacemaking, used for over four centuries, does not rely upon a superior decision-maker who imposes decisions on the participants or parties. There is no adjudication coercion or force. Decisions are arrived at by the participants who engage in respectful dialogue and open discussion. The process fosters mutual respect, harmony, relationships, and courtesy. The resolution is the result of a process based on understanding and agreement of the parties.

Diné Peacemaking reinforces traditional Navajo justice which relies upon adjustment of the differences of equals through free discussion of conflict which is resolved by consent of the parties. Peacemaking is of exponential value in preventing and resolving conflict, disrespect, and aggressive behavior in the school community. Navajo principles of maintaining harmony, establishing order, respecting freedom, and talking things out (Canon One of the Navajo Code of Judicial Conduct) are the mainstay of a conflict resolution process that builds and restores relationships and communities.

In the school community, the traditional disciplinary process is adjudicatory and authoritarian. It is a swift justice: a school code of conduct is violated, the violation is determined, and punishment results in the usual form of detention, suspension, or expulsion. The cause of the misconduct is often not ascertained, and the harm resulting to the offended student(s) of the offending behavior is rarely addressed.

Diné restorative justice Peacemaking is a viable and effective alternative to traditional school discipline. It can be used in place of punitive disciplinary especially in offenses involving bullying, harassment, vandalism, classroom disturbances, theft, fighting, and aggressive behavior. The underlying causes of a conflict are discussed in the Peacemaking session, which can be facilitated by a school guidance counselor or school psychologist. Stakeholders to the conflict are invited to participate as equals in the process and include the offended student and parents/guardians, the student-offender and parents/guardians, students who observed the conflict who were also harmed. Peacemaking utilizes the benefits of decision making and resolution of the conflict by the parties themselves with guidance from the facilitator.

Diné Peacemaking reinforces traditional Navajo methods and K‘é principles of relationship, courtesy, and mutual respect, as well as empathy for others. By its very nature, Peacemaking is a transformational process.

In addition to accepting responsibility for one’s decisions and actions, students will recognize that respect and dignity are owed to each individual, including themselves, and that conflicts must be not only resolved, but prevented, as well. Repairing the harm caused to others is essential to a respectful and civil school atmosphere. The values and moral principles emphasized in Navajo Peacemaking are the cornerstone of personal relationships.
affecting the smallest of communities to the largest. Peacemaking is the foundational basis of good relationships and responsible living.

This curriculum is divided into six units with age-graded activities for classroom use in kindergarten through grade three, grades four through six, and grades seven through twelve. Each unit contains student performance goals, instructional goals, essential vocabulary terms, and classroom lessons. At the conclusion of each lesson, objectives and goals are summarized with positive reinforcement. All units aim to re-enforce the values of respect, cooperation, responsibility, civility, problem-solving, repair of harm resulting from offensive behavior, and personal transformation to meet normative standards of behavior and school codes of conduct.

This course of study is based on restorative justice Navajo Peacemaking and the rights of children to dignity and respect and to feel safe and be safe in the school community. It has been developed with the intent to provide classroom teachers with a curriculum to reinforce these rights, to prevent and resolve conflict, and to repair the harm caused by inappropriate and wrongful acts. A major goal of the curriculum is to reinforce a peaceful and civil school community or to transform an aggressive school ethos into an atmosphere conducive to learning.

The course of study addresses both classroom behavior as well as restorative justice Peacemaking as an alternative to traditional school discipline as a consequence for violations of codes of conduct when determined appropriate by school administrators.

The classroom lessons and activities are intended to teach and reinforce appropriate behavior and respect for self and others by reinforcing social skills for use not only in the school community, but in societal settings as well.

The classroom activities have been developed to urge students to relate issues to their personal experiences, views, and thoughts. The lessons are intended to be flexible and may be taught over varying lengths of time. The course of study may be expanded through teacher-directed or student-initiated activities or discussions.

**Curriculum Performance Objectives**

Students will:
- Learn the elements of the Peacemaking process.
- Reinforce a value system of respect for self and others.
- Understand the need for harmonious relationships.

**Curriculum Instructional Objectives**

- Remind students that all persons have an entitlement to respect, dignity, and personal safety.
- Emphasize that each person is unique and their gifts and differences are to be respected.
• Emphasize that the school environment must be civil and peaceful where an atmosphere conducive to learning is maintained and fostered by students and staff.
• Teach students that a civil and peaceful school environment is one where each student is provided an opportunity to develop his/her skills and abilities without fear or concern for personal safety.

PARENTAL INVOLVEMENT

A letter should be sent to parents/guardians from the board of education/school district about restorative justice Peacemaking will promote cooperation, support, and a partnership in an effort to prevent conflicts, encourage respect, and provide an educational community conducive to learning. The following is a sample parent letter:

Date

Dear Parents/Guardians:

The administration and staff at _________________ School want your child to be safe and happy in the school setting. In pursuit of this goal, the Board of Education has adopted restorative justice Peacemaking as alternative discipline for violations of the student code of conduct as deemed appropriate by the administration of each school. The intent is to resolve and prevent conflicts and to repair harm caused by inappropriate behavior in the school community.

Participation in restorative justice Peacemaking is voluntary and involves stakeholders in a conflict situation, including the students directly involved, their parents/guardians, and school officials. Through discussion and dialogue, the intent is to learn the cause of the conflict, make amends for the wrongdoing, and resolve the conflict so it does not re-occur.

Thank you for your cooperation and assistance. Together, we will promote a respectful and civil school community which is conducive to learning.

Sincerely,

_____________________________
School Administrator
UNIT 1
DIGNITY AND RESPECT FOR SELF AND OTHERS
UNIT 1 - DIGNITY AND RESPECT FOR SELF AND OTHERS

PRE-TEST

Discuss the following pre-test questions with your class as a preparation for the classroom activities:

1. Do you know what harassment and bullying are?  
   YES  NO

2. Would you go to an adult for help if you were being harassed or bullied?  
   YES  NO

3. Would you immediately tell on one of your classmates if they were harassing or bullying you?  
   YES  NO

4. Do you think that all students should feel and be safe at school?  
   YES  NO

5. Do you think that all students are entitled to dignity and respect?  
   YES  NO

6. Do you think that some offended students drop out of school rather than put up with daily harassment and bullying?  
   YES  NO

7. Do you think that those who offend students have a duty to repair the harm they have caused to others?  
   YES  NO
UNIT 1 - DIGNITY AND RESPECT FOR SELF AND OTHERS

CLASSROOM ACTIVITIES

KINDERGARTEN – GRADE 3

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Learn to respect themselves and others.
- Be reminded that all persons deserve respect.

Instructional Objectives
- Build self-esteem.
- Reinforce respect for each other and diversity.
- Teach students they have the right to dignity and respect.
- Stress Diné principles of harmony and order.

Ask the students to draw a picture of themselves and to list five or more characteristics that make them unique and, therefore, special. Have each student show their picture to the class, and ask each student to explain his/her gifts and unique qualities (language, culture, heritage, physical characteristics, skin, eye, and hair color, strengths, and abilities). Reinforce that no two students are alike and that each is special in their own ways.

CLASSROOM ACTIVITY #2

Performance Objectives
Students will:
- Learn to resolve problems without aggressive behavior.
- Learn what to do when wrong choices are made.

Instructional Objectives
- Emphasize the importance of kindness to others.
- Reinforce the need to repair harm resulting from inappropriate conduct.
- Stress the need for harmony in the school community.
Distribute the Word Find below, and ask the students to circle each of the following terms: CARE, NO, KIND, HELP, RUN, THREAT, SAFE, MEAN, HURT, RESPECT, NOW, TELL.

After the students have completed the Word Find, discuss with the class the meaning and relevancy of each word as it pertains to their safety at school.

CLASSROOM ACTIVITY #3

Performance Objectives
Students will:
• Learn to treat each other with kindness.
• Learn appropriate behavior.

Instructional Objectives
• Emphasize the importance of a peaceful school community.
• Teach the importance of dialogue to prevent and resolve conflict.
• Reinforce Diné principles of relationship, courtesy, and mutual respect.

Organize the students in role-playing. Designate a Teacher, three Students, and a Bully. Set this scenario for the students to act out: One of the students is walking through the classroom with his/her backpack. The bully grabs the student’s backpack, throws it on the ground, and steps on it as two other students observe what is happening. One of the student witnesses immediately seeks help from the classroom teacher. The teacher brings the students together as a group to begin a non-adversarial discussion to resolve the strained relationship that resulted from what occurred. After the role-playing, explain and discuss the following with the class:

1. Why did the bully act in an aggressive manner?
2. How did the offended student feel as a result of the incident?
3. How did the student witnesses feel as a result of the incident?
4. All students deserve respect.
5. Bullying is not acceptable behavior and must stop.
6. Respect includes the individual person and his/her property and belongings.
7. Harm is caused by aggressive behavior.
8. The non-accusatory, informal, immediate dialogue among the four students and teacher discusses the underlying causes of the behavior.
9. Have students focus on values, not on accusatory and hostile remarks: respect, kindness, talking and resolving conflicts, physical aggression as the wrong means of addressing personal conflicts, how others feel when they are bullied.
10. Dialogue addresses those causes to reach an agreement, harmony, and restoration of student relationships.
11. Bring closure to the conflict focusing on civility, kindness, and resolving differences without mean-spirited actions.
12. Repair the harm done by the aggressive behavior (apology, amends, replacement or repair of damaged property) and restore relationships and harmony.
CLASSROOM ACTIVITIES

GRADES 4 – 6

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
  • Be reminded they are a gift of great value.
  • Be reminded of right and wrong behaviors.
  • Learn they have the right to be and feel safe in school.
  • Be reminded to be respectful to others.

Instructional Objectives
  • Stress what is acceptable and unacceptable behavior.
  • Stress that we treat all persons with respect and dignity.
  • Reinforce *K’ê* principles of relationship, courtesy, and mutual respect.

Below is a list of behaviors which are contrary to respect and dignity. Place the list on the chalkboard or Smart Board and discuss why each of the behaviors is harmful to others. Ask the students to provide additional unacceptable behaviors. Have the students suggest an alternate acceptable behavior, i.e., waiting one’s turn in line instead of shoving.

| name calling | bullying |
| theft        | fights   |
| threats      | shoving  |
| damage to others’ property | lies |
| vandalism   | name calling |

CLASSROOM ACTIVITY #2

Performance Objectives
Students will:
  • Learn to respect diversity.
  • Know they have the right to be and feel safe at school.

Instructional Objectives
  • Build students’ self-esteem.
  • Reinforce with students the importance of a peaceful school community.
  • Reinforce *K’ê* principles of relationship, courtesy, and mutual respect.
Discuss with the students the importance of each of the following terms and as they relate to their safety:

- humiliation
- assault
- bully
- abusive
- hostile
- harass
- menace
- threaten
- intimidate
- victim
- coerce
- respect
- diversity
- bias
- harm
- repair
- talk
- dialogue
- discuss
- kindness
- peer
- control
- exploit
- threat
- report
- help
- peaceful
- unwelcome
- touch
- immediate

Ask the students to create a crossword puzzle using these and additional terms from the classroom discussion.

**SAMPLE:**

```
T  V
O I
UNWELCOME
C T
H I
HUMILIATION
O A
ABUSIVE L A
T KINDNESS
REPAIR S
L ABUSIVE
THREATEN U
E L
L THREAT
PEACEFUL
```

**CLASSROOM ACTIVITY #3**

**Performance Objectives**

**Students will:**

- Emphasize the importance of respecting self and others.
- Understand that offended students of harassment suffer damaging effects.
- Understand that harassment offends the dignity and worth of individuals.
- Learn the importance of seeking assistance in situations which make him/her feel threatened or fearful.
- Learn to apply Navajo concepts of maintaining harmony.
Instructional Objectives

- Remind students they are entitled to be and feel safe at school.
- Stress that peer harassment and bullying must be reported immediately to teachers and/or school officials.
- Emphasize that harassment and bullying will not be tolerated in the school setting.
- Reinforce $K'ê$ principles of relationship, courtesy, and respect.

Divide the class into small groups. Have each group discuss the following myths about peer sexual harassment. Ask the students to add additional myths to the list.

- Only females are offended students of peer sexual harassment.
- Only males are perpetrators of peer sexual harassment.
- Offended students of sexual harassment overreact.
- If it’s fun, it can’t be wrong or harassment.
- If the offender does not intend to be abusive or offensive, it’s not sexual harassment.
- Peer sexual harassment should not be reported to parents or school officials. It is best for offended students to deal with it themselves.
- Peer sexual harassment should not be reported unless the offended student is physically touched.
- Peer sexual harassment is just a part of growing up.
- Sexual jokes or sexual conversations are really no big deal.
- Sexual harassment should stop only if the offended student demands it.
- An attractive female or male student should get used to other students making sexual comments about their appearance.

Bring the class together and summarize the group discussions. Discuss truisms as opposed to the myths about sexual harassment. Include in the discussion the causes and effects of sexual harassment. Discuss:

- All students have the right to be free of sexual harassment.
- All students have the right to be respected.
- All students need to know boundaries for themselves and others.
- Some acts of sexual harassment, in addition to being a violation of the student code of conduct, can be crimes.
CLASSROOM ACTIVITIES
GRADES 7 – 12

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Be reminded they are a gift of great value.
- Be reminded of acceptable and unacceptable behavior.
- Learn they have the right to be and feel safe in school.

Instructional Objectives
- Stress what is acceptable and unacceptable behaviors.
- Stress that we treat all persons with respect and dignity.
- Reinforce K’é principles of relationship, courtesy, and mutual respect.

Below is a list of behaviors which are contrary to respect and dignity. Place the list on the chalkboard or Smart Board and discuss why each of the behaviors is harmful to others. Ask the students to provide additional unacceptable behaviors. Have the students suggest an alternate acceptable behavior, i.e., being open to diversity instead of making unkind remarks.

- social media
- assaults
- gossip
- fights
- character assassination
- Internet harassment
- lies
- offensive e-mails
- unkind remarks
- phone harassment
- threats
- texting
- sexual harassment
- sexting
- peer-peer harassment
- bullying

CLASSROOM ACTIVITY #2

Performance Objectives
Students will:
- Learn to make proper choices in behavior.
- Learn that harassment is abusive behavior.
### Instructional Objectives

- Reinforce the importance of a peaceful, civil school environment.
- Teach students to know the importance of kindness and respect.
- Stress K’é principles of relationship, courtesy, and mutual respect.

Distribute the following terms and definitions to the class. Ask the class to fill in their definition of each term. Once completed, facilitate a class discussion of the terms and as the terms relate to peer sexual harassment in the school environment.

<table>
<thead>
<tr>
<th>VOCABULARY TERM</th>
<th>BRIEF DEFINITION</th>
<th>YOUR DEFINITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Respect</td>
<td>Hold in high regard</td>
<td></td>
</tr>
<tr>
<td>Individual rights</td>
<td>Power or privilege to which an individual is entitled</td>
<td></td>
</tr>
<tr>
<td>Responsibility</td>
<td>Duty</td>
<td></td>
</tr>
<tr>
<td>Integrity</td>
<td>Honesty</td>
<td></td>
</tr>
<tr>
<td>Bravery</td>
<td>Courage</td>
<td></td>
</tr>
<tr>
<td>Exploit</td>
<td>Maltreat; use wrongly or selfishly</td>
<td></td>
</tr>
<tr>
<td>Exploitation</td>
<td>Misuse; unethical use</td>
<td></td>
</tr>
<tr>
<td>Abuse</td>
<td>Mishandle</td>
<td></td>
</tr>
<tr>
<td>Power</td>
<td>Control</td>
<td></td>
</tr>
<tr>
<td>Control</td>
<td>Dominance</td>
<td></td>
</tr>
<tr>
<td>Victimization</td>
<td>Mistreatment; persecution</td>
<td></td>
</tr>
<tr>
<td>Intimacy</td>
<td>Familiarity</td>
<td></td>
</tr>
<tr>
<td>Rape</td>
<td>Sexual and criminal assault</td>
<td></td>
</tr>
<tr>
<td>Violence</td>
<td>Brutality</td>
<td></td>
</tr>
<tr>
<td>Peer</td>
<td>Equal</td>
<td></td>
</tr>
<tr>
<td>Harassment</td>
<td>Bother, molest, persecute, tease, torment, annoy</td>
<td></td>
</tr>
</tbody>
</table>
Peer Sexual Harassment

A type of sexual discrimination which creates a hostile environment; unwelcome sexual comments and advances

Bullying

Dominating, harassing, terrorizing, tormenting, persecuting, trampling on the rights of others

CLASSROOM ACTIVITY #3

Performance Objectives
Students will:
- Know that the entire school community needs to work together to rid the school environment of peer sexual harassment.

Instructional Objectives
- Emphasize that peer sexual harassment must be identified, stopped, and prevented.
- Stress K‘é principles of relationship, courtesy, and mutual respect.

Divide the class into small groups. Distribute poster board and markers to each group. Assign one of the following to each group for illustration and posting in the classroom and/or around the school:

- What is peer sexual harassment?
- What should you do if you have been sexually harassed? How did you feel? Should you report sexual harassment to a school administrator or teacher? Why or why not?
- Have you ever been a witness to peer sexual harassment? What should you do? Why?
- What should happen to students who harass other students? Should they be disciplined? What type of punishment?
- How can students who have sexually harassed offended students repair the harm they have caused? How can the harm experienced by offended students be repaired?
CLASSROOM ACTIVITY #4

Performance Objectives
Students will:
- Emphasize the importance of respecting self and others.
- Understand that offended students suffer damaging effects.
- Understand that sexual harassment offends the dignity and worth of individuals.
- Learn the importance of seeking assistance in situations which make them feel threatened or fearful.

Instructional Objectives
- Remind students they are entitled to be and feel safe at school.
- Stress that peer sexual harassment and bullying must be reported immediately to teachers and/or school officials.
- Emphasize that sexual harassment and bullying will not be tolerated in the school setting.
- Reinforce Navajo concepts and procedures of harmony, order, and justice.

Divide the class up into small groups. Have each group discuss the following myths about peer sexual harassment. Ask the students to add additional myths to the list.

- Only females are offended students of peer sexual harassment.
- Only males are perpetrators of peer sexual harassment.
- Offended students of sexual harassment overreact.
- If it’s fun, it can’t be wrong or harassment.
- If the offender does not intend to be abusive or offensive, it’s not sexual harassment.
- Peer sexual harassment should not be reported to parents or school officials. It is best for offended students to deal with it themselves.
- Peer sexual harassment should not be reported unless the offended student is physically touched.
- Peer sexual harassment is just a part of growing up.
- Sexual jokes or sexual conversations are really no big deal.
- Sexual harassment should stop only if the offended student demands it.
- An attractive female or male student should get used to other students making sexual comments about their appearance.

Bring the class together and summarize the group discussions. Discuss truisms as opposed to the myths about sexual harassment. Include in the discussion the causes and effects of sexual harassment. Discuss:
All students have the right to be free of sexual harassment.
All students have the right to be respected.
All students need to know boundaries for themselves and for others.
Some acts of sexual harassment, in addition to being a violation of the student code of conduct, can be crimes.
UNIT 1
DIGNITY AND RESPECT FOR SELF AND OTHERS

POST-TEST

The following post-test questions should be discussed at the conclusion of Unit 1 classroom activities. Clarify any misconceptions, misunderstandings, or areas that require additional discussions.

1. Why should we respect one another?

2. Why is it important to report bullying and harassment?

3. To what persons in the school community should I report bullying or harassment?

4. What should I do if I see a classmate being bullied or harassed?

5. Why does someone bully or harass another person?

6. What should I do if I do something wrong against a classmate?

7. Why is it important to talk about disagreements and the reasons for a conflict?
UNIT 2

RESTORATIVE JUSTICE PEACEMAKING PROCESS
UNIT 2 - RESTORATIVE JUSTICE PEACEMAKING PROCESS

CLASSROOM ACTIVITIES

KINDERGARTEN – GRADE 3

CLASSROOM ACTIVITY #1

Performance Objectives

Students will:
- Learn that the Peacemaking process can prevent and resolve conflicts.
- Learn the harm that aggressive behaviors cause to the offended student and bystanders who observe it.
- Learn proper social skills, including skills necessary to resolve conflict.

Instructional Objectives

- Teach the students the elements of the Peacemaking process.
- Reinforce the need for respect at all times, including participation in the Peacemaking process.
- Stress the importance of dialogue, active listening, and discussion in resolving conflicts and reaching agreements through consensus.
- Emphasize the value of traditional Navajo justice through conflict resolution.
- Reinforce traditional Navajo justice methods of adjusting the differences of equals through free discussion of conflicts.

Engage the students in role-playing. Designate a Student A and a Student B. Create the following scenario: Student A approaches Student B as he/she is playing with a ball on the school playground during recess. Student A takes the ball away from Student B and teases Student A by running and refusing to give the ball back to Student B. Student A then pushes Student B to the ground and refuses to let him/her get up. All of Student A and Student B’s classmates were a part of the game with Student B before Student A took the ball. The teacher arrives to resolve the conflict.

The teacher decides this incident is suitable for the Peacemaking process and initiates the process with the entire class participating in the Peacemaking process. The teacher, as the Facilitator, explains the process:

- All members of the Peacemaking process will be given an opportunity to talk about how they felt concerning the incident on the playground.
- No one will be interrupted.
- All will be respectful to each other.
- No one will challenge or dispute what another has to say.
The purpose of the Peacemaking process is to get to the cause of the playground conflict, to end it, and to prevent further episodes of aggressive behavior by all.

The class talks it out, tells how they feel when aggression takes place, talks about how to prevent further aggressive behavior, and discusses and reaches an Agreement on how to resolve this particular incident and repair any harm caused by it.

Apologies and amends are made.

CLASSROOM ACTIVITY #2

Performance Objectives

Students will:

- Learn the need to repair harm resulting from their offensive behavior.
- Understand the need to make amends and repair the harm resulting from their actions.
- Understand horizontal decision making.

Instructional Objectives

- Teach the need for a genuine apology.
- Reinforce the importance of restoring relationships.
- Reinforce the Navajo value of achieving harmony.

Orally deliver the following questions to the students facilitating a classroom discussion aimed at the above performance and instructional objectives:

Feelings of Others/Self

- How do you feel when someone makes fun of you? How do you respond?
- How do you feel when someone makes fun of your ideas? How do you respond?
- How do you feel when someone makes fun of what you are wearing? How do you respond?
- If you cannot work out a problem with a classmate, what can or should you do?
- Do you think about the consequences of your actions?

Dialogue

- How important do you think it is to talk about problems when they arise?
- Should the causes of the problem and “getting to the bottom of things” be discussed to resolve a conflict?
Accepting Responsibility /Proper Attitudes

- Do you accept responsibility for your inappropriate and/or wrong behavior?
- Are you accountable for your actions?
- Are you willing to discuss the problems which led to the conflict?
- Are you willing to make things right?
- Are you willing to try to make things better (repair the harm caused by your actions)?
- Are you willing to change your behavior?
- Do you understand the harm that you caused to others by your inappropriate behavior?
- Do you want to repair and restore damaged friendships?

CLASSROOM ACTIVITY #3

Performance Objectives

Students will:

- Learn the basic elements of Peacemaking.
- Learn the value of dialogue and discussion in resolving conflict.
- Learn how to resolve conflict.

Instructional Objectives

- Remind students they are accountable for their actions.
- Stress the importance of discussion and understanding one another.

Print the following phrases on separate flashcards. As each flashcard is shown, ask the class to explain the meaning of each as it relates to the Peacemaking process and maintaining a safe, respectful school environment:

- Consideration of others’ feelings before I speak or act.
- Repair harm resulting from my inappropriate and unacceptable behavior.
- Make things right.
- Prevent and resolve conflict through discussion and dialogue.
- Really listen to what others are saying without interrupting.
- A real discussion is not a win-lose process.
- Accepting responsibility for one’s behavior.
- All actions have consequences.
- Importance of problem-solving through discussion and dialogue.

Ask the students to present additional phrases.
CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Learn the need to repair harm resulting from their offensive behavior.
- Understand the need to make amends and repair the harm resulting from their actions.

Instructional Objectives
- Teach the need for a genuine apology.
- Reinforce the importance of restoring relationships.
- Teach the need to resolve conflict and attain harmony.

Orally deliver the following questions to the students, and ask them to write a short response to each question. Have the students share their answers facilitating a classroom discussion aimed at the above performance and instructional objectives.

Feelings of Others/Self
- How do you feel when someone makes fun of you? How do you respond?
- How do you feel when someone makes fun of your ideas? How do you respond?
- How do you feel when someone makes fun of what you are wearing? How do you respond?
- If you cannot work out a problem with a classmate, what can or should you do?
- Do you think about the consequences of your actions?

Dialogue
- How important do you think it is to talk about problems when they arise?
- Should the causes of the problem and “getting to the bottom of things” be discussed to resolve a conflict?

Accepting Responsibility/Proper Attitudes
- Do you accept responsibility for your inappropriate and/or wrong behavior?
- Are you accountable for your actions?
- Are you willing to discuss the problems which led to the conflict?
- Are you willing to make things right?
- Are you willing to try to repair the harm caused by your actions?
- Are you willing to change your behavior?
• Do you understand the harm that you caused to others by your inappropriate behavior?
• Do you want to repair and restore damaged friendships?

CLASSROOM ACTIVITY #2

Performance Objectives
Students will:
• Learn the basic elements of Peacemaking.
• Learn the value of dialogue and discussion.
• Learn to adjust differences through discussion and dialogue.

Instructional Objectives
• Remind students they are accountable for their actions.
• Stress the importance of discussion and understanding one another.
• Teach the process of horizontal decision making.

Print the following phrases on separate flashcards. Divide the class into groups, and distribute one or two flashcards to each group. Ask the groups to discuss the meaning of each phrase as it relates to the Peacemaking process and maintaining a safe, respectful school environment. Ask the students to formulate additional phrases. Bring the class together and have the students share the results of their group discussions.

• Consideration of others’ feelings before I speak or act.
• Repair harm resulting from my inappropriate and unacceptable behavior.
• Make things right.
• Prevent and resolve conflict through discussion and dialogue.
• Really listen to what others are saying without interrupting.
• A real discussion is not a win-lose process.
• Accepting responsibility for one’s behavior.
• All actions have consequences.
• Importance of problem-solving through discussion and dialogue.
CLASSROOM ACTIVITY #3

Performance Objectives
Students will:
- Learn that the Peacemaking process can prevent and resolve conflicts.
- Learn the harm that aggressive behaviors cause to the offended student and bystanders who observe it.
- Learn proper social skills.

Instructional Objectives
- Teach the students the elements of the Peacemaking process.
- Reinforce the need for respect at all times, including participation in the Peacemaking process.
- Stress the importance of dialogue, active listening, and discussion in resolving conflicts and reaching agreements through consensus.
- Reinforce that horizontal decision making is not coercive.

Present the following scenario to the class. Ask for volunteers from the class to play participating roles in the Peacemaking process.

A group of students is talking together in the hall as they proceed to lunch. Student A, the school bully, approaches and pushes Student B to the ground and will not allow Student B to get up. Students C, D, and E witness this incident and attempt to stop the aggressive behavior. A teacher arrives and ends the conflict. The teacher refers the matter to the school administration, and the principal contacts the parents of Students A and B. The principal asks the parents if they and their children would be interested in resolving this matter through the Peacemaking process. The parents and students agree to participate. The principal asks the school guidance counselor to serve as the Facilitator of the Peacemaking process, a format for dialogue and discussion intended to get to the underlying causes of the conflict between Student A and Student B.

All stakeholders (parties with an interest in the incident, effected by it, and interested in the outcome) are invited to join the Peacemaking process. The following stakeholders are part of the process:
- Student A, the bully
- Student B, the offended student
- Parents/guardians of Student A and Student B
Students C, D, and E who observed the aggressive behavior and who are also negatively affected by it
- The teacher involved in ending the conflict in the hallway
- The school guidance counselor as Facilitator of the Peacemaking process

The participants of the Peacemaking process arrive and arrange their chairs in a circular format. The Facilitator explains the process to all:

- All present are there voluntarily.
- The Peacemaking process is not an adversarial one.
- All are given an opportunity to express their feelings regarding the incident.
- No one is ever interrupted.
- No one becomes accusatory, offensive, or challenging in any way.
- The role of the Facilitator is to learn the underlying causes of the incident.
- All participants have a common goal to resolve the underlying causes and to repair any harm resulting from the aggressive behavior.
- An Agreement will be reached by all in the Peacemaking process stating what action is to be taken, how it is to be taken, and what occurs if the Agreement is violated.

At the conclusion of the Peacemaking process, ask the class for further suggestions for the Agreement to resolve the conflict.
CLASSROOM ACTIVITIES

GRADES 7 – 12

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
• Learn the need to repair harm resulting from their offensive behavior.
• Understand the need to make amends and repair the harm resulting from their actions.
• Learn the value of respectful dialogue.

Instructional Objectives
• Teach the need for a genuine apology.
• Reinforce the importance of restoring relationships.
• Teach students the need to have empathy for one another.
• Emphasize K’ê principles of relationship, courtesy, and mutual respect.

Distribute the following questions to the students, and ask them to write a short response to each question. Have the students share their answers facilitating a classroom discussion aimed at the above performance and instructional objectives.

Feelings of Others/Self
• How do you feel when someone makes fun of you? How do you respond?
• How do you feel when someone makes fun of your ideas? How do you respond?
• How do you feel when someone makes fun of what you are wearing? How do you respond?
• If you cannot work out a problem with a classmate, what can or should you do?
• Do you think about the consequences of your actions?

Dialogue
• How important do you think it is to talk about problems when they arise?
• Should the causes of the problem and “getting to the bottom of things” be discussed to resolve a conflict?
Accepting Responsibility /Proper Attitudes

- Do you accept responsibility for your inappropriate and/or wrong behavior?
- Are you accountable for your actions?
- Are you willing to discuss the problems which led to the conflict?
- Are you willing to make things right?
- Are you willing to try to repair the harm caused by your actions?
- Are you willing to change your behavior?
- Do you understand the harm that you caused to others by your inappropriate behavior?
- Do you want to repair and restore damaged friendships?

CLASSROOM ACTIVITY #2

Performance Objectives

Students will:

- Learn the basic elements of Peacemaking.
- Learn the value of respectful dialogue and open discussion.

Instructional Objectives

- Remind students they are accountable for their actions.
- Stress the importance of discussion and understanding one another in resolving conflict.

Print the following phrases on separate flashcards. Divide the class into groups, and distribute one or two flashcards to each group. Ask the groups to discuss the meaning of each phrase as it relates to the Peacemaking process and maintaining a safe, respectful school environment. Ask the students to formulate additional phrases. Bring the class together and have the students share the results of their group discussions.

- Consideration of others’ feelings before I speak or act.
- Repair harm resulting from my inappropriate and unacceptable behavior.
- Make things right.
- Prevent and resolve conflict through discussion and dialogue.
- Really listen to what others are saying without interrupting.
- A real discussion is not a win-lose process.
- Accepting responsibility for one’s behavior.
- All actions have consequences.
- Importance of problem-solving through discussion and dialogue.
CLASSROOM ACTIVITY #3

Performance Objectives
Students will:

- Learn that the Peacemaking process can prevent and resolve conflicts.
- Learn the harm that aggressive behaviors cause to the offended student and bystanders who observe it.
- Learn proper social skills, including Navajo principles of maintaining harmony and talking things out in free discussion.

Instructional Objectives

- Teach the students the elements of the Peacemaking process.
- Reinforce the need for respect at all times, including participation in the Peacemaking process.
- Stress the importance of dialogue, active listening, and discussion in resolving conflicts and reaching agreements through consensus.

Present the following scenario to the class. Ask for volunteers from the class to play participating roles in the Peacemaking process:

In a crowded school hallway, Student A verbally abuses Student B by name-calling and shouting false rumors about Student B. A number of students clearly overhear the abuse but are unable to stop Student A despite trying to calm Student A down. A school administrator appears and ends the verbal attack.

The teacher refers the matter to the school administration, and the principal contacts the parents of Students A and B. The principal asks the parents if they and their children would be interested in resolving this matter through the Peacemaking process. The parents and students agree to participate.

The principal asks the school guidance counselor to serve as the Facilitator of the Peacemaking process, a format for dialogue and discussion intended to get to the underlying causes of the conflict between Student A and Student B. All stakeholders (parties with an interest in the incident, effected by it, and interested in the outcome) are invited to join the Peacemaking process. The following stakeholders are part of the process:

- Student A, who has been verbally abusive
- Student B, the offended student
- Parents/guardians of Student A and Student B
- Students C, D, E, F, and G who observed the aggressive behavior and who are also negatively affected by it
The teacher involved in ending the conflict in the hallway
The school guidance counselor as Facilitator of the Peacemaking process

The participants of the Peacemaking process arrive and arrange their chairs in a circular format. The Facilitator explains the process to all:

- All present are there voluntarily.
- The Peacemaking process is not an adversarial one.
- All are given an opportunity to express their feelings regarding the incident.
- No one is ever interrupted.
- No one becomes accusatory, offensive, or challenging in any way.
- The role of the Facilitator is to learn the underlying causes of the incident.
- All participants have a common goal to resolve the underlying causes and to repair any harm resulting from the aggressive behavior.
- An Agreement will be reached by all in the Peacemaking process stating what action is to be taken, how it is to be taken, and what occurs if the Agreement is violated.

At the conclusion of the Peacemaking process, ask the class for further suggestions for the Agreement to resolve the conflict.
UNIT 3

THE IMPORTANCE OF DIALOGUE AND DISCUSSION: PREVENTING AND RESOLVING CONFLICTS
UNIT 3 – THE IMPORTANCE OF DIALOGUE AND DISCUSSION: PREVENTING AND RESOLVING CONFLICTS

CLASSROOM ACTIVITIES

KINDERGARTEN – GRADE 3

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Learn to make right choices.
- Know that conflict resolution involves meaningful dialogue with others.

Instructional Objectives
- Teach students to dialogue, listen, and understand one another.
- Teach students that anger is not an appropriate response.
- Reinforce K’é principles of relationship, courtesy, and mutual respect.

Discuss with the students what behavior causes them to become upset. Once the catalyst is identified, then reinforce that Peacemaking and its emphasis on respect for one another and dialogue is a means to resolving conflict and understanding one another.

Ask the students to draw a picture of their response to the following:
- How do you feel when someone tells a lie about you?
- How do you feel when someone teases you?
- How do you feel when someone pushes you out of the way to get into line first?
- How do you feel when someone makes fun of what you look like?
- What is a good and right thing to do when someone upsets you or makes you mad?
- When you argue with a classmate, how do you feel?
- When you argue with a classmate, how does your classmate feel?

Discuss the students’ responses as well as the following incorporating the above performance and instructional objectives:
- Do you ever think of the consequences to others as a result of your harmful behavior?
- How would Peacemaking be an appropriate way to address disputes?
CLASSROOM ACTIVITY #2

Performance Objectives
Students will:

- Learn that dialogue is critical to a peaceful and civil school environment.
- Learn that Navajo horizontal decision making through the Peacemaking process restores relationships and emphasizes courtesy and mutual respect.

Instructional Objectives

- Reinforce the need to talk about conflicts in order to resolve differences.

Facilitate a class discussion stressing the need to dialogue and discuss to prevent and resolve differences and conflicts. Create a checklist on a piece of poster board to display in the classroom. Emphasize the following elements of dialogue:

- Openness and honesty with one another.
- Listen and hear what others are saying (active listening).
- Understand how each person feels about an issue.
- Take responsibility for wrongful actions.
- Understand how actions can be harmful to others.
- Understand that all persons deserve dignity and respect.
- Be a positive part of a civil and respectful school community for each student.
CLASSROOM ACTIVITIES

GRADES 4 – 6

CLASSROOM ACTIVITY #1

Performance Objectives

Students will:
- Learn to prevent conflicts.
- Understand the need to resolve conflicts.

Instructional Objectives

- Remind students of the need to reinforce good relationships and harmony in the school community.
- Reinforce that all students are responsible for their actions.
- Stress respect for one another.

Review with the class the two behavior groups when disagreements occur: acceptable and unacceptable. Using the two groups below, review each behavior and lead the discussion as to why some behaviors are acceptable and others are not. Encourage the students to add to both lists.

Unacceptable Behaviors

- Pushing
- Shoving
- Fighting
- Yelling
- Walking away
- Damaging property
- Spreading false rumors
- Calling another names
- Damaging something that belongs to another
- Refusing to speak to another
- Excluding another from your circle of friends
- Encouraging other classmates to harass another
- Encouraging other classmates to speak false rumors about another
- Calling another names
- Threatening to hurt another
- Mocking or laughing at another
- Purposely knocking books out of another’s hands
- Making rude remarks
Acceptable Behaviors

- Having manners
- Having patience
- Controlling your temper
- Respecting others’ property
- Discussing issues civilly and respectfully
- Listening to the other person’s position and understanding why they believe what they do
- Respecting the other person’s opinions and explaining your reasons for an opposing view
- Not trying to coerce or control another person to accept your point of view

Conclude the discussion with what students should do if they are an offended student and/or a witness to aggressive behavior. Emphasize that resolution will not take place unless the unacceptable behaviors are addressed.

- Tell a teacher or school administrator and ask for help.
- Tell parents/guardians.
- Do not come to school late to avoid the bully.
- Do not confront the bully.

CLASSROOM ACTIVITY #2

Performance Objectives

Students will:

- Learn that open dialogue is critical to a peaceful and civil school environment.
- Learn the value of Navajo principles of maintaining harmony and establishing order.

Instructional Objectives

- Reinforce the need to talk about conflicts in order to resolve differences.
- Reinforce the Navajo Peacemaking process and horizontal decision making in resolving conflict.

Divide the class into small groups and ask each group to create two checklists on a piece of poster board -- one relating to the prevention of conflicts before they occur and one to the resolution of conflicts once they have occurred. Facilitate a class discussion stressing the need to dialogue and discuss to prevent and resolve differences and conflicts. Emphasize the following elements of dialogue:
Unit 3
Grades 4 - 6

- Openness and honesty with one another.
- Listen and hear what others are saying (active listening).
- Understand how each person feels about an issue.
- Take responsibility for wrongful actions.
- Understand how actions can be harmful to others.
- Understand that all persons deserve dignity and respect.
- Be a positive part of a civil and respectful school community for each student.

Have the students decide appropriate places in the classroom to display the posters.
CLASSROOM ACTIVITIES

GRADES 7 –12

CLASSROOM ACTIVITY #1

Performance Objectives

Students will:

- Learn to prevent conflicts through respectful dialogue and open discussion.
- Understand the need to resolve conflicts and the value of the Navajo Peacemaking process.

Instructional Objectives

- Remind students of the need to reinforce good relationships in the school community.
- Reinforce that all students are responsible for their actions.
- Emphasize K’é principles of relationship, courtesy, and mutual respect.

Review with the class the two behavior groups when disagreements occur: acceptable and unacceptable. Using the two groups below, review each behavior and lead the discussion as to why some behaviors are acceptable and others are not. Encourage the students to add to both lists.

Unacceptable Behaviors

- Pushing
- Shoving
- Fighting
- Assaults
- Yelling
- Walking away
- Damaging property
- Spreading false rumors
- Sexting
- Phone harassment
- Offensive e-mails
- Social media harassment
- Calling another names
- Gossip
- Threats
- Damaging something that belongs to another
- Refusing to speak to another
Unit 3
Grades 7 - 12

- Excluding another from your circle of friends
- Encouraging other classmates to harass another
- Encouraging other classmates to speak false rumors about another
- Calling another names
- Mocking or laughing at another
- Purposely knocking books out of another’s hands
- Making rude remarks

Acceptable Behaviors
- Having manners
- Having patience
- Controlling your temper
- Respecting others’ property
- Appropriate use of the Internet, social media sites, and cellular devices and functions
- Discussing issues civilly and respectfully
- Listening to the other person’s position and understanding why they believe what they do
- Respecting the other person’s opinions and explaining your reasons for an opposing view
- Not trying to coerce or control another person to accept your point of view

Conclude the discussion with what students should do if they are an offended student and/or a witness to aggressive behavior. Emphasize that resolution will not take place unless the unacceptable behaviors are addressed.

- Tell a teacher or school administrator and ask for help.
- Tell parents/guardians.
- Do not come to school late to avoid the bully.
- Do not confront the bully.

CLASSROOM ACTIVITY #2

Performance Objectives
Students will:
- Learn that respectful dialogue is critical to a peaceful and civil school environment.
- Learn the need for harmony in the school community.
Instructional Objectives

- Reinforce the need to talk about conflicts in order to resolve differences.
- Reinforce the values of harmony, mutual respect, and empathy.

Divide the class into small groups and ask each group to create two checklists on a piece of poster board — one relating to the prevention of conflicts before they occur and one to the resolution of conflicts once they have occurred. Facilitate a class discussion stressing the need to dialogue and discuss to prevent and resolve differences and conflicts. Emphasize the following elements of dialogue:

- Openness and honesty with one another.
- Listen and hear what others are saying (active listening).
- Understand how each person feels about an issue.
- Take responsibility for wrongful actions.
- Understand how actions can be harmful to others.
- Understand that all persons deserve dignity and respect.
- Be a positive part of a civil and respectful school community for each student.

Have the students decide appropriate places in the classroom or around the school to display the posters.
UNIT 4

THE AGREEMENT:
RESOLVING CONFLICT THROUGH PEACEMAKING
UNIT 4 – THE AGREEMENT: RESOLVING CONFLICT THROUGH PEACEMAKING

CLASSROOM ACTIVITIES

KINDERGARTEN – GRADE 3

CLASSROOM ACTIVITY #1

Performance Objectives

Students will:

- Identify values and behaviors important to them and in the classroom setting.
- Understand the need for harmony, order, and mutual respect.

Instructional Objectives

- Teach students critical thinking involving a respectful and kind classroom atmosphere.
- Reinforce Navajo Peacemaking horizontal decision making.

Values express our hopes and aspirations. Facilitate a discussion with the class using the following questions:

- What do you want to be when you grow up (hopes and aspirations)?
- What will help you to become this (values to assist in achieving this goal)?
- How will these things help you to become a kind and respectful person (how will values help on the journey)?

Ask the class to draw a picture of how they envision a safe, peaceful, respectful classroom and school ethos.

CLASSROOM ACTIVITY #2

Performance Objectives

Students will:

- Identify values important to a safe, happy, and respectful school ethos.
- Learn the importance of the Navajo principles of justice, harmony, order, and conflict resolution through discussion.
Instructional Objectives

- Reinforce appropriate behavior and respectful treatment of one another.
- Reinforce Navajo values of harmony and mutual respect.

Distribute pre-cut magazine pictures to the students illustrating the following. Ask the student(s) holding a picture displaying the following to hold up their picture. Discuss with the class the person in the picture, if they would prefer to have that person as a friend, and why or why not. Emphasize the above performance and instructional objectives.

- Angry person
- Sad person
- Frightened person
- Self-centered or selfish person
- Person refusing to talk with others
- Empathetic person
- Concerned person
- Person extending kindness
- Person showing compassion
- Person showing manners
CLASSROOM ACTIVITIES

GRADES 4 – 6

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
• Identify personal qualities and proper behavior.
• Understand that inappropriate behavior is not to be admired.
• Learn the value of respect for self and others, harmony, and order.

Instructional Objectives
• Teach students critical thinking skills.
• Teach students to make right choices.
• Reinforce Navajo Peacemaking and horizontal decision making.

Divide the class into small groups. Ask the students to work together as a group and answer the following questions. Come together as a class and lead a class discussion addressing the students’ responses regarding personal qualities and appropriate behavior toward others.

• What qualities do you admire in yourself?
• What are some qualities about yourself that you would like to change?
• What qualities do you admire in others?
• What qualities do you admire in classmates who are concerned about others and their feelings?
• What qualities do you admire in classmates who are friendly to all?
• What qualities do you admire in classmates who make fun of others?
• What qualities do you admire in classmates who hit and punch others?
• What qualities do you admire in classmates who tease others?
• What behaviors bother you or cause you to be concerned for your safety?

CLASSROOM ACTIVITY #2

Performance Objectives
Students will:
• Identify personal qualities and proper behavior.
• Understand that inappropriate behavior is not to be admired.
• Understand the importance of \( K'ë \) principles of relationship, courtesy, and mutual respect.
Instructional Objectives

- Teach students critical thinking skills.
- Teach students to make right choices.
- Reinforce the Navajo Peacemaking process.

Ask the students to work individually and list behaviors which make them feel uncomfortable or unsafe. Do not have the students put their names on the paper. Collect the students’ lists and lead a classroom discussion of their anonymous concerns. Ask for suggestions for appropriate responses.
CLASSROOM ACTIVITIES

GRADES 7 – 12

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:

- Identify values important to a safe, happy, and respectful school ethos.
- Know the importance of Navajo concepts of justice and principles of harmony, order, and talking things out.

Instructional Objectives

- Reinforce appropriate behavior and respectful treatment of one another.
- Reinforce K’é principles of relationship, courtesy, and mutual respect.

Engage the class in a dialogue and discussion on personal values important to them. Use the following questions as a starting point:

- What values describe you when you are at your very best?
- What values do you admire in others?
- What qualities or values would you hope for in your own behavior if a dispute were to occur?
- What values would be needed if you were confronted with…(present a situation)?
- What values or behavior traits support good relationships?
- What values or behaviors make school a safe place?

CLASSROOM ACTIVITY #3

Performance Objectives
Students will:

- Learn the importance of respect in the classroom setting.
- Apply Navajo concepts and procedures of justice, including principles of harmony, order, and talking things out.

Instructional Objectives

- Teach students they owe one another respect.
- Teach students K’é principles of relationship, courtesy, and mutual respect.
As a class, establish a list of values that are important to a peaceful, civil, and respectful school community. Request a volunteer to record the suggested list on a flipchart, chalkboard, or Smart Board. Lead a classroom discussion on the importance of each value listed. Conclude with a class consensus that the values listed are important to each member of the class individually and as a member of the whole group, the importance of each value, and that the values will guide the class in their relationships with each other.

Examples: self-respect, respect for each other, dignity, respect one another’s diversity.
UNIT 5

REPAIRING HARM CAUSED BY OFFENDING BEHAVIOR
UNIT 5 – REPAIRING HARM CAUSED BY OFFENDING BEHAVIOR

CLASSROOM ACTIVITIES

KINDERGARTEN – GRADE 3

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:

• Learn to consider other persons’ feelings.
• Achieve harmony through the practice of Navajo values of harmony and mutual respect.

Instructional Objectives

• Reinforce mutual respect.
• Stress the need to repair harm and achieve harmony and order.

List the following words on the chalkboard: respect, repair, apologize, responsibility, kindness, helpful, differences.

Begin an acrostic starting with one word at a time, in any order, discussing the importance of each term as it relates to a civil, peaceful, and respectful school community. Encourage the students to add additional words to the acrostic. Emphasize the performance and instructional objectives above.

Sample:

RESPECT
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APOLOGIZE
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DIFFERENCES
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CLASSROOM ACTIVITIES

GRADES 4 – 6

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Learn to be aware of the feelings of others.
- Understand they must make amends for harm caused to others.
- Learn to solve differences peacefully.
- Develop empathy for others.

Instructional Objectives
- Reinforce Peacemaking skills of respectful dialogue and open discussion.
- Reinforce the importance of harmony and good relationships in the school community.

Lead the class in a discussion of the following questions about unacceptable and acceptable behavior:

- How can I become more aware of the feelings of someone I have hurt by my behavior?
- What are the best ways to make amends for the harm I have caused to another?
  - When I tell lies about them?
  - Break something that belongs to them?
  - Spread false stories about them?
  - Make fun of them.
- What should I do when I see a classmate being bullied?
- Why is it important to report harassment of a classmate to a teacher or the school principal?
- What are some examples of harassment?
  - Intimidation of another
  - Threatening another
  - Engaging in physical fights
  - Verbal abuse
  - Disruption of class
  - Bullying
  - Annoying someone
- Why do people harass others?
- What can be done to stop the harassment and harmful behavior?
• How should teachers and school administrators approach bullying problems?
• How does a person accept responsibility for their offensive behavior?
• How would you feel if someone
  o Made fun of your height, weight, or hair color/style?
  o Broke something that belonged to you?
  o Was mean to you?
  o Would not let you join in a game?
  o Took your lunch?
• Have you ever been bullied? If so, what did you do? Did you tell a teacher? Did you tell your parents?
• Have you ever observed a classmate being bullied? If so, what did you do?
• Do you think talking out problems and conflicts helps?
• What are some examples of unacceptable behavior and good/bad responses?

Examples:

<table>
<thead>
<tr>
<th>Unacceptable Behaviors</th>
<th>Good/Bad Responses</th>
</tr>
</thead>
<tbody>
<tr>
<td>Repeated teasing</td>
<td>Staying home from school</td>
</tr>
<tr>
<td>Hitting, kicking, shoving, punching</td>
<td>Coming late to school to avoid the bully</td>
</tr>
<tr>
<td>Name calling</td>
<td>Laughing it off</td>
</tr>
<tr>
<td>Taking something that belongs to another</td>
<td>Avoiding the location of the bullying</td>
</tr>
<tr>
<td>Making jokes about someone</td>
<td>Telling a teacher</td>
</tr>
<tr>
<td>Mimicking someone</td>
<td>Telling parents</td>
</tr>
<tr>
<td>Damaging the property of another</td>
<td>Requesting a Peacemaking session</td>
</tr>
<tr>
<td>Threatening someone</td>
<td></td>
</tr>
</tbody>
</table>
CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Understand the need to repair harm and the value of justice.
- Learn to respect the feelings of others.

Instructional Objectives
- Stress the need to make amends for wrongdoing and repair the harm.
- Emphasize that each person must take responsibility for his/her actions.
- Reinforce the dignity and the need to respect the diversity of others.
- Reinforce K’é principles of relationship, courtesy, and mutual respect.

Distribute the following words to the class and discuss how the terms relate to restorative justice Peacemaking and the importance of repairing harm caused by offending behavior. Following the discussion, ask the students to formulate a crossword puzzle using these and additional terms.

<table>
<thead>
<tr>
<th>Term</th>
<th>Term</th>
<th>Term</th>
<th>Term</th>
<th>Term</th>
</tr>
</thead>
<tbody>
<tr>
<td>HARMONY</td>
<td>KINDNESS</td>
<td>REPAIR</td>
<td>RESTORE</td>
<td></td>
</tr>
<tr>
<td>RESOLVE</td>
<td>DIALOGUE</td>
<td>UNDERSTAND</td>
<td>DIGNITY</td>
<td></td>
</tr>
<tr>
<td>SELF-ESTEEM</td>
<td>INAPPROPRIATE</td>
<td>AMENDS</td>
<td>CONFLICT</td>
<td></td>
</tr>
<tr>
<td>AGREEMENT</td>
<td>SAFE</td>
<td>PEACE</td>
<td>APOLOGIZE</td>
<td></td>
</tr>
<tr>
<td>ACCEPTANCE</td>
<td>DIVERSITY</td>
<td>OPEN</td>
<td>EMPATHY</td>
<td></td>
</tr>
</tbody>
</table>
UNIT 6

WHAT CAN I DO
TO FOSTER A RESPECTFUL SCHOOL ENVIRONMENT
UNIT 6 - WHAT CAN I DO
TO FOSTER A RESPECTFUL SCHOOL ENVIRONMENT

CLASSROOM ACTIVITIES

KINDERGARTEN – GRADE 3

CLASSROOM ACTIVITY #1

Performance Objectives
Students will:
- Learn they can make a positive difference.

Instructional Objectives
- Develop critical thinking skills.
- Reinforce the need for kindness towards others.

Present the following scenarios to the class, and ask the students what they can do to make school a happier place for others:

- Oscar is always excluded from games at recess.
- Lillie is frequently called mean names and made fun of by classmates.
- Foster takes classmates’ lunches and threatens to hit them if they tell a teacher.
- Zeus picks on classmates who are quiet and shy.
- Classmates always cut in line in front of Allie.
CLASSROOM ACTIVITIES
GRADES 4 – 6

CLASSROOM ACTIVITY #1

**Performance Objectives**

Students will:
- Learn empathy for others.
- Learn they can make a positive difference.
- Learn to prevent conflicts through open discussion and respectful dialogue.

**Instructional Objectives**
- Develop critical thinking skills.
- Reinforce the need for kindness towards others.
- Reinforce *K’é* principles of relationship, courtesy, and mutual respect.

As a class, discuss the lists below of acceptable and unacceptable behaviors. Ask the students what attributes and values are associated with acceptable behavior and the harm caused by unacceptable actions. Ask them what they can do to make school a peaceful, respectful, and a happy place for others. Encourage the students to add to the lists.

<table>
<thead>
<tr>
<th>Acceptable Behavior</th>
<th>Unacceptable Behavior</th>
</tr>
</thead>
<tbody>
<tr>
<td>Help a classmate use a computer</td>
<td>Hit or kick a classmate</td>
</tr>
<tr>
<td>Ask a classmate who is upset if you can help</td>
<td>Exclude a classmate from a game</td>
</tr>
<tr>
<td>Include a classmates who has no one to</td>
<td>Bully a classmate</td>
</tr>
<tr>
<td>play with in a game with your friends</td>
<td>Encourage others to bully a classmate</td>
</tr>
<tr>
<td>Help a classmate who has dropped books</td>
<td>Make fun of a classmate</td>
</tr>
<tr>
<td>Stop a classmate from teasing another classmate</td>
<td>Cut in line in front of a classmate</td>
</tr>
</tbody>
</table>

Conclude the discussion with the following questions:
- How do I repair harm caused by offending behavior?
- How can I be a better person?
- How can I help to make my school community safe for all students and teachers?
- How can I demonstrate the following for classmates who feel lonely or unhappy at school:
  - Justice
  - Concern
  - Empathy
- When I act with respect for others, how do I behave?
Performance Objectives
Students will:
- Build social skills based the Navajo principles of mutual respect.
- Recognize acceptable and unacceptable behaviors.
- Learn to make wise choices.

Instructional Objectives
- Reinforce the values of kindness and mutual respect for others.
- Reinforce the need to repair harm caused by hurtful actions.
- Reinforce traditional Navajo justice through Peacemaking conflict resolution.
- Reinforce that all persons are entitled to dignity and respect.

Divide the class into small groups. Ask each group to formulate a Power Point page for each of the following phrases summarizing what they have learned about respecting self and others, resolving conflicts, and repairing harm caused by wrongful behavior. Have each group show their Power Point presentation to the class.

BUILD YOUR SELF-ESTEEM
KEEP THE LINES OF COMMUNICATION OPEN
BREAK THE CODE OF SILENCE
RESPECT SELF AND OTHERS
REPAIR THE HARM
APPENDIX I

PERMISSION TO INTERVIEW

I, __________ Josephine Foo __________, a resident of __________ Farmington __________, New Mexico, knowingly, intentionally, and freely agrees to a telephonic and written interview questions by MARY A. LENTZ, a resident of the State of Ohio and doctoral candidate at Georgetown University, Washington, D.C. The subject matter of the interview is Navajo Peacemaking, a traditional Dine procedure to resolve conflicts.

The undersigned is an Associate Attorney in the Navajo Nation Judicial Branch who has been involved in obtaining grant funding for the Peacemaking Program and in working with community-based peacemakers in revising written guidelines for the peacemaking process when the process interfaces with the modern courts. She agrees to a telephonic interview and written Questionnaire, the contents of which will become a part of the doctoral Thesis to be written and submitted by MARY A. LENTZ to Georgetown University as a requirement for the doctoral degree.

The undersigned understands that the summary to be included in the doctoral will be based on the written responses to the questionnaire.

Signed this __________ 18th __________ day of __________ September __________, 2011 at __________ Farmington __________, in the State of New Mexico.

____________________________________________________________________

__________________________

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anne.barnard@thomsonreuters.com

September 16, 2011

VIA E-MAIL and U. S. MAIL

Mary A. Lentz
P.O. Box 493
Chagrin Falls, OH  44022

Dear Ms. Lentz,

Thank you for your inquiry to Carrie Petersen regarding permission to reprint selected material from Lentz School Security and from Baldwin's Ohio School Law Journal, for use in your doctoral dissertation.

I am pleased to grant permission to reprint the material as you have outlined, and ask only that you include an attribution that the material was reprinted with permission of Thomson Reuters and identify the sources.

Best wishes as you complete your dissertation and please feel free to contact me if you require anything further.

Sincerely,

Anne Barnard

Anne Barnard
ádóoné é – A clan (as in “What clan are you?”)
ák’éí – Relatives or related
anáhóóti’ – A problem, legal issue
bee haź á – Act that is legal
bee haź áanii – Laws of every kind
bee hózhó náhodoodleel – Something used to restore harmony
Diné – Traditional name of the Navajo People and other Athabascan peoples
Diné bibee haz’ áanii – Navajo common law (Navajo customs, traditions, values, etc.)
Diné Bigóoldih – Navajo Nation Court System
Diné é – Concept of “beings;” also various races of people
Diyin Nohookáá Diné – Laws of the Diné
hastóí – Elder men
hazhó ógo – Done in a careful, respectful way; to exercise freedom
hóchxó – State of disharmony
hózhó – In a good relationship, peace, harmony, balance
hózhó nahasdlii – Harmony restored
hózhó nahodoodleel – Harmony will be restored
Hózhóóii Naat’ ááh – Peace leader
Hózhóóii Naat’ áanii – Navajo peacemaking
K’é – Kinship unity through positive values
K’éli – Navajo clan or kinship system
lá yilyaa – Final or complete

naat’ áanii – Leader

naayéé – Anything that causes disharmony

nabik’ íyátí – Talk things out

nályééh – Restitution, reparation, or atonement for an injury
GLOSSARY

**arbitration** – Means of settling differences

**alternate dispute resolution (ADR)** – Method to resolve differences rather than through litigation

**conflict resolution** – Settlement of differences through discussion

**consensus** - Agreement

**disputants** – Parties to a dispute

**distributive justice** – Equality and equity

**empiricists** – Based on experience

**expiatory punishment** – Atonement or making amends

**facilitator** – One who provides neutral assistance, but does not adjudicate

**harm** – Hurtful effects from wrongful behavior or act

**harmony** – Tranquility and peace

**hierarchical form of justice** – Judge presides over a hearing or proceeding; adjudication

**horizontal decision-making system** – A process by which the parties themselves resolve differences

**initiating party** – Person who requests Peacemaking

**Navajo Nation** – The Navajo People and governing officials

**Navajo Peacemaker Court** – A non-adjudicatory process

**participants** – Parties of interest in a Peacemaking session

**Peacemaker** – A respected and knowledgeable member of the Navajo Nation who facilitates a Peacemaking session.

**Peacemaker Liaison** – Person assigned by the Navajo Peacemaking Division to arrange a Peacemaking session
**Peacemaking** – A horizontal decision-making restorative justice conflict resolution process

**phenomenon of cognitive dissonance** – Inconsistence between beliefs held and a person’s actions

**reciprocity** – A mutual exchange

**reconcile** – To settle or resolve

**reintegration** – Reentry

**responding party** – Person who responds to a request for Peacemaking and who either agrees or refuses to participate in the Peacemaking process

**restorative justice** – A conflict resolution process which addresses harm resulting from wrongful behavior and makes things right

**retributive justice** – Harsh punishment for wrongful acts

**vertical system** - An adjudicatory process with a single decision-maker
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