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Student Conduct Officers' Perceptions of Restorative  
Practices Based on Educational  
and Professional Background

by

Gregory William Robert Weaver

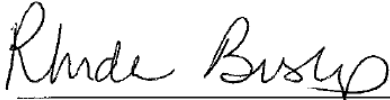
May 2019

A Dissertation submitted to the Education Faculty of Lindenwood University in partial  
fulfillment of the requirements for the degree of  
Doctor of Education  
School of Education

Student Conduct Officers' Perceptions of Restorative  
Practices Based on Educational  
and Professional Background

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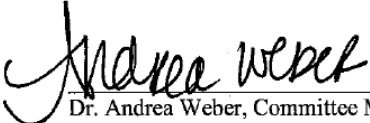
This Dissertation has been approved as partial fulfillment  
of the requirements for the degree of  
Doctor of Education  
Lindenwood University, School of Education

  
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Declaration of Originality

I do hereby declare and attest to the fact that this is an original study based solely upon my own scholarly work at Lindenwood University and that I have not submitted it for any other college or university course or degree.

Full Legal Name: Gregory William Robert Weaver

Signature:  Date 5-08-19

## Acknowledgement

The doctoral program has been a fun journey. I truly mean this entire process has been satisfying, rewarding, and fun. Do not get me wrong, I really do not want to do it again; however, the friendships made, lessons learned, and support received have all been greatly appreciated.

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P.S. I would also like to thank the baristas at Starbucks on South Glenstone in Springfield, Missouri, for giving me somebody to talk to...thanks.

## **Abstract**

Student conduct officers have the ability to provide learning and growth opportunities for every student with whom they interact (Hyde, 2014; Jackson, 2014). It is important that student conduct officers be willing and able to utilize an array of tools, including alternative dispute resolution techniques to provide learning experiences (Bennett, Gregory, Loschiavo, & Waller, 2014; Clark, 2014; Hyde, 2014; Waryold & Lancaster, 2008). The educational and professional experiences of the student conduct officer vary, as many institutions employ conduct officers with an educational background and others employ conduct officers with a more formal legal background (Hyde, 2014; Jackson, 2014). In this study, the intent was to investigate differences in the perception of restorative practices based on the educational and professional backgrounds of student conduct officers. Additionally, exploration to find out if differences in the propensity of student conduct officers to implement restorative practices in both Title IX and non-Title cases based on the conduct officers' varying educational and professional backgrounds was investigated. In this qualitative study, eight student conduct officers from public institutions in the Midwest were interviewed. Four participants had an educational background, and the other four participants had a formal legal education. Four themes emerged from the research: educational experience counts; professional experience counts, too; informal resolutions are widely accepted, up to a point; and relationships matter. Based on the findings of this study, student conduct officers should engage in a variety of educational and professional learning opportunities, and areas such as alternative dispute resolution should be heavily focused on in the student conduct officers' preparation for practice.

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## **Chapter One: Introduction**

Holistic education of the college or university student has emerged as the preeminent goal of the higher education community (Bennett et al., 2014). Learning is a priority both inside and outside of the classroom (Bennett et al., 2014). Administration of student conduct has been identified as an important area in which holistic learning and student development can occur (Hyde, 2014; Jackson, 2014). However, this opportunity for learning becomes more complicated as student discipline issues become more serious and complex (Koss, Wilgus, & Williamsen, 2014). To effectively confront these increasingly complex issues, student conduct officers have generally agreed that a one-size-fits-all approach to solving these issues is not the optimal answer (Bennett et al., 2014; Clark, 2014; Hyde, 2014; Waryold & Lancaster, 2008). Instead, alternative forms of dispute resolution such as mediation and restorative practices have been implemented with success (Koss et al., 2014; Janosik & Stimpson, 2011; Novkov, 2016).

However, one of the more complicated issues facing student conduct officers is the administration of Title IX offenses (Anderson, 2016; Koss et al., 2014; Ridolfi-Starr, 2016). Title IX seeks to prevent sexual discrimination in the educational arena (Novkov, 2016; Smith, 2015; Title IX, 1972). Congressional mandates, case law, and federal administrative guidance have made it clear that sexual harassment and sexual assault fall under the penumbra of the Title IX language (Novkov, 2016; Prescott, 2018; Smith, 2015). Although complex, Title IX issues continue to be consistently handled using a traditional justice model where retributive punishment is the priority (Derajtys & McDowell, 2014).

Federal guidance from the Office of Civil Rights (OCR) had specifically prohibited the use of mediation in Title IX cases (U.S. Department of Education, OCR, 2011). The U.S. Department of Education, under the guidance of President Trump appointee, Betsy DeVos, rescinded many of the rules regarding Title IX, including the prohibition on mediation (Bernard, Blakemore, Foerster, Peterson, & Scaduto, 2018; DeVos, 2017; Osland, Clinch, & Yang, 2018; U.S. Department of Education, 2017). However, restorative practices are very different from mediation and arguably are not prohibited in matters involving Title IX (Koss et al., 2014). Despite worldwide success in the criminal justice arena, restorative practices have not often been utilized by student conduct officers to resolve Title IX cases (Clark, 2014; Gallagher, Meagher, & Vander Velde, 2014; Karp & Sacks, 2014).

Possibly complicating the issue of utilizing restorative practices is the diverse background of student conduct officers throughout colleges and universities in the United States (Hyde, 2014; Jackson, 2014). Some higher education systems seek conduct officers with a background in education and student affairs (Jackson, 2014). However, other colleges and universities employ conduct officers who possess a formal legal education and who have professional experience in the practice of law (Hyde, 2014; Jackson, 2014). In this study, the intent was to investigate if there are differences in the perception of restorative practices based on educational and professional backgrounds of student conduct officers. Additionally, data were collected to find out if there are differences in the propensity of student conduct officers to implement restorative practices in both Title IX and non-Title cases based on the conduct officers' varying educational and professional backgrounds.



The role of the university conduct officer is one that is complex and broad (Waryold & Lancaster, 2008). At times, these officers are faced with mundane tasks and decisions with seemingly little consequences at stake (Bennett et al., 2014; Waryold & Lancaster, 2008). Other times, complicated issues with the potential for dire and costly repercussions for both the student and university are at the forefront (Koss et al., 2014). Regardless of the issue being faced, leadership of the Association for Student Conduct Administration (ASCA) as cited in Bennett et al. (2014), stated the role of student conduct officials, "...is to help the student to translate knowledge into action to form behavioral habits that will enable them to be successful beyond the brick-and-mortar or virtual walls of the institution" (p. 5).

Within student conduct theory, three basic models of student conduct systems exist (Derajtys & McDowell, 2014). The formal system is reliant upon the criminal justice system found outside the walls of the higher education institution (Derajtys & McDowell, 2014; Hyde, 2014). In this system, language, procedures, and outcomes are more judicial in nature and tend to focus on a victim and an offender (Derajtys & McDowell, 2014). An informal system also exists which "has less focus on legalistic matters and refrains from utilizing justice system language" (Derajtys & McDowell, 2014, p. 214). Finally, the mixed system combines attributes from the formal and informal models creating a hybrid system (Bennett et al., 2014; Derajtys & McDowell, 2014; Walen, 2015). Regardless of the type of model that is used, "student judicial systems are a necessary component of institutions of higher learning" (Derajtys & McDowell, 2014, p. 214).

The conduct office is an integral part of the university canvas, and it is paramount that its mission is in alignment with the mission of the university (Bennett et al., 2014; Derajtys & McDowell, 2014). Furthermore, it is readily assumed that colleges and universities are focused on student learning and everything that happens on campus should involve education and student development at its core (Bennett et al., 2014; Derajtys & McDowell, 2014; Jackson, 2014). Following this nexus, a student conduct system that is aligned with the mission of the university is one that focuses on processes and outcomes that educate and develop all of the involved parties (Derajtys & McDowell, 2014). Regardless of the student conduct model that is utilized, student education and development should be the focus (Clark, 2014; Derajtys & McDowell, 2014).

When looking at different models of student conduct, Janosik and Stimpson (2011) found it is insufficient to merely meet only the requirements set forth as necessary by the courts. Instead, Janosik and Stimpson (2011) determined, “intentional practice requires student professionals to engage in processes that are timely, fair, explanative, respectful, facilitative, and that foster student learning” (p. 5). One method used in student conduct that helps to ensure these qualities and expectations are met is through the process of restorative justice (Koss et al., 2014).

Restorative justice seeks to repair the harm that has occurred (Koss et al., 2014). When harm occurs, a victim directly involved feels consequences of the action (Zehr, 2002). Proponents of restorative justice believe that more than just the direct victim is impacted (Koss et al., 2014). Instead, proponents of restorative justice believe a ripple effect emerges, impacting families and friends of the victim, the offender, and the community where the offense took place (Koss et al., 2014). Community members are

affected because the safety and social connectedness of the community have been impacted by the harm that has occurred (Koss et al., 2014). The restorative justice model seeks to address and balance the needs of the impacted parties (Koss et al., 2014).

### **Theoretical Framework**

Education and development of the student is the primary mission for departments and divisions of an institution of higher education (Bennett et al., 2014). Specifically, the student affairs division of a college or university constantly strives to help students progress not only academically but also in ways that help students to become better citizen scholars (Bennett et al., 2014; Derajtys & McDowell, 2014; Janosik & Stimpson, 2011; Koss et al., 2014). One of the theories that student affairs professionals use to enhance the student development process is Kohlberg's theory of student development (Derajtys & McDowell, 2014; Kohlberg, 1984).

Kohlberg (1984) theorized people develop their moral and ethical behavior and responsibilities by passing through a series of stages of development. Although it may take longer for some individuals to pass through a stage, all people progress through the stages sequentially (Kohlberg, 1984; Kuhmerker, Gielen, & Hayes, 1994; Modgil & Modgil, 1988). Additionally, all people begin from the initial level referred to as the pre-conventional level (Kohlberg, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988).

The Pre-conventional level consists of two stages, the heteronomous morality stage and the individualism stage (Kohlberg, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988). When a person begins to follow rules only to serve someone else's immediate interest, he or she prepares to leave the initial pre-conventional stage of development (Kohlberg, 1984; Kuhmerker et al., 1994). The next level is the

conventional level, first marked by stage three, mutual interpersonal expectancies (Kohlberg, 1984). A person progresses through stage three when he or she begins to rely on and value the expectations of others (Kohlberg, 1984). Stage four, relationships, is achieved when an individual realizes he or she has a duty or an obligation to others to uphold (Kohlberg, 1984). The final level, post-conventional, is marked by stage five, the social contract and individual rights stage, and stage six, the universal ethical principles stage (Kohlberg, 1984). Individuals adopt a greater philosophy when leaving stage five, and in stage six justice and equality are supreme (Kohlberg, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988).

Student affairs professionals have a duty to educate and develop students they serve at their respective college and university (Bennett et al., 2014). Education of the student does not just occur in the classroom (Bennett et al., 2014; Derajtys & McDowell, 2014; Janosik & Stimpson, 2011; Koss et al., 2014). Instead, the student experience, including the student conduct process, should develop the student morally and socially (Bennett et al., 2014; Derajtys & McDowell, 2014; Janosik & Stimpson, 2011; Koss et al., 2014).

Specific conduct processes may be more or less impactful to students depending on the progression of his or her moral development (Bennett et al., 2014; Derajtys & McDowell, 2014; Janosik & Stimpson, 2011; Koss et al., 2014). By understanding where students are in the stages of moral development, student conduct officers can tailor appropriate conduct processes to further develop the student (Bennett et al., 2014; Derajtys & McDowell, 2014; Janosik & Stimpson, 2011; Koss et al., 2014). Realizing that student conduct is not a one-size-fits-all proposition can help student conduct officers

better prepare their students to succeed after the college experience is complete Bennett et al., 2014; Derajtys & McDowell, 2014).

### **Statement of the Problem**

Actions of student conduct officers and subsequent outcomes of the student conduct process directly affect college and university students' lives (Hyde, 2014; Jackson, 2014). The methods in which conduct officers investigate disciplinary matters and resolve conflict are often related to their educational and professional experience (Jackson, 2014). Some higher education systems seek conduct officers with a background in education and student affairs while others employ conduct officers with a formal legal education (Hyde, 2014; Jackson, 2014). Further, conduct officers with legal training often differ in their practice fields with some proficient and experienced in traditional litigation and others proficient in forms of alternative dispute resolution (Cooper, 2014; Kovach, 2014). Variances in education and experience can result in varied perceptions and approaches to resolving conflict (Lamond, 2016).

To help students learn from their interactions with conduct officers some college and university conduct officers have implemented alternative dispute and conflict resolution practices such as mediation and restorative justice to their toolboxes (Janosik & Stimpson, 2011; Koss et al., 2014; Novkov, 2016). Employing the practices of mediation and restorative justice have become more accepted throughout the landscape of student conduct in higher education (Koss et al., 2014; Janosik & Stimpson, 2011). Mediation focuses on resolving a dispute between two parties and usually results in both parties gaining some interest and losing some interest to reach a mutually agreeable resolution to a dispute or conflict (McKenzie, 2015; Paul & Dunlop, 2014; Smith &

Smock, 2016). Restorative justice, however, is a practice that focuses on healing for both the offender and victim, as well as the community where the harm occurred (Koss et al., 2014). Both mediation and restorative justice are in stark contrast to the more traditional justice-type conduct proceeding which focuses on black and white, wrong or right, guilty or not guilty outcomes (Koss et al., 2014). Often, the outcome of a traditional justice proceeding is focused solely on the punishment of the offender (Fondacaro, Koppel, O'Toole, & Crain, 2015; Goodmark, 2014; Paul & Dunlop, 2014).

Although many higher education institutions have transitioned away from the traditional justice approach in solving many of their campus student conduct issues, a new scenario has emerged with the additions and inclusions to Title IX, as well as the issuance of the "Dear Colleague Letters" of 2011 and 2014 (Koss et al., 2014; Novkov, 2016; Smith & Smock, 2016). Title IX cases involve some of the most serious issues found in modern higher education: sexual harassment and sexual assault (Novak, 2016; Smith & Smock, 2016). These cases present dire repercussions for not only the victim and the offender but also for many of the affected communities found on the university campus (Anderson, 2016; Koss et al., 2014; Ridolfi-Starr, 2016). Despite seriousness of Title IX offenses, very little guidance or consistency has been provided on how best to proceed with these cases (Novkov, 2016; Prescott, 2018; Smith & Smock, 2016). Title IX also provides dire consequences, mainly a loss of federal funding, for the college or university if they are found responsible for an action or inaction that results in a violation of the law (Smith & Smock, 2016).

## **Purpose of the Study**

Despite the effectiveness of alternative dispute resolution methods in other student conduct issues, colleges and universities have been reluctant to integrate these methods in Title IX cases (Clark, 2014; Gallagher et al., 2014; Karp & Sacks, 2014). The lack of consistency in the procedure, as well as consequence of losing federal funding for a violation of Title IX, has led higher education institutions to proceed cautiously when investigating and adjudicating Title IX issues (Anderson, 2016; Lave, 2016; Smith, 2015). Additionally, federal guidance has prohibited the use of mediation in Title IX cases (U.S. Department of Education, OCR, 2011). However, mediation and restorative practices including restorative justice are different in methods and application (Koss et al., 2014). Regardless, of the success that some institutions have had with implementing restorative justice practices in Title IX cases, most college and university conduct officers are reluctant to stray from the traditional justice model when handling these issues (Clark, 2014; Gallagher et al., 2014; Karp & Sacks, 2014).

There is no set education or experience criteria to serve in the role of student conduct officer, and individuals bring varied educational experiences to the position. In this qualitative study, the purpose was to gain an understanding of whether differences in education and experience impact the perceptions of student conduct officers toward alternative dispute resolution techniques including restorative practices.

**Research questions.** The following research questions guided the study:

1. How do the educational and professional backgrounds of student conduct officers influence their knowledge and perception of alternative dispute resolution methods such as mediation and restorative justice?

2. How do the education and professional backgrounds of student conduct officers influence their propensity to implement alternative dispute resolution methods such as medication and restorative justice in non-Title IX cases?
3. In consideration of the prohibition on the use of mediation in Title IX cases, does the educational and professional background of student conduct officers influence their perceptions of the use of restorative practices in Title IX cases?

### **Definition of Key Terms**

For the purposes of this study, the following terms were defined:

**Alternative dispute resolution.** According to Menkel-Meadow (2015), a process “used to resolve disputes, either within or outside the formal legal system, without adjudication or decision by a judge” (p. 1).

**Mediation.** According to Riskin et al. (2014), an “informal process in which an impartial third party helps the parties to resolve a dispute or plan a transaction but does not impose a solution” (p. 10).

**Office for Civil Rights.** According to the U.S. Department of Education (2011), the office for Civil Rights “enforces several Federal civil rights laws that prohibit discrimination in programs or activities that receive federal financial assistance from the Department of Education” (p.1).

**Ombudsman.** According to Shiroma (2018), a person within an organization “... on the payroll but are still considered third-party neutrals in addressing disputes within said organization” (p. 242). Neutrality and confidentiality are key attributes in an ombudsman system (Shiroma, 2018).



**Restorative justice.** According to Zehr (2002), “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations in order to heal and put things as right as possible” (p. 37).

**Student affairs.** According to Love (2003), “student affairs could be said to consist of any advising, counseling, management, or administrative function at a college or university that exists outside the classroom” (p. 1).

**Student conduct administration.** According to Nelson (2017), “one of many names for the processes and procedures through which colleges and universities manage student behavior” (p. 1274).

**Title IX.** According to Lave (2016) and Yung (2016), a piece of federal legislation passed as a small component of the larger Educational Amendments of 1972, that sought to protect against sexual discrimination in the classroom and the broader educational arena.

**Traditional justice model or model code.** According to Karp and Sacks (2014), “a formal process, emphasizing authority and control as a way to guarantee fairness and legitimacy” (p. 3).

### **Limitations and Assumptions**

This study was limited to the perceptions of student conduct officers at public institutions located in the Midwest region of the United States. It is possible that perceptions may be different when evaluating perceptions of conduct officers in larger metropolitan areas, or on either of America’s coastal regions. Additionally, perceptions

of conduct officers at smaller and/or private colleges and universities may differ from those included in the study.

One assumption in this study was that study participants were fully open and honest in their responses. Although participant honesty cannot be fully ensured, measures were taken to enhance the likelihood participant responses were honest and accurate. Confidentiality was ensured throughout the entirety of this study.

Confidentiality protects participants from being known to anyone but the researcher (Gay, Mills, & Airasian, 2012; Magnusson & Maracek, 2015). Thus, names, university identifiers and location, and job titles have been omitted and pseudonyms were utilized throughout the study (Gay et al., 2012; Magnusson & Maracek, 2015). Additionally, interview questions were pilot tested to ensure questions and research design were appropriate and valuable to the study (Creswell, 2017; Yin, 2016).

### **Summary**

The integration of learning and development into all aspects of student life has become a priority for higher education administrators (Bennett et al., 2014; Clark, 2014; and Hyde, 2014). Student conduct administrators have been called upon to teach and develop students as they navigate the conduct process (Bennett et al., 2014). However, as more serious and complex issues are presented to student conduct officers, different approaches of resolution may be deemed necessary to align with the mission of holistic development of the college or university student (Koss et al., 2014).

Kohlberg's theory of moral development served as the theoretical framework for this study (Kohlberg, 1984; Kohlberg & Hersh, 1977). Kohlberg posited that people develop their moral and ethical behavior and responsibilities by passing through a series

of stages of development (Kohlberg, 1981; 1984; Kohlberg & Harsh, 1977; Kuhmerker et al., 1994). A person's sense of right and wrong develops from a concern about the results of one's actions (Kohlberg, 1981; 1984; Kohlberg & Harsh, 1977; Kuhmerker et al., 1994). College and university conduct processes must help fully educate and develop the student through these processes (Karp & Sacks, 2014).

In Chapter One, the statement of the problem along with the purpose of the study was presented. Key terms were listed and defined to provide clarity to the reader. Inclusion of key terms helps the reader to differentiate between several complex concepts such as restorative justice, mediation, and alternative dispute resolution. Beyond these terms, several other terms were defined. Limitations and assumptions were also addressed for the study.

The remainder of this dissertation is comprised of several chapters. In Chapter Two, a review of surrounding literature is conducted. Areas surrounding restorative justice are discussed including student conduct, Title IX, and restorative practices.

## **Chapter Two: Literature Review**

The overarching role of the university administrator greatly transformed as the overall mission of the university changed (Bennett et al., 2014; Clark, 2014; Hyde, 2014). This mission is now to educate students in every aspect of the university setting and environment (Bennett et al., 2014; Clark, 2014; Hyde, 2014). This educational role holds true especially for administrators whose principle responsibility lies in the field of student conduct (Bennett et al., 2014; Hyde, 2014).

In this chapter, literature pertinent to this educational shift is reviewed. Additionally, literature regarding Title IX legislation and how Title IX has become ubiquitous in the ever-evolving field of student conduct are also discussed. Further, recognizing a one-size-fits-all approach to student conduct does not work, some conduct administrators have added techniques such as mediation, conferencing, and restorative justice practices to their ever-expanding repertoire of educational and conduct related tools (Bennett et al., 2014; Clark, 2014; Hyde, 2014; Waryold & Lancaster, 2008). Educational and conduct related techniques and their applications in the higher education setting are discussed.

### **Theoretical Framework**

Lawrence Kohlberg's (1981) theory of moral development was used to establish the theoretical framework for this study. Kohlberg's (1981) theory was selected to show how college students learn and morally develop through a series of stages. The theory of moral development is further explained throughout the following section.

**Kohlberg's theory of moral development.** The overarching goal of all colleges and universities is to fully develop and educate the citizen scholar (Bennett et al., 2014). A large portion of accomplishing that goal lies with the professional staff of the student affairs division of the college or university (Derajtys & McDowell, 2014). Student affairs professionals rely on a host of theoretical ideas and frameworks to develop and implement practices that lead to the full development and education of the student (Bennett et al., 2014; Janosik & Stimpson, 2011; Koss et al., 2014). One of these fundamental frameworks is the moral development theory authored by Kohlberg (Kuhmerker et al., 1994; Modgil & Modgil, 1988).

According to Kohlberg, people develop their moral and ethical behavior and responsibilities by passing through a series of stages of development (Kohlberg, 1981, 1984). A person's sense of right and wrong develops from a concern about the results of one's actions (Kohlberg, 1981, 1984; Kuhmerker et al., 1994). Progression through the stages occurs when values and normative behaviors become more dependent on interpersonal expectancies (Kohlberg, 1981, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988). Final development occurs when behaviors are crafted from one's own principles and not assumed from the society in which they are surrounded (Kuhmerker et al., 1994; Modgil & Modgil, 1988). Kohlberg (1984) theorized everyone progresses through the same stages in sequence, however, development through these stages may take longer for some people than others.

Kohlberg (1981, 1984) contended everyone begins in the pre-conventional level of development. This initial level is comprised of two stages, heteronomous morality and individualism (Kohlberg, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988).

People in the heteronomous morality stage make decisions to avoid punishment (Kohlberg, 1984; Kuhmerker et al., 1994). People understand there are rules in place, and if they break the rules, they will suffer some sort of negative consequence (Kuhmerker et al., 1994; Modgil & Modgil, 1988). In this stage, consideration of others is not a factor (Kuhmerker et al., 1994). The next stage, individualism, is achieved when people follow rules only to serve someone else's immediate interest (Kohlberg, 1981, 1984; Kuhmerker et al., 1994).

After leaving stage two, people developmentally progress into level two of the theory. Level two is first marked by stage three, entitled mutual interpersonal expectancies and relationships (Kohlberg, 1981, 1984). In this stage, people form their behavior based on the expectancies of those to whom they are in a close relationship (Kohlberg, 1981; 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988). Development into this stage is identified when one decides to be a good person only because it is expected of by those they love (Kuhmerker et al., 1994; Modgil & Modgil, 1988). Stage four, social system and conscience occurs when behaviors are based on fulfilling one's duties (Modgil & Modgil, 1988). People realize the system in which they live define the rules, and they have an obligation to uphold their duty to the system (Kohlberg, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988).

The final, or post-conventional level, includes stage five, social contract and individual rights, and stage six, universal ethical principles (Kohlberg, 1984). People progress into stage five behavior when they believe that rules are important to the group to which they belong (Kohlberg, 1981, 1984). A greater good philosophy is indicative of people in this stage (Kuhmerker et al., 1994; Modgil & Modgil, 1988). The final stage of

development occurs when people develop their own ethical rules based on principles of justice and equality (Kohlberg, 1981, 1984). Levels and stages of Kohlberg's theory are presented in Figure 1.

Level	Stage
Pre-Conventional	Heteronomous Morality Individualism
Conventional	Mutual interpersonal Expectancies and Relationships Social System and Conscience
Post-Conventional	Social Contract and Individual Rights Universal Ethical Principles

*Figure 1.* Levels and stages of moral development (Kohlberg, 1984).

Student development in higher education occurs both inside and outside of the classroom (Bennett et al., 2014; Karp & Sacks, 2014). Student conduct administration is one important component of students' extracurricular experiences (Karp & Sacks, 2014). A successful conduct experience is one where the students' place in their school and community are well recognized by everyone involved (Karp & Sacks, 2014). Karp and Sacks (2014) stated that a successful conduct experience motivates a student's "movement from extrinsic moral motivation to intrinsic moral motivation" (p. 4). As Kohlberg described, the student progresses from stage to stage, eventually accepting community values and recognizing the impact his or her harmful actions had on the community (Karp & Sacks, 2014; Kohlberg, 1981, 1984; Kuhmerker et al., 1994).

## **Student Conduct**

The field of student conduct traces its origins back several hundred years to the emergence of universities in the colonies of early America (Bennett et al., 2014; Hyde, 2014). However, in the latter part of the 20th century, student conduct practitioners sought to align their mission with the overall educational mission of the university (Bennett et al., 2014; Clark, 2014; Hyde, 2014; Wawrzyński & Baldwin, 2014). During this shift, it was recognized that a one-size-fits-all approach to student conduct was ineffective and unreasonable (Bennett et al., 2014; Clark, 2014; Hyde, 2014; Wawrzyński & Baldwin, 2014). As a result, practices such as mediation and restorative justice were implemented in the student conduct arena (Bennett et al., 2014; Hyde, 2014; Waryold & Lancaster, 2008).

The field of student conduct is ever evolving (Hyde, 2014). Its foundational core dates to the 1600s with the emergence of colleges and universities in early America (Hyde, 2014). During this time, educators served their constituents in the role of *loco parentis*, or in place of the parent (Belch & Racchini, 2016; Bennett et al., 2014; Hyde, 2014; Waryold & Lancaster, 2008). The president of the college and the academic staff, “were responsible for advising their students about such things as their moral life and intellectual habits” (Waryold & Lancaster, 2008, p. 19). This role of moral and intellectual educator remained present in university life for several hundred years (Association for Student Conduct Administration [ASCA], 2014). As a result, student conduct took on a very paternalistic and moralistic tone its form, language, and punishment (Bennett et al., 2014; Clark 2014; Hyde, 2014; Jackson, 2014).



As student conduct theory more fully evolved, the concept of *in loco parentis* diminished throughout higher education, and new and progressive methods of student conduct resolution emerged (Bennett et al., 2014; Clark, 2014; Hyde, 2014; Jackson, 2014; Waryold & Lancaster, 2008). During the traditional portion of the student conduct evolutionary cycle, terms such as guilty, defense, disciplinary, and judicial were common to the institutional language (Bennett et al., 2014; Clark, 2014). The traditional justice approach still used by the majority of colleges and universities today is adversarial in nature and grounded in a hierarchical and administrative format (Clark, 2014; Hyde, 2014). In this format, a single administrator is often responsible for finding information about the offense and punishing the offender (Clark, 2014; Hyde, 2014). Traditional campus justice generally offers punishment for the offense and does not attempt to resolve any underlying issues within the campus community (Clark, 2014; Hyde, 2014).

Instead of the student conduct process revolving around the offender and the punishment, officials with the ASCA have stated student conduct officials should be focused on education and not punishment (Bennett et al., 2014). The executive director and elected officers of ASCA posited, “student conduct professionals transform student behavior by establishing policies, providing preemptive education, having conversations to change students’ perspectives, facilitating the resolution of complaints and conflicts, and implementing accountability measures when necessary” (Bennett et al., 2014, p. 5).

Student conduct officials accomplish educational objectives because their focus and attention have shifted from only punishing the offender to educating all the parties involved the situation (Bennett et al., 2014; Hyde, 2014; Jackson, 2014; Waryold & Lancaster, 2008). The mission of every institution of higher learning is to educate and

develop students (Clark, 2014). Further, every department of the institution should align with that mission to educate and develop (Clark, 2014). To be an effective arm of its institution, the student conduct office should also align with the institutional mission of educating and developing its constituents (Bennett et al., 2014; Clark, 2014; Hyde, 2014; Wawrzynski & Baldwin, 2014). Hyde (2014) summarized, “student education has expanded beyond the classroom to a more holistic view of student development” (p. 29). No longer is student education, “limited to the four walls of an academic setting but expands to the dining hall, residence hall, and athletic fields” (Hyde, 2014, p. 29).

To align student conduct with the educational mission of the institution, a one-size-fits-all approach to student conduct does not work (Bennett et al., 2014; Hyde, 2014; Waryold & Lancaster, 2008). Instead, various forms of resolution such as administrative hearings, panel hearings, and disciplinary conferences have been implemented in the student conduct arena to provide the greatest opportunity for all the involved parties (Bennett et al., 2014; Waryold & Lancaster, 2008). One of the most prevalent models of contemporary student conduct is the disciplinary conference model, which encourages the student conduct officer to view the accused student in a more holistic manner (Waryold & Lancaster, 2008). Through a review of case documents, the conduct official becomes familiar with the student’s history including academic progress, major, and grade point average (Waryold & Lancaster, 2008). Also, the conduct officer can discern information regarding drug and/or alcohol, or mental health issues suffered by the student (Waryold & Lancaster, 2008). By using this information, the conduct officer can propose helpful interventions that will ensure the student’s success as opposed to just punishing his/her actions (Waryold & Lancaster, 2008).

The move from a traditional, justice-type student conduct approach to a more community minded approach requires many changes to occur (Bennett et al., 2014). First and foremost, a paradigm shift recognizing college and university campuses are not courtrooms is essential (Bennett et al., 2014; Waryold & Lancaster, 2008). The shift from the traditional justice approach to the community healing model has been recognized by student conduct and student development professionals as well as the judicial courts (Bennett et al., 2014; Hyde, 2014).

A shift from the traditional justice paradigm to a more contemporary student development approach is found in the vocabulary and burden of proof used in some college and university student conduct settings (Bennett et al., 2014; Koss et al., 2014). In the court system, a typical burden of proof to find guilt is beyond a reasonable doubt or 90% reliability (Walen, 2015). However, in the contemporary conduct model, the burden of *beyond a reasonable doubt* has been altered, in most cases, to a preponderance of the evidence, or the *more likely than not* standard (Bennett et al., 2014). Furthermore, terms such as *charges*, *witnesses*, and *testimony* have been omitted in the contemporary conduct model, and such terms as *agreement*, *dialogue*, and *incident* are now prevalent (Bennett et al., 2014; Koss et al., 2014).

Secondly, a focus on the student's relationship to the institution is necessary (Bennett et al., 2014, Hyde, 2014). ASCA (Bennett et al., 2014) officials stated:

Campus proceedings are educational and focus on the students' relationships to the institution. The field of student conduct is rooted in ensuring that individual student's rights are upheld as they engage in an educational process about the

behavioral, and sometimes academic, standards of the campus community.

(Bennett et al., 2014, p.1)

To fully develop, students must feel a belonging and social connection to the university (Hyde, 2014).

In the past, student conduct officers came from a general pool of applicants who held traditional educational backgrounds (Brostoff, 2017; Holloway & Friedland, 2017; Minow, 2017). Conduct officers had navigated their way through other student affairs departments, such as residence life, and had aspired to lead and develop students through the conduct system (Kupo, 2014; Perez, 2017). However, more conduct officers with formal legal educations are entering the field (Brostoff, 2017; Holloway & Friedland, 2017). Some of these officers with legal backgrounds have other experience in the educational world and others do not (Kupo, 2014; Perez, 2017). What is important is the recognition that student affairs officers with formal legal backgrounds are educated and trained in a very different way than student conduct officers with a formalized educational background (Brostoff, 2017; Holloway & Friedland, 2017; Minow, 2017).

**Educational differences.** A formalized legal education provides a very unique experience that balances the, sometimes competing worlds of academia and practicality (Holloway & Friedland, 2017). Although the balance of academia and practice is common among graduate studies, the way law students are trained to master the two worlds is unique (Holloway & Friedland, 2017). The saying which is common among legal educators is that law school teaches one to think like a lawyer (Brostoff, 2017; Preston, Stewart, & Molding, 2014). In teaching students to think like lawyers, the importance is not focused on the recitation of the codified laws but instead on the critical

thinking that allows a law student to apply the codified laws in different situations and scenarios (Minow, 2017; Post, 2017; Riech, 2015).

Professor Christopher Columbus Langdell is credited with formulating the case law method of teaching in American law schools (Minow, 2017; Shapcott, Davis, & Hanson, 2017). As Dean of the Harvard Law School, Langdell focused the legal education on the analysis of appellate court decisions rather than on the rote memorization of laws (Minow, 2017; Post, 2017). By focusing on appellate court decisions, law students were able to analyze the underlying facts and application of the law and then apply similar arguments to other fact patterns (Whalen-Bridge, 2014). The emphasis on application dramatically focused the law student's ability to reason analytically (Minnow, 2017; Schauer & Spellman, 2017; Whalen-Bridge, 2014). Critical thinking, analysis, and application are at the heart of educating a law student (Minnow, 2017; Schauer & Spellman, 2017; Whalen-Bridge, 2014). Minnow (2017) wrote, "law school instruction and scholarship emphasize attention to distinctions and analogies, framing and reframing apparently dissimilar facts or arguments to find commonalities and identifying difference to point out reasons to treat seemingly similar instances differently" (p. 2290).

Also, very different from other graduate programs is the law school's utilization of the Socratic method of instruction (Holloway & Friedman, 2017). The Socratic method emphasizes the importance of teachers asking all of the questions and the student providing the answers (Holloway & Friedman, 2017; Schauer & Spellman, 2017). During a class facilitated by the Socratic method, a student might answer a question, be required to refute the answer that was just given, and then refute that answer to rely on

the student's first response which happened to be the right answer from the beginning (Holloway & Freidman, 2017). Although convoluted to the outsider, the Socratic method teaches and trains law students to rely upon legal reasoning and creative and critical thinking to identify the correct issues and render an appropriate solution to the problem (Preston et al., 2014; Reich, 2015).

Another unique part of legal education is the way in which law students are trained to discuss and write about a legal problem (Brostoff, 2017; Schauer & Spellman, 2017). Lawyers and law students communicate in a common language referred to as IRAC (Burton, 2016; Whalen-Bridge, 2014). The acronym IRAC stands for issue, rule, application, and conclusion and is recognized by all legal professionals as an effective and efficient way to communicate a legal analysis (Burton, 2016; Holloway & Friedman, 2017; Whalen-Bridge, 2014). Additionally, IRAC is a system that helps legal professionals to organize legal issues at hand and develop an answer that relies on an appropriate analysis of the pertinent laws (Whalen-Bridge, 2014).

Formal legal education is unique in the way that future legal professionals are taught and trained (Holloway & Friedland, 2017). However, the highly competitive and stressful environment of law school is also unique (Brostoff, 2017). Law schools generally tend to attract students who are extroverted and sociable and who tend to be more authoritarian than other students (Riech, 2015). Law students are also generally more dominant and are defined as more risk-taking than students in other disciplines (Brostoff, 2017; Riech, 2015). Additionally, students who are defined as thinkers are more likely to be successful in the law school environment than those students who are defined as feelers (Brostoff, 2017; Reich, 2015). The competitiveness of law school has

also been determined to produce hyper competitiveness in lawyers once they graduate (Reich, 2015).

College and university conduct officers must also undergo extensive educational programming and hold advanced degrees such as masters and doctorate degrees (Perez, 2017). Conduct officers are student affairs professionals and as such must constantly balance the dichotomy of theory and field work (Kupo, 2014; Perez, 2017). To help provide the balance between theory and field work, masters and doctorate level programs are designed to utilize a dual training model that gives sufficient attention to both practical and academic success (Munsch & Cortez, 2014; Perez, 2017; Tyrell, 2014). Although graduate level programs may differ in some form or function, the programs are created to provide common competencies to graduates across the student affairs profession (Underwood & Austin, 2016).

The goal of student affairs professionals is to foster student success on his or her college or university campus (Perez, 2017; Underwood & Austin, 2016). To help equip future student affairs professionals to impact others, leaders of graduate programs have looked to professional organizations for common competencies that will help ensure student affairs professionals are successful (Eaton, 2016; Hevel, 2016; Tyrell, 2014). In 2010, ASCA and the National Association of Student Personnel Administrators issued a joint document that focused on 10 competencies imperative to the success of those individuals working in student affairs (Eanes & Perillo, 2010). The competencies are advising, assessment and research, equity and inclusion, ethics and professionalism, history, human and organizational resources, law and policy, leadership, personal foundations, and student development (Eanes & Perillo, 2010). Through the common

competencies, graduate programs are developed to bridge any gap between theory and practice and prepare the future professional for continued growth and development (Eaton, 2016).

Student affairs graduate programs have been providing guidance for future professionals for many decades (Eaton, 2016; Munsch & Cortez, 2014). However, the way current students are taught in modern programs has evolved from the traditional class work and class room environment (Ortiz, Filimon, & Cole-Jackson, 2015). Although classroom work is important, robust student discussion and collaborative learning have come to the forefront as the best pedagogy to prepare future student affairs professionals (Ortiz et al., 2015). Also, a real focus on social justice issues has taken a place in the student affairs curriculum (Ortiz et al., 2015; Taub & McEwen, 2006).

Student affairs and student conduct are fundamentally important fields which have a direct impact on students' lives (Eaton, 2016; Perez, 2017). However, student affairs are described as a hidden career field, because there are essentially no undergraduate programs which lead to a career in student affairs (Gillet-Karam, 2016; Taub & McEwen, 2006; Underwood & Austin, 2016). Practitioners often enter the field of student affairs by accident (Taub & McEwen, 2006). College and university students are often directed into the student affairs field by practitioners who have made an impact on the student's life (Gillet-Karam, 2016; Underwood & Austin, 2016). Students who most often pursue graduate studies and a career in student affairs are very involved and are leaders on their college or university campus (Taub & McEwen, 2006).



## **Title IX**

The Civil Rights Act of 1964 emerged as crucial legislation designed to counter the ubiquitous discrimination faced by women in the United States (Smith, 2015). Although effective in its purpose, the Civil Rights Act of 1964 was designed to counter discrimination in the workplace but did not address the widespread discrimination occurring in educational settings (Smith, 2015). As a result, discrimination continued to impact educational opportunities for women across the United States (Novkov, 2016; Smith, 2015). To address continued gender discrimination blocking educational experiences and opportunities, Congress passed, with little resistance, Title IX (Novkov, 2016; Smith, 2015). Although commonly associated with intercollegiate athletics, the scope of Title IX is much wider than just that arena (Novkov, 2016; Smith, 2015; Title IX, 1972).

Title IX, passed as a small component of the larger Educational Amendments of 1972, was drafted to protect against sexual discrimination in the classroom and the broader educational arena (Lave, 2016; Prescott, 2018; Yung, 2016). To ensure enforceability, non-compliance with Title IX results in the loss of federal financial assistance for the at-fault educational institution (Lave, 2016; Novkov, 2016; Title IX, 1972). The scope of Title IX also includes private institutions that wish to continue to provide Pell Grants and other federal financial aid money to students (Carroll et al., 2013; Title IX, 1972).

Although short in length, much litigation has emerged from the language of Title IX (Anderson, 2016; Lave, 2016; Smith, 2015; Title IX, 1972; Yung, 2016). The first

United States Supreme Court case to interpret Title IX was *Cannon v. University of Chicago* (1979). In this case, the Court found, for the first time, a private right of action existed under the language of Title IX (*Cannon v. University of Chicago*, 1979; Smith, 2015). After this ruling, many lower courts had the opportunity to further interpret and expand Title IX (Smith, 2015). In *Alexander v. Yale* (1980), the court established for the first time sexual harassment was a form of sexual discrimination under Title IX (*Alexander v. Yale*, 1980; Smith, 2015). Additionally, a lower court found in *Franklin v. Gwinnett County Public Schools* (1992) that monetary damages could be awarded in Title IX cases.

The United States Supreme Court again granted certiorari for a case involving Title IX in *Gebser v. Lago Vista Independent School District* (1998). For a school to be held liable for sexual harassment, a school official with the authority to act and correct the harassing behavior must have actual knowledge of the behavior and have failed to respond to the allegations (*Gebser v. Lago Vista Independent School District*, 1998; Smith, 2015). The Court stated that a deliberate indifference must be shown to hold the school liable, thus making a successful claim against a school increasingly difficult (Duncan, 2014; *Gebser v. Lago Vista Independent School District*, 1998; Smith, 2015).

In 1999, one year after the Court ruled on *Gebser*, the Court heard arguments in the seminal case of *Davis v. Monroe County Board of Education* (1999). The primary issue in this case was whether or not student on student sexual harassment constituted part of the wider umbrella covered under the language of Title IX (*Davis v. Monroe County Board of Education*, 1999; Strader & Williams-Cunningham, 2017). The Court found student-on-student harassment did fall under the purview of Title IX but stated for

a claim to exist the school must have dominion over the harasser, the victim, and the place where the alleged behavior occurred (Davis v. Monroe County Board of Education, 1999; Strader & Williams-Cunningham, 2017).

Also, in Davis, the Court narrowed the test found in previous cases qualifying sexual harassment as sexual discrimination under Title IX and ruled that the behavior in question must be, “so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit” (Davis v. Monroe County Board of Education, 1999, p. 691). Finally, the *deliberate indifference* standard previously found in Gebser was validated (Davis v. Monroe County Board of Education, 1999). This case marked important implications for higher education institutions since, they could now be held liable for the actions of students against other students (Lave, 2016; Yung, 2016).

Congress charged the Office for Civil Rights (OCR) with the responsibility of enforcing language found in the Title IX legislation (Anderson, 2016; Title IX, 1972). As a part of the enforcement process, the OCR is authorized to issue rules and regulations concerning compliance with Title IX (Anderson, 2016; Title IX, 1972). These rules and regulations regarding Title IX have often taken the form of guidance documents issued by the OCR (Anderson, 2016). During its enforcement of Title IX, the OCR has been careful to reiterate the law is not intended to favor one party over another (Anderson, 2016). In support of the assertion that Title IX is not an exercise in favoritism, one of the OCR earliest released guidance documents stressed the importance of the accused due process rights (Anderson, 2016; U.S. Department of Education, OCR, 2001). The guidance went so far as to state that even the Family Rights and Privacy Act (FERPA)

does not override due process rights afforded to the accused (Anderson, 2016; U.S. Department of Education, OCR, 2001).

One of the most substantial guidance documents came in 2011 when OCR issued a Dear Colleague Letter which reiterated the inclusion of sexual violence as sexual harassment as it interferes with a student's right to unfettered access to education (Anderson, 2016; U.S. Department of Education, OCR, 2011). The Dear Colleague Letter was also the first confirmation from OCR that rape and other acts of sexual violence were considered to fall under the definition of sexual harassment under the language of Title IX (Carroll et al., 2013; Smith, 2015; U.S. Department of Education, OCR, 2011).

**Office for Civil Rights.** The importance of schools effectively, efficiently, and immediately ending sexual violence was paramount to the OCR, and the Dear Colleague Letter of 2011 was issued to clarify decades of questions (Anderson, 2016; Novkov, 2016). The Dear Colleague Letter sought to mandate three things university administrators must do to fully comply with Title IX (Anderson, 2016; Smith, 2015; U.S. Department of Education, OCR, 2011). To be in compliance with Title IX and to continue to receive federal funding, colleges and universities are required to disseminate the institution's non-discrimination policy to all members of the educational community, to appoint a Title IX officer responsible for the compliance of the institution, and to create and publish the institution's grievance procedures regarding sexual harassment issues (Anderson, 2016; Smith, 2015; U.S. Department of Education, OCR, 2011).

Beyond the guidance, the 2011 Dear Colleague Letter also mandated schools must conclude a Title IX complaint in a prompt and equitable manner and reaffirmed

schools must use a *preponderance of the evidence* standard to adjudicate Title IX complaints (Anderson, 2016; Grayson & Meilman, 2015; U.S. Department of Education, OCR, 2011). Although drafted for clarification and guidance, the Dear Colleague Letter left many school practitioners even more confused about ensuring Title IX compliance (Novkov, 2016; Smith, 2015).

Another attempt for clarification again failed in the eyes of many school professionals, as a 2014 Dear Colleague Letter left many more questions regarding procedures and protocols (Smith, 2015; U.S. Department of Education, OCR, 2014). The great variances of where a student files a complaint, the procedures used to put parties on notice, how an investigation proceeds, and what sanctions are available if the accused party is found responsible are representative of the concern of the vague instructions and guidance provided by the OCR (Lave, 2016; Smith, 2015). The amount of interpretation left to the individual college or university has made some Title IX commentators wary that schools would be left, “vulnerable to claims of negligence and mistreatment by the accused, whose rights are barely recognized by the OCR” (Smith, 2015, p. 6). The argument also exists there is no reason for colleges and universities to have specific procedures in place, because the heavy burden on the plaintiff pursuing a Title IX claim against the college or university almost ensures the plaintiff will not be successful (Smith, 2015).

Regardless, the OCR guidance mandating the use of a preponderance of the evidence standard be used has been a source of frustration for many higher educational practitioners (Anderson, 2015; Novkov, 2016). The frustration occurs because the preponderance of the evidence is viewed by many practitioners as considerably weaker

and more subjective than other burdens of proof (Anderson, 2015; Novkov, 2016). When deciding accountability for action, a burden of proof or a weighing system is used to determine guilt or responsibility (Novkov, 2016). A preponderance of the evidence means it is more likely than not a person accused of committing a wrongful action, actually committed the action or harm (Anderson, 2016). The preponderance of the evidence standard generally equates to a 51% likelihood and is generally utilized except in cases where life or liberty are in jeopardy (Anderson, 2016, p. 1986).

Another burden that can be used to determine accountability is the *clear and convincing* standard (Novkov, 2016). The clear and convincing burden is stricter than the preponderance of the evidence standard and a higher degree of certainty is needed for accountability and responsibility to be found (Novkov, 2016). The last generally recognized burden of proof is *beyond a reasonable doubt*, which is the most stringent standard required for convictions in criminal matters (Novkov, 2016). In the 2011 Dear Colleague Letter, the OCR reaffirmed its requirement for schools to utilize a preponderance of the evidence standard and explicitly noted the use of a clear and convincing standard was not fair and equitable under the language of Title IX (Anderson, 2016; Lave, 2016; U.S. Department of Education, OCR, 2011). Many college and university officials have expressed concern the preponderance of the evidence standard would serve as the threshold for evidentiary proof in a Title IX matter (Edelman, 2017). Those officials have argued, with such a low burden required, students' fundamental due process rights are in jeopardy (Edelman, 2017).

**New enforcement of Title IX.** On January 20th, 2017, Donald Trump was inaugurated as the 45th President of the United States (Edelman, 2017). Additionally, Betsy DeVos was confirmed by the United States Senate on February 7, 2017, to serve as the 11th Secretary of Education (U.S. Department of Education, 2018). With this new administration came much anticipation that a scale-back of Title IX regulations and enforcement of its rules might occur (Pappas, 2016). On September 7, 2017, Secretary DeVos addressed an audience at George Mason University outlining change for the interpretation and enforcement of Title IX (DeVos, 2017).

In her remarks, DeVos praised the role that Title IX has played in protecting students so that sexual discrimination does not interfere with the students' access to and benefits from educational programs receiving federal assistance (Bernard et al., 2018; DeVos, 2017). DeVos (2017) also expressed the U.S. Department of Education's commitment to continuing to confront the culture of sexual harassment and assault on American college and university campuses. However, DeVos (2017) also expressed that the current mechanisms found in Title IX are broken, and many students have been failed by the system. DeVos (2017) also alluded that educational institutions have lived in fear under draconian rules set forth by bureaucrats and that many alleged assaulters had been disadvantaged because of the lack of due process and low burden of proof often used in Title IX matters. It was inferred in DeVos' statement that much of the 2011 OCR Guidance infringed on the free speech rights of those on college and university campuses throughout the United States (DeVos, 2017; Edelman, 2018; Osland et al., 2018).

Shortly after DeVos enunciated her remarks at George Mason University, the OCR withdrew the 2011 and 2014 Guidance documents (Bernard et al., 2018). At the

same time, the OCR issued the 2017 Question and Answer document to help institutions manage matters during the interim period without official guidance (Bernard et al., 2018). The 2017 Question and Answer document allowed colleges and universities to use a higher standard of proof and allow institutions to choose whether to limit the option of an appeal to one party (Bernard et al., 2018; U.S. Department of Education, 2017). The Question and Answer document also permits the college or university to use mediation as a method of resolution, reversing the long-held ban on the alternative dispute resolution technique (Bernard et al., 2018; U.S. Department of Education, 2017).

The 2017 Question and Answer document also removed the 60-day time-period in which a college or university had to complete an investigation (U.S. Department of Education, 2017). Instead of a set number of days, the OCR will look to a college or university's good faith effort to complete a pending investigation in a timely manner (Bernard et al., 2018; U.S. Department of Education, 2017). The new administration does still require that the investigation be prompt and equitable (U.S. Department of Education, 2017).

Additionally, the 2017 Question and Answer document allows colleges and universities the flexibility to use either a preponderance of the evidence standard or a clear and convincing evidence standard when determining a case of alleged sexual assault or harassment (Bernard et al., 2018; U.S. Department of Education, 2017). As previously mentioned, the OCR had required institutions to use the preponderance of the evidence when adjudicating Title IX matters (Anderson, 2016; Lave, 2016; U.S. Department of Education, OCR, 2011). The 2017 Question and Answer document no longer requires the lowest standard of proof be used but also allows institutions to utilize the clear and



convincing evidence standard as well (Bernard et al., 2018; U.S. Department of Education, 2017). The Trump and DeVos administration makes clear the 2017 Question and Answer document is not prescriptive in its choice of burdens of proof but simply asks colleges and universities to choose a standard consistent with how other disciplinary matters are handled (Bernard et al., 2018; U.S. Department of Education, 2017; Osland et al., 2018).

The 2017 Question and Answer document also permits colleges and universities to allow parties to utilize informal measures to bring about a resolution to a dispute (U.S. Department of Education, 2017). Although not prescriptive, the Question and Answer document provides a sense of flexibility for the educational institution in how it disciplines these matters (U.S. Department of Education, 2017). Despite the clear language in other OCR guidance, the 2017 Question and Answer document now includes mediation as a permitted informal mechanism allowed for dispute resolution in a Title IX matter (Bernard et al., 2018; U.S. Department of Education, 2017).

To participate in the informal resolution mechanism in a Title IX case, a three-prong test must be met (Bernard et al., 2018; U.S. Department of Education, 2017). First, all parties must voluntarily agree to participate in the process (Bernard et al., 2018). Parties must be free from institutional pressures to participate, as well as pressures from other external sources such as peer groups, families, and their community (Bernard et al., 2018). Further, to be allowed to participate in the informal proceedings, the parties must be notified of all pending allegations, and they must also be notified of all options that are available under the more traditional formal processes (Bernard et al., 2018; U.S. Department of Education, 2017). Finally, the college or university must determine that

the case is appropriate for an informal resolution (Bernard et al., 2018; U.S. Department of Education, 2017). Although the pending matter must be determined to be appropriate for informal resolution, the 2017 Question and Answer document does not define what is appropriate, nor does it provide guidance in how the educational institution should proceed (Bernard et al., 2018; U.S. Department of Education, 2017).

The 2017 Question and Answer document is intended to serve as guidance during an interim regulatory period (U.S. Department of Education, 2017). However, the 2017 Question and Answer document is not prescriptive and does not require any change in university policy or procedure, so long as that policy or procedure is not in conflict with earlier guidance issued by the OCR (Bernard et al., 2018; U.S. Department of Education, 2017). More conclusive guidance is expected as the OCR requests and receives input from affected parties, including the public (U.S. Department of Education, 2017).

Regardless of confusion caused by the interpretations of its language, Title IX encompasses very real situations such as sexual harassment and sexual assault that occur all too frequently on the campuses of American colleges and universities (Amar, Strout, Simpson, Cardiello, & Beckford, 2014; DeMatteo, Galloway, & Unnati, 2015; Dunn, 2013; Safko, 2016). Many of the actions that constitute a Title IX offense also have the potential of constituting a criminal offense, as well as carrying civil liability (Coray, 2016). Thus, a single action by a student could constitute a civil offense brought forth in the civil courts resulting in a monetary judgment against the offending party, and a criminal offense resulting in criminal culpability and a potential loss of freedom for the offending party (Coray, 2016). Furthermore, this student action could be determined to be a violation of a student code of conduct resulting in sanctions imposed by the

educational institution (Chmielewski, 2013; Coray, 2016; Dunn, 2013). The sanction for a Title IX violation could result in suspension or expulsion from the educational institution for the responsible party (Chmielewski, 2013; Dunn, 2013).

In response to the potential intersection of criminal, civil, and educational repercussions for the accused student, some scholars and legislators have suggested colleges and universities should stop adjudicating actions involving sexual assault and sexual harassment (Novkov, 2016). Proponents of removing this adjudication from the purview of college and university administrators hold the varied and broad policies and procedures involved with Title IX issues serve as barriers to the victims they are designed to protect (Smith, 2015). Without the ability to hand down punishments other than suspension and expulsion and with the lack of legal or judicial training, it has been suggested that educational institutions turn the responsibilities and investigations of these actions to the police and the traditional criminal justice system (Novkov, 2016; Smith, 2015).

Many scholars and professional organizations, however, are adamant colleges and universities cannot elude their responsibilities to work within the guidelines provided by Title IX and other legislation (Novkov, 2016). In fact, proponents of collegiate Title IX enforcement argue that it is the duty of educational institutions to be involved in sexual assault and sexual harassment cases to protect the students and community of the institution (Anderson, 2016). Although colleges and universities do not have the aforementioned law enforcement or judicial expertise, they do have the responsibility for providing equal educational opportunities for their constituents (Anderson, 2016).

The policies and procedures set forth in Title IX help to ensure colleges and universities are accountable for providing equal educational opportunities at least, in gender related issues (Anderson, 2016). The major function of colleges and universities is to educate, and the main function of law enforcement and the judicial system is to hold an offender criminally responsible for their action (Anderson, 2016; Novkov, 2016). These functions are not mutually exclusive, and in fact, rely on each other to ensure a balance of freedom, opportunity, and safety is maintained (Anderson, 2016; Novkov, 2016; Smith, 2015)

### **Restorative Justice**

The traditional justice approach emphasizes, “accountability through punishment” (Paul & Dunlop, 2014, p. 265). Although it is the most prevalent form of justice, the traditional model is viewed to ignore the victim (Armenta, Macías, Verdugo, Niebla, & Arizmendi, 2018; Paul & Dunlop, 2014). Furthermore, it is a binary system where someone is either wrong or right, or guilty or not guilty (Paul & Dunlop, 2014). There is no room for the consideration of other factors in the traditional system (Obi, Okoye, Ewoh, & Onwudiwe, 2018; Paul & Dunlop, 2014). Additionally, the traditional model is very individualistic and simplistic, focusing on the punishment of the person found responsible for the action (Paul & Dunlop, 2014). However, instead of solving underlying issues, the punishment is designed as a retributive action (Armenta et al., 2018; Paul & Dunlop, 2014). Despite its prevalence, the traditional punishment approach appears to be the least satisfactory form of justice (Paul & Dunlop, 2014).

**Alternative dispute resolution.** Because the traditional justice approach can be so unsatisfactory, alternative dispute resolution has quickly gained ground since its inception in the late 1970s (Riskin et al., 2014). One very popular form of alternative dispute resolution is mediation (Riskin et al., 2014). Mediation “is an informal process in which an impartial third party helps the parties to resolve a dispute or plan a transaction but does not impose a solution” (Riskin et al., 2014, p. 10). The neutral third party helps the involved parties through a structured set of steps, with the goal of a mutually agreeable solution for both sides (Koss et al., 2014; Waryold & Lancaster, 2008).

Another form of dispute or conflict resolution is restorative justice (Zehr, 2002). Restorative justice can be defined as, “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligation, to heal and put things as right as possible” (Zehr, 2002, p. 37). The restorative process developed from indigenous descent and has been adopted by many Western legal institutions (Hyde, 2014; Umbreit, Blevins, & Lewis, 2015). While the modern usage of restorative justice began in legal communities, it has quickly expanded to other “settings, such as families, schools, workplaces, faith communities, and regional and national contexts” (Umbreit et al., 2015, p. 14).

To help further expand the knowledge and use of dispute resolution methods, many law schools in the United States have built in dispute resolution theories such as mediation and negotiation into the class room curriculum (Riskin et al., 2014). Some law schools have a special curriculum that focuses on dispute resolution, while other schools build practice techniques and scenarios into the substantive classroom environment

(Menkel-Meadow, 1993). Through practice, law students hone their creativity, listening skills, and legal analysis (Benston & Farkas, 2018). Despite the method, laws school familiarize students with the theories and skills necessary to add dispute resolution to the graduate's bag of tools (Benston & Farkas, 2018; Malizia & Jameson, 2018). The practice of role playing and participating in dispute resolution practices is imperative to the success of the student (Malizia & Jameson, 2018). Simply knowing about dispute resolution is not the same as knowing how to conduct dispute resolution (Menkel-Meadow, 1993).

Although mediation and restorative justice appear grounded in similar theory and application, there are major differences between the two methods of conflict resolution (Zehr, 2002). Mediation and restorative justice generally involve an encounter between the person responsible for the harm and the person who suffered the harm, however, a mediation often implies that two equals are meeting to settle a dispute (Obi et al., 2018; Zehr, 2002). In a mediation, "parties are assumed to be on a level moral playing field, often with responsibilities that may need to be shared on all sides" (Zehr, 2002, p. 9). This level playing field is not appropriate for many instances involving serious harm such as rape and may result in a worse outcome for the involved parties (Zehr, 2002).

Variances in the parties involved is another distinguishing factor between mediation and restorative justice (Clark, 2014; Hyde, 2014; Paul & Dunlop, 2014; Winslade, 2018; Zehr, 2002). Where mediation involves a neutral party facilitating participants to a mutually agreeable solution, restorative justice adds the community as an effected party (Clark, 2014; Hyde, 2014; Paul & Dunlop, 2014; Winslade, 2018; Zehr, 2002). Paul and Dunlop (2014) stated, "restorative justice represents an approach to

managing conflict initiated by a wrongdoing that focuses on restoring the participants, materially, psychologically, and relationally” (p. 257).

**The uniqueness of restorative justice.** Proponents of the restorative justice model hold when “conflict occurs, one inevitable result is harm” (Derajtys & McDowell, 2014, p. 349). However, harm does not just affect the victim (Koss et al., 2014). Instead, the harmful action affects the family and friends of the victim and the offender (Koss et al., 2014; Paul, 2015). Moreover, the harmful action impacts members of the community where the harm occurred, because community members feel their safety has been jeopardized and their trust violated (Derajtys & McDowell, 2014; Koss et al., 2014). Thus, unlike mediation, restorative justice is unique as it seeks “to balance the needs of each group of participants” (Koss et al., 2014, p. 246).

Restorative justice balances these harms since the first step is looking at the needs of the victim, the offender, and the impacted community (Obi et al., 2018; Zehr, 2002). Proponents of restorative justice contend the traditional justice system does not fully meet the needs of the direct victims of a harm (Armenta et al., 2018; Zehr, 2002). In the traditional system, a victim has very little interaction or input with the retributive process (Zehr, 2002). Instead, the system views the harm as one against the state, and a representative attorney employed by the state, prosecutes that harm (Zehr, 2002). This system further isolates the victim, because another hired representative speaks for the person responsible for the harm, while a third party (judge) referees the process and ultimately imposes a penalty on behalf of the state (Armenta et al., 2018; Zehr, 2002). The victim may finally receive a chance to express his or her feelings through a victim impact statement read to the court (Armenta et al., 2018; Zehr, 2002). Although the

statement may be cathartic, the amount of healing may be minimal (Obi et al., 2018; Zehr, 2002).

A restorative justice approach seeks to alter that isolation by focusing on the victim's needs (Obi et al., 2018; Zehr, 2002). Zehr (2002) identified four key needs in regard to victims which are neglected by the traditional justice system, are the need for information, truth-telling, empowerment, and restitution or vindication. Victims need, "real information, not speculation or the legally constrained information that comes from a trial or plea agreement" (Zehr, 2002, p. 14). Restorative justice allows for victims to gain this information through direct encounters between the victim and the person responsible for the harm (Armanta et al., 2018; Obi et al., 2018; Winslade, 2018; Zehr, 2002). This direct encounter also allows the victim to tell his or her story to the responsible party and to have that party understand the impact the action had on the victim (Zehr, 2002).

The encounter and dialogue between the parties also provide empowerment to the harmed party, because he or she has involvement and direct interaction with the one who caused the harm (Armanta et al., 2018; Zehr, 2002). No longer does the responsible party have all the power in the relationship (Zehr, 2002). Finally, a restorative justice approach helps meet the victim's need for restitution or vindication (Obi et al., 2018; Zehr, 2002). Zehr (2002) posited, "when an offender makes an effort to make right the harm, even if only partially, it is a way of saying I am taking responsibility, and you are not to blame." (p. 14).



**Restorative justice and the offender.** A restorative system also helps to meet the needs of the offender who is responsible for the harm (Obi et al., 2018; Zehr, 2002). In the traditional justice system, an offender is held accountable for his or her actions, but that accountability comes in the form of punishment (Zehr, 2002). Furthermore, an offender in a traditional system is sometimes forced to think only of him/herself and continued preservation (Obi et al., 2018; Zehr, 2002). The punishment imposed by the traditional justice system further isolates and alienates the offender from the victims and society, which “further tends to discourage responsibility and empathy on the part of the offenders” (Zehr, 2002, p. 16).

However, a restorative justice system is concerned with the offenders learning to understand the consequences of their actions, which may lead the offender to empathize with his or her victim (Zehr, 2002). The real accountability imposed on the offender is the understanding of the impact that his/her action has had on those involved in the situation and the ability to “address the resulting harms” (Zehr, 2002, p. 17). Instead of further alienation, restorative justice seeks to provide curative opportunities for the offender, which may help to right many of the underlying wrongs which led to the offensive behavior (Armanta et al., 2018; Winslade, 2018; Zehr, 2002). These healing opportunities provide for “encouragement and support for integration into the community,” which helps both the victim and the offender to have a more normal existence (Zehr, 2002, p. 17).

Where traditional justice may exacerbate the core issues of the problem that resulted in a harm, restorative justice attempts to fix the underlying issues and go deeper

than just punishment for the harm that occurred (Paul & Dunlop, 2014; Tung, 2018). The key to success in the restorative justice method is involving all interested parties or stakeholders and bringing them together to discuss all the repercussions of the harm (Hyde, 2014; Paul & Dunlop, 2014). In this sense, restorative justice is very relational (Paul & Dunlop, 2014). Although participants are not expected or required to forgive the person responsible for the harm, that is sometimes the result of the restorative justice process (Clark, 2014; Zehr, 2002).

Restorative practices are effective because they focus on reintegrative shaming as opposed to disintegrative shaming (Armenta et al., 2018). When an act occurs that results in harm to others, the one responsible for the act encounters shaming (Armenta et al., 2018). Although the person responsible for the act is punished, reintegrative shaming calls for the act itself to be shamed and not the actor (Braithwaite, 1989). If the responsible party is shunned, and the focus is on the actor and not the act, disintegrative shaming has occurred (Braithwaite, 1989; Makkai & Braithwaite, 1994). The person becomes labeled as an offender, and the gap between that person and the community becomes wider and harder to transgress (Braithwaite, 1989). As a result, the resources and potential the person needs become more unavailable, and the person becomes more trapped in the status of the offender (Makkai & Braithwaite, 1994). Finally, the process culminates in a real potential for recidivism and a continuation of the cycle (Armatta, 2018; Armenta et al., 2018; Braithwaite, 1989; Makkai & Braithwaite, 1994).

The theory of reintegrative shaming predicts a different outcome than the perpetual cycle of offending derived from disintegrative shaming (Braithwaite, 1989). Unlike disintegrative shaming, reintegrative shaming ensures that respect for the person

is maintained as disapproval for the actions are expressed (Braithwaite, 1989; Makkai & Braithwaite, 1994). Reintegrative shaming allows the offending party to be brought back into the community and gives him/her an opportunity to live by the rules and conventions of that community (Armenta et al., 2018; Braithwaite, 1989). This provides for a reduction in recidivism as the offender, as well as the victim and the community, are able to move past the harmful act (Armenta et al., 2018; Braithwaite, 1989; Makkai & Braithwaite, 1994).

**Methods of restorative justice.** One method of seeking to balance the needs of affected parties is through the use of restorative circles (McDowell, Crocker, Evett & Cornelison, 2014). This method is rooted in the early peaceful traditions of the indigenous peoples of North America (Hyde, 2014; Umbreit et al., 2015). Instead of using argument and debate, “the circle process establishes a safe, nonhierarchical space in which all present have the opportunity to speak without interruption” (Umbreit et al., 2015, p. 15). Circles allow the parties to “consider the extent of harm and create a plan of sanctions and rehabilitative activities for the responsible person” (Koss et al., 2014, p. 247).

Although a facilitator is present, a talking piece is used to allow interaction in the circle (Hyde, 2014; Umbreit et al., 2015). The talking piece is passed around the circle only after specific guidelines of respect have been set forth by the facilitator (Hyde, 2014; Umbreit et al., 2015). When the talking piece has begun to be passed around the circle, participants may only speak when they are in possession of the piece (Hyde, 2014; Umbreit et al., 2015). The use of methodical and intentional rules allows for discernment and unfettered listening to occur (Hyde, 2014; Umbreit et al., 2015). It is also important

to note that only people who wish to speak do so (Hyde, 2014; Umbreit et al., 2015). Otherwise, if participants were forced to speak, the circle would not be as safe a place as it is intended (Hyde, 2014; Umbreit et al., 2015).

Conferencing is another method of bringing all the involved parties together to resolve a conflict (Koss et al., 2014; McDowell et al., 2014). In this process, the person responsible for the harm comes together with the direct victim or victims, as well as those in the community who were inadvertently harmed (Hyde, 2014). During the conference, a trained facilitator guides the process and “imposes conference rules to ensure that key points are discussed, speech is non-abusive, and everyone has a chance to speak” (Koss et al., 2014, p. 248). Participants take as much time as necessary to express their feelings and perceptions about the harm that occurred (Hyde, 2014). Not only do the direct and indirect victims have a voice, but so does the person responsible for the harm (Hyde, 2014). In this process, “the offenders take the time they need to express what they did, who they harmed, why they did it, how they felt about their action, and how they feel about it at the time of the conference” (Hyde, 2014, pp. 51-52). Although all impacted parties have the opportunity to hear and are heard, the difference between restorative justice circles and restorative justice conferences is from where the guidance and control are coming (Hyde, 2014). In restorative justice circles, “the process is guided by the facilitator but controlled by the circle, whereas in restorative justice conferencing, the process is guided by questions but controlled by the facilitator” (Hyde, 2014, p. 52).

**Restorative justice applications in education.** Although contemporary student conduct strives to be educational in form and function, that goal is not always achieved (Janosik & Stimpson, 2017). At times, the student population does not know or

understand how the conduct process works until they are involved as a party (Hyde, 2014). These “students do not see the process, they see the outcome,” and without knowledge of the process these outcomes can appear to be “arbitrary or unfair” (Hyde, 2014, p. 34). If these students are not involved in the process, they may misunderstand or mischaracterize the outcomes of the process (Hyde, 2014). It is imperative student conduct officials “give considerable attention to how students perceive processes and procedures” (Janosik & Stimpson, 2017, p. 5).

#### Restorative Justice Fosters Fairness

One method of ensuring students have the opportunity to perceive the college or university conduct process in an objective manner is to ensure the process is fundamentally fair (Janosik & Stimpson, 2017). Students have reported the timeliness of the conduct process, the amount of information shared with them, and fair and respectful treatment were of paramount concern when assessing their perceptions of the conduct process (Janosik & Stimpson, 2017). Therefore, student conduct officials must be consistent and intentional when dealing with the student population, because the way that a conduct system is “administered has a dramatic influence on how much is learned by students who interact with that system” (Janosik & Stimpson, 2017, p. 4). In a successfully administered system, the paradigm shifts from notice and process to understanding, knowledge, and learning (Janosik & Stimpson, 2017; Tung, 2018). Instead of asking if the conduct office provided notice of the charges to the students, the conduct officials would question the depth the involved students “understood the charges” (Janosik & Stimpson, 2017, p. 5).

One way to foster this transition is through restorative justice. The evolution of restorative justice into higher education is important, because “when a harm arises within an educational environment, the relationship can be shattered between the administration, students and community members” (Derajtys & McDowell, 2014, p. 349). Although restorative justice concepts have been implemented in many aspects of society including the courts, the juvenile system, and the K-12 education system, higher education “has been reluctant to embrace its practices” (Clark, 2014, p. 708).

In many school settings, administrators still utilize a very traditional student discipline model that is authoritative, adjudicative, and focuses on sanctions (Fronius, Persson, Guckenburg, Hurley, & Pertros, 2016; Giacomini & Schrage, 2009). Opponents of this model find fault in that it focuses on behavior as opposed to development and maturation (Fronius et al., 2016). Additionally, the authoritative approach has the effect of further excluding the offending student from the school community (Fronius et al., 2016). Instead of focusing on the *why* of the offender’s action, the authoritative approach to student conduct tends to concentrate on the harmful action that occurred (Fronius et al., 2016; Giacomini & Schrage, 2009).

A strictly traditional model of student conduct also excludes the victim (Fronius et al., 2016; Koss et al., 2014). Because there is such a focus on the adjudication process, the victim’s needs and desires are often left unaddressed (Koss et al., 2014). Furthermore, the school community is generally excluded when the traditional authoritative discipline model is implemented (Giacomini & Schrage, 2009). In an adjudication model, “sanctions may caution, hold accountable, and even remove a student from campus” (Giacomini & Schrage, 2009, p. 17). However, a real developmental

teaching moment is vacated because of the focus on punishment and the voidance of restorative means to heal the involved parties (Giacomini & Schrage, 2009; Karp & Sacks, 2014; Koss et al., 2014).

However, other educators throughout the United States and the world have sought out and implemented restorative justice practices as a viable option in school discipline situations (Fronius et al., 2016). In many elementary and secondary school settings, administrators have embraced the restorative justice process and its emphasis on “a fair and collective process, featuring maturing, growth and communal empathy and resilience overexploitation and imposed control” (Fronius et al., 2016, p. 6). Champions of restorative justice processes have implemented conferencing techniques and circle processes that build trust and promote a sense of community (Fronius et al., 2016). Additionally, some administrators have added restorative justice processes with traditional conduct methods to help build accountability for the offending student and to help heal the entire school community (Giacomini & Schrage, 2009).

#### Restorative Justice in Higher Education

The use of restorative justice techniques has been relatively limited in the college and university campus setting (Gallagher et al., 2014; Karp & Sacks, 2014). Although limited, conduct officers have had success using restorative justice techniques in cases involving underage drinking, assault, plagiarism, and property disputes (Karp & Sacks, 2014). When restorative justice practices have been utilized to solve campus conflict issues instead of more traditional justice models, an increase in student learning has been demonstrated (Karp & Sacks, 2014). Additionally, students involved in conduct cases where restorative practices were used exhibited greater satisfaction with the conduct

process and had lower recidivism rates than students involved in a more traditional model code hearing (Gallagher et al., 2014).

The successful implementation of restorative justice practices on college and university campuses is important as restorative justice is congruent with the mission of the educational institution (Gallagher et al., 2014; Karp & Frank, 2016). The overarching mission of colleges and universities is to educate the student not only as a scholar but as a citizen as well (Bennett et al., 2014; Clark, 2014; Hyde, 2014). If a student is faced with a conduct violation, restorative justice offers an opportunity for the student to be held accountable and to learn from the conduct experience (Karp & Frank, 2016). Additionally, through a restorative justice process, the offending student rebuilds trust within the college community (Karp & Sacks, 2014).

One of the most successful integrations of restorative justice practices in a university conduct setting occurred at Dalhousie University in Nova Scotia, Canada (Karp & Frank, 2016). In the Dalhousie case, 13 male dentistry students posted misogynous comments to a private Facebook page accessible only to invited participants (Karp, 2015; Karp & Frank, 2016). Upon the revelation that offensive comments had been posted by their fellow students, many female dentistry students felt uncomfortable, offended, and their future at Dalhousie was in question (McMurtrie, 2015).

Although many in the community called for the suspension or expulsion of the offending male students, the Dalhousie administration along with the cooperation of the victims and offenders entered into a successful restorative process (Karp & Frank, 2016). Through the restorative process, the offenders accepted responsibility for their harmful actions, and both the offenders and the victims were heard by each other (Karp & Frank,



2016). In this instance, lives and careers were salvaged and greater learning occurred than if the parties had participated in a more traditional justice model hearing (Karp, 2015; Karp & Frank, 2016; McMurtrie, 2015).

### **Summary**

The mission of higher education is to educate students in every aspect of the university experience (Bennett et al., 2014; Clark, 2014; Hyde, 2014). This educational role holds true especially for administrators whose principle responsibility lies in the field of student conduct (Bennett et al., 2014; Hyde, 2014). To align student conduct with the educational mission of the institution, campus conduct officers have generally recognized a one-size-fits-all approach to student conduct does not work (Bennett et al., 2014; Hyde, 2014; Waryold & Lancaster, 2008).

As more complex conduct issues such as Title IX emerge, the inadequacy of a one-size-fits-all approach to conduct resolution becomes clear (Bennett et al., 2014; Hyde, 2014; Waryold & Lancaster, 2008). Governmental guidance to proper compliance with Title IX has essentially restricted conduct officers to a traditional justice approach to solving the issue (Novkov, 2016; Smith, 2015). However, other methods of resolving these issues such as restorative practices might be in better alignment to the university mission of fully educating the student (Gallagher et al., 2014; Karp & Frank, 2016).

In Chapter Three, the methodology of this study is explained. A summary of the qualitative research method is reviewed, and utilization of an open-ended research instrument is justified. Additionally, a review of the population and sample are included, as is an explanation of the data collection and data analysis processes used in the study.

### **Chapter Three: Methodology**

In this qualitative study, the purpose was to gain an understanding of whether differences in education and experience impact the perceptions of student conduct officers toward alternative dispute resolution techniques including restorative practices. Many conduct officers have received their education from traditional student affairs programs (Hyde, 2014; Jackson, 2014). However, other student conduct professionals in the field have received formal legal education graduating with a juris doctor and practicing law (Jackson, 2014). Despite variances in educational backgrounds, there had been little research to determine if student conduct officers perceive and implement restorative justice practices in different ways based on their education and experience.

Conduct officers were asked about their knowledge and perceptions of dispute resolution techniques when examining and facilitating a student conduct resolution. In addition, information was gathered to ascertain if Title IX issues impact the conduct officers' perceptions of, and propensity to use, dispute resolution techniques, including restorative justice practices. Further, information was collected and analyzed to determine if training and experience impact the knowledge of and utilization of dispute resolution techniques in student conduct matters.

#### **Research Questions**

The following research questions guided this study.

1. How do the educational and professional backgrounds of student conduct officers influence their knowledge and perception of alternative dispute resolution methods such as mediation and restorative justice?

2. How do the education and professional backgrounds of student conduct officers influence their propensity to implement alternative dispute resolution methods such as mediation and restorative justice in non-Title IX cases?
3. In consideration of the prohibition on the use of mediation in Title IX cases, does the educational and professional background of student conduct officers influence their perceptions of the use of restorative practices in Title IX cases?

### **Research Design**

A qualitative methods approach was chosen to study the decisions and perceptions of student conduct officers with varying educational backgrounds serving at state universities in the Midwest region of the United States. Qualitative methodology was selected because the questions are newly emerging, and no numerical data exists of which to analyze (Creswell, 2017). Furthermore, a broad inquiry needs to occur that goes beyond the numerical bounds of quantitative study (Creswell, 2015, 2017; Yin, 2016).

More specifically, a phenomenological research approach was selected to focus on the impact, if any, of education and professional experience on student conduct officers and their perceptions of, and propensity to use, restorative practices in conduct settings (Creswell, 2017). A phenomenological study “describes the lived experiences of individuals about a phenomenon as described by participants” (Creswell 2014, p. 14). According to Padilla-Diaz (2015), the most appropriate data collection instrument is either the open interview or semi-structured interview format (Padilla-Diaz, 2015). The interview format allowed the participant to openly express his/her experiences (Abayomi, 2017; Creswell, 2014; Padilla-Diaz, 2015). Although often interviewed in a one-on-one

setting, the emphasis is how participants experienced the studied phenomenon (Creswell, 2014).

The sample or participants in a phenomenological study are generally selected by purposive sampling (Padilla-Diaz, 2015). Purposive sampling utilizes specific characteristics which are held by the participants at the time of the selection (Abayomi, 2017; Creswell, 2014; Padilla-Diaz, 2015). The size of the sample is much smaller than the groups studied in quantitative inquires and generally ranges from three to 15 participants (Creswell, 2014).

Qualitative research utilizes words or images to examine why something happens (Clarke & Braun, 2013; Creswell, 2017; Jones, Torres, & Armino, 2014; Thorne, 2016). By analyzing multiple sources of data, answers to research questions are obtained from the study participants, not just the researcher's opinion (Creswell, 2017). Instead of using numerical analysis to determine relationships, qualitative research seeks out the *why* of a problem (Clark & Braun, 2013; Creswell, 2017). Creswell (2017) stated qualitative research is conducted because "a problem or issue needs to be explored" (p. 47).

To find the why, qualitative research is conducted in the field (Creswell, 2017). Unlike quantitative research, which is mostly done in a laboratory environment, qualitative research seeks out and observes study participants in their natural setting (Creswell, 2017; Yin, 2016). Further, qualitative research involves personal interaction between the researcher and the study participants (Creswell, 2017). Creswell (2017) purported, "qualitative researchers gather up-close information by actually talking directly to people and seeing them behave and act within their context" (p. 45).

When conducting qualitative research, answers are sought rather than relying on pre-accumulated data or numbers (Creswell, 2017; Merriam & Tisdale, 2016). Because of this, open-ended questions are characteristic of qualitative research (Creswell, 2017). Closed questions generally prompt participants to either answer in the affirmative or in the negative (Creswell, 2017; Merriam & Tisdale, 2016). However, open-ended questions allow for the participants of the study and the researcher to explore further thoughts, opinions, and ideas (Creswell, 2017). A deeper understanding of the questions presented can be formed through open-ended methodology (Merriam & Tisdale, 2016).

Open-ended questions are extremely important for exploring emerging questions because relevant information simply does not yet exist (Yin, 2016). Qualitative researchers do not solely rely on instruments designed by others (Creswell, 2017). Instead, researchers rely on the study participants to help form thought patterns and themes that lead to a clearer understanding of the problem the researcher is seeking to solve (Creswell, 2017; Yin, 2016). Emerging topics require a broader and deeper understanding (Creswell, 2017). To gain this broader understanding, open-ended interview questions were administered to student conduct professionals (Creswell, 2017; Merriam & Tisdale, 2016; Yin, 2016). By conducting face-to-face interviews, the researcher is able to converse with the study participants to gather needed information in the participant's setting in the field (Creswell, 2017).

### **Population and Sampling**

For this study, the population consisted of student conduct officers serving at state educational institutions in the Midwest region of the United States. Qualitative sampling is the "process of selecting a small number of individuals for a study in such a way that

the individuals chose will be able to help the researcher understand the phenomenon under investigation” (Magnusson & Maracek, 2015, p. 113). A representative sample of this population was determined and subsequently interviewed. Sufficient sample size is one that provides data saturation (Fusch & Ness, 2015; Gay et al., 2012; Magnusson & Maracek, 2015). Data saturation occurs when no new nor relevant themes nor ideas come forward (Fusch & Ness, 2015; Gay et al., 2012; Magnusson & Maracek, 2015). A sample of 10 student conduct officers were selected from the population. The sample consisted of student conduct officers with degrees in higher education such as Master of Arts, Master of Science, Doctor of Education, and Doctor of Philosophy, as well as conduct officers holding a formal law degree such as a Juris Doctor or Bachelor of Laws.

### **Instrumentation**

A qualitative approach was utilized to collect and analyze data generated from semi-structured interviews (Gay et al., 2012; Magnusson & Maracek, 2015). Interviews were “face-to-face conversations structured by the researcher” (Magnusson & Maracek, 2015, p. 6). This method of data collection allows researchers an effective way to garner valuable data that is both informative and fluid (Gay et al., 2012; Magnusson & Maracek, 2015).

More particularly, a semi-structured interview format was utilized in this study (Gay et al., 2012; Paine, 2015). Interview questions were constructed and utilized to help provide consistency throughout the interview sessions (see Appendix A). However, the most important information providing key insights into the research participant’s expert experiences often comes from outside of the researcher’s structured questions (Brinkmann, Jacobsen, & Kristiansen, 2014). To elicit more information from

participants, a semi-structured interview approach was implemented allowing for the researcher and participant interaction to be more conversational (Magnusson & Maracek, 2015; Mojtahed, Baptista, Tiago, & Peng, 2014). The conversation and flow of ideas that stem from the semi-structured interview approach provide the researcher with a greater understanding of the individual participant's professional experiences, observations, and perceptions (Mojtahed et al., 2014).

**Validity.** Validity measures the appropriateness of the instrument used in the study (Fraenkel, Wallen, & Hyun, 2014). More specifically, "validity is the degree to which the qualitative data we collect accurately gauge what we are trying to measure" (Gay et al., 2012, p. 403). The trustworthiness of a study contributes to its validity (Gay et al., 2012). Researchers must be sure that the conducted research is accurate in both content and interpretation (Gay et al., 2012). Furthermore, the study must show the research has been obtained objectively and the researcher has approached the information in a neutral and unbiased manner (Creswell, 2017; Gay et al., 2012).

To increase validity of the study, the research instrument was pilot tested prior to the study (Creswell, 2014; Gay et al., 2012). Pilot testing of the research instrument is crucial, because it establishes the validity of the instrument and helps to answer the questions asked by the researcher (Creswell, 2014). Additionally, to increase validity in the research, the semi-structured interview instrument was utilized in a consistent manner (Creswell, 2014). Interviews were conducted in a face-to-face or one-on-one telephone format with detailed comments noted (Gay et al., 2012).

Multiple methods of recording, specifically hand-written notes and voice recordings were utilized (Gay et al., 2012; Merriam & Tisdale, 2016). An audio tape

recorder was utilized to ensure that descriptive validity was present (Gay et al., 2012). After the interview, the audio recording was professionally transcribed, and a written record of the interview was produced. This step helps ensure the true and correct answers of participants were properly memorialized and the answers given were a valid reflection of the participants' answers (Creswell, 2014).

In addition, member checks were utilized to ensure interpretive validity, and the overall report was submitted to the participants to check for accuracy (Anney, 2014; Creswell, 2017; Gay et al., 2012). Member checks allow participants to review collected data and confirm whether or not the data accurately reflects participants' experiences (Creswell, 2017; Gay et al., 2012). Peer debriefing was also utilized to ensure validity was achieved and that an unbiased view is presented in the research (Anney, 2014; Gay et al., 2012). Finally, researcher bias was disclosed before the beginning of the interview (Creswell, 2017; Gay et al., 2012).

**Reliability.** Reliability measures how consistently a research instrument measures what it intended to measure (Gay et al., 2012). In quantitative research studies, several measures are available to test the reliability of a research instrument (Gay et al., 2012; Noble & Smith, 2015). However, in qualitative research, reliability is found in the consistency in which the research was conducted (Noble & Smith, 2015). Therefore, the semi-structured interview instrument was administered in as a consistent manner as possible

**Bracketing.** When conducting research, it is imperative the researcher acknowledge his/her perspectives and experiences related to the area of study (Bengtsson, 2016). Each researcher approaches a study with individual beliefs about the subject



matter based on the person's own history and life experiences (Hopkins, Regehr, & Pratt, 2017). Although no researcher's opinion is wrong, it is fundamentally important the thoughts and beliefs formed by the researcher's experiences are reflected upon by the writer (Hopkins et al., 2017). One method of acknowledging assumptions and beliefs is through a process called bracketing (Bengtsson, 2016; Creswell, 2014). Bracketing allows the researcher to acknowledge the assumptions and beliefs formed by the writer's life experiences and essentially set them aside to objectively view the phenomenon that is being studied (Hopkins et al., 2017). The bracketing process essentially mimics the brackets found in mathematical equations, where the mathematician sets aside certain parts of the equation (Hopkins et al., 2017).

The process of bracketing was utilized by this researcher to ensure objectivity was achieved. Bracketing served to be both frustrating and freeing to this researcher. At the beginning of the process, this researcher felt it incomprehensible that he would have any bias that would influence his objectivity in the reporting of the research results. The term bias had always struck this researcher as a negative word that often resulted in a closed-minded approach to situations. Therefore, the prospect of identifying supposedly non-existent biases was frustrating. However, as the researcher extended his list of references, read more articles, and absorbed more information about the research topic, a realization emerged that certain philosophies and theories seemed to, internally, make more sense than others. In fact, some theories and conclusions were so non-sensical, the researcher pondered how anyone, academically inclined or not, could truly understand or endorse the utilization of them.

The researcher began to realize that his experience as a criminal defense attorney had truly caused some bias in the way he processes certain ideas and situations. Being able to identify this bias allowed the researcher to think more clearly when reading literature that was contrary to his thinking and philosophy. The process of bracketing was freeing and allowed the researcher to think more objectively about the subject of Title IX and restorative justice (Bengtsson, 2016; Creswell, 2014). Additionally, the researcher discloses that he has obtained the degree of juris doctor with a specialization in alternative dispute resolution and currently is a member of the Missouri Bar.

### **Data Collection**

Research commenced once the dissertation proposal was approved, and permission was granted from Lindenwood University's Institutional Review Board (see Appendix B). Relevant contact information was collected by utilizing ASCA. A review of the ASCA website provided information regarding the pertinent educational background of its members.

From the information garnered from the ASCA website, the researcher sought identified conduct officers at state universities within the Midwest region and delivered information via email to these potential subjects to garner interest in the study. Of the 26 conduct officers who were contacted, 11 responded to the email request for research assistance (see Appendix C).

Once interested parties were identified, their individual educational and professional backgrounds were evaluated for the relevance of the study. After meeting the requirements set forth by the researcher, participants were contacted by either or phone or email and scheduled for either in-person or phone interview times, reserving

one hour of their time for the study. Participants were informed he or she would be recorded, and his/her answers used in the research. Subsequently, participants reviewed and signed the adult consent form (see Appendix D).

The final sample that was analyzed consisted of four participants with legal education and four participants with formal education training. Participants were contacted, and seven of the participants were interviewed by phone, and one participant was interviewed in person. The decision regarding the availability of phone or in-person interviews was dependent upon the location of the participant. Interviews were conducted with the assistance of the semi-structured interview questions, and anonymity was maintained throughout the study. Once data were collected, recorded information was sent to be transcribed.

### **Data Analysis**

To capture experiences of each participant, a phenomenological process was utilized in this study (Creswell, 2014, 2016). This type of qualitative research approach allowed for the true essence of participants' experiences to be captured and better understood (Creswell, 2014). Transcripts garnered from the participant's responses were reviewed multiple times and significant statements were identified and recorded (Creswell, 2014, 2016). Through a coding process, data were further reduced into a series of categories (Creswell, 2014). Subsequently, recurring themes were identified from statements contained in the significant categories (Creswell, 2014; Gay et al., 2012).

### **Ethical Considerations**

Confidentiality and anonymity of participants were ensured throughout the study. Confidentiality protects participants from being known to anyone but the researcher (Gay

et al., 2012; Magnusson & Maracek, 2015). Therefore, names, university identifiers and location, and job titles were omitted from the study, and pseudonyms were utilized throughout the study (Gay et al., 2012; Magnusson & Maracek, 2015). To ensure further confidentiality, pseudonyms used are generic names appropriate for both male and female (Gay et al., 2012; Magnusson & Maracek, 2015). Also, the use of “he,” “she,” and “they” were utilized to help further protect identities of the participants. Additionally, the researcher disclosed to the participants that he is an active member of the Missouri Bar and is licensed to practice law and did so for many years.

### **Summary**

Student conduct officers’ perceptions of restorative justice practices in both Title IX and non-Title IX cases at state universities in the Midwest region of the United States were examined throughout this study. More specifically, whether the education and professional experience of student conduct officers’ influence their perceptions of restorative justice practices and the student conduct officers’ propensity to implement restorative justice practices in both Title IX and non-Title IX conduct cases were examined. To answer these inquiries, a qualitative methods approach was utilized in this study, because the questions presented are newly emerging a broad inquiry beyond quantitative measures was required (Creswell, 2017).

The foundational research questions for this study were self-developed, using a qualitative research approach. To help answer these questions, a semi-structured interview instrument was created, and field tested. To conduct the study, the researcher sought state universities within the Midwest region and delivered information to potential subjects to garner interest in the study. Once interested parties were identified, their

individual educational and professional backgrounds were evaluated for the relevance of the study. Based upon gathered information, a total of four participants with a formal education degree (Master's, Doctor of Education, Doctor of Philosophy) were selected for the study as well as a total of four participants with formal legal education (J.D., L.L.B., L.L.M.) were selected for the study. Once identified, participants were scheduled for either a phone interview or an in-person interview time, reserving one hour of their time.

In Chapter Four, interview questions utilized in this study are presented. In addition, qualitative data gathered from participants' responses are analyzed. Finally, emerging themes are identified and explained.

## **Chapter Four: Data Analysis**

This study was created to examine perceptions and use of restorative justice practices by student conduct officers from state universities in the Midwest region of the United States, with varying educational backgrounds, in both Title IX and non-Title IX cases. The use of restorative practices in student conduct scenarios may help to better resolve the issues and conflict by healing all of the involved parties, including the impacted community (Karp, 2014). To better understand the impact, if any, that education and career experiences play in the use of restorative justice practices, questions were developed by the researcher that outlined processes used by each participant in the study. Additionally, questions were asked regarding the amount of training and experience each conduct officer had with regard to restorative practices and other dispute resolution techniques, such as mediation.

A brief discussion of the demographic characteristics of participants is provided in this chapter. Additionally, a comprehensive analysis of the participant's responses is offered. Finally, the four emerging themes from the research are identified and discussed.

### **Demographics**

The sample population for this study consisted of student conduct officers from state universities in the Midwest region of the United States. More specifically, the sample population was further segmented into conduct officers with a formal education degree (M.A., Ed.D., Ph.D.), and those with formal legal education (J.D., L.L.B., L.L.M.). After the sample population was identified and appropriate permissions were obtained, interviews were conducted. A total of seven interviews were conducted by

phone. Phone interviews were conducted because of the distance in the proximity of participants and the researcher. One interview was conducted in person, which interestingly resulted in the shortest interaction between the participants and the researcher.

To maintain anonymity, pseudonyms were employed (Gay et al., 2012; Magnusson & Maracek, 2015). Because of the size of the population, certain identifiers, such as gender, might erode anonymity promised to participants, so pseudonyms commonly recognized as both male and female names were utilized (Gay et al., 2012; Magnusson & Maracek, 2015). The pseudonym and corresponding education for each participant are provided in Table 1.

Table 1

*Pseudonyms and Backgrounds of Participants*

Pseudonym	Background
Taylor	Education
Kim	Education
Alex	Education
Jamie	Education
Lee	Law
Logan	Law
Marty	Law
Robin	Law

*Note.* Actual names of the participants were not used and replaced with non-gender specific pseudonyms.

## Data Analysis

A semi-structured qualitative interview protocol was created to identify and understand the perceptions of, and the propensity to use, restorative practices in both Title IX and non-Title IX cases by student conduct officers based on their education and career experiences (Creswell, 2014). The sample included participants who had varied undergraduate degrees ranging from business administration to psychology.

Additionally, participants had very different professional backgrounds ranging from law enforcement to professional sports administration. Of the sample, three men and five women were included. The size of institutions represented varied and ranged from a student population in the low thousands to a population reaching many tens of thousands.

**Results by interview question.** In this section, responses of the professionals who participated in the interview process for this study are explored. Findings are delineated by the appropriate interview question. An analysis of the responses shows that, although each participant explained his or her answers in his or her own language and through his or her own lens, a series of common themes emerged from the interview questions. Additionally, participants' comments are separated into the comments given by participants, with an educational background presented first, followed by the comments provided by participant with a formal legal background.

*Interview question 1: Please tell me about your educational background.* When asked about his or her educational background, only one of the participants with an education background explained that he had graduated with a degree in education. This participant originally wanted to teach and had pursued an appropriate bachelor's degree to do so. An analysis of data indicated a wide variety of undergraduate majors pursued



by the research participants. Areas of study pursued by each participant ranged from history, political science, psychology, communication, business, marketing, and sociology. Of the participants who responded, one participant, Taylor, had been awarded a doctorate degree in education. Another participant, Jamie, was currently pursuing a doctorate in education. All other participants held master's degrees.

While all of the participants with a legal background were currently working in the higher education arena, none of the participants with a juris doctorate pursued any education related degree while obtaining their bachelor's degree. Although varied, participants pursued majors that were typical for a pre-law preparation. For example, Logan and Lee obtained political science degrees, Marty obtained a degree in sociology, and Robin obtained a degree in history.

All but one of the participants with a legal education background held master's degrees, with Lee and Robin holding master's degrees in education. Logan did not hold a master's degree. Additionally, Marty obtained master's degrees in both counseling and criminal justice. All of the participants, as a prerequisite for inclusion in the study sample, held the degree of juris doctor.

*Interview question 2: Please tell me about your professional career experiences.*

This interview question elicited a varied response, as all of the participants with a formalized education background had worked in varying professional fields before working in the student conduct profession. Two of the participants began professional careers in the field of recreation and sports, while another was a social worker for a period of time. Alex, however, began a career in education by serving as a resident assistant in a campus dormitory. Alex stated the resident assistant position served as an

epiphany revealing, “student affairs is going to be a thing that I’m really interested in. I’m really interested in that holistic student experience, in-classroom, outside classroom pairing, that sort of thing.”

Although all participants, except Alex, began work in a career field outside of education, participants quickly found themselves transitioning into a career in higher education. Taylor stated housing was her first foray into the educational field, followed by a position in disability services, and finally by a position overseeing student affairs. Jamie entered into a student affairs position and has taken on more responsibilities in the student affairs arena as his career has expanded. Bobby began a career in higher education by serving in an academic advisement position, and Kim began a career in higher education by serving in campus outreach and education role. Alex served in a resident assistant role and then transitioned into a student conduct role.

Each of the participants with a formal legal education indicated he or she had a very diverse career history. Marty stated after graduating from her undergraduate program, she became a federal agent investigating crimes throughout the world. Subsequently, she attended law school and worked as a prosecuting attorney and as a public defender. Marty indicated that he or she did not enjoy the traditional practice of law and accepted a position again as a law enforcement officer on a university campus. Marty served as a trainer and a detective but desired another position while still wishing to remain in a university setting. Because of her training, experience, and reputation, Marty was appointed to serve as the Director of Student Conduct at an institution of higher learning.

After graduating with a history degree, Robin spent approximately four years working in the insurance industry. Subsequent to this, Robin attended and graduated from law school and practiced law for four years in corporate litigation and white-collar crime. Finally, Robin practiced administrative law focusing on state and local tax. After a career in law, Robin entered into higher education working at a law school and then entered administration and finally worked in student conduct.

Lee always wanted to attend law school but started working as a resident assistant in college. Although Lee had been extremely active in student organizations, the prospect of working in higher education had not occurred. However, Lee applied for, and served in, a position in residence life and then transitioned into student affairs. During this time, Lee was interested in obtaining a doctoral degree and chose to attend law school because of the varied opportunities a legal education provides. During law school and immediately following graduation, Lee clerked for a law firm and also worked for a state agency. Following these experiences, Lee returned to higher education and entered the conduct field.

Logan stated she has a higher education background and worked in retention and admissions. After graduating from law school, Logan practiced with a firm that specialized in labor relations. Logan thought this to be boring work and returned to higher education working in the conduct field.

*Interview question 3: What was your emphasis in law school?* This question is not applicable to the participants with a formalized education background. However, participants with a formal legal education responded in a variety of ways. The participants noted that their respective law schools' emphasis was varied. Robin stated

that a general law curriculum track was followed in law school. The law school that Robin attended did offer classes in alternative dispute resolution, but Robin declined to take those classes because it was not interesting at the time. Although the firm where Robin worked did litigation, it was a large firm, and as a new associate, Robin generally did research and writing during this career period. Robin did have some experience in hearings but those were mainly administrative in content.

Logan also did not seek a specific emphasis in law school. As an attorney, Logan participated in arbitrations but did not participate in trial work. The law school Logan attended did offer a curriculum in alternative dispute resolution, and Logan participated in several of those classes including mediation, conflict coaching, and shuttle negotiations. Logan explained why alternative dispute resolution classes were of interest:

So, I have a higher education background. I've worked in admissions and retention, and while I was working in retention, I noticed that a lot of students who were struggling academically were struggling behaviorally as well. And I was using forms of alternative dispute resolution to help them navigate relationships with faculty members and/or other students when conflicts occurred, and when I was taking an alternative dispute resolution class, I came across a quote from Chief Justice Warren Berger that said, "our system has become too costly and too inefficient especially for a civilized nation, and we're so mesmerized with the stimulation of the courtroom contest that we forget that we need to be healers of conflict." So, when I was taking alternative dispute resolution, I felt as if I was being a healer of conflict. And when Chief Berger was talking about healers of conflict, he wasn't talking about nurses or judges, he

was talking about attorneys. So, alternative dispute resolution (ADR) seemed more in line with what I was supposed to be doing as an attorney.

Logan also participated in arbitrations while working as an attorney.

Lee focused on constitutional law and corporate law while in law school and stated the emphasis on constitutional law has been helpful working “at a state institution” where you “have to be mindful of certain things.” Lee’s law school offered courses in alternative dispute resolution and Lee participated in an alternative dispute resolution class. In addition, other classes such as family law and pre-trial practice also had some focus on alternative dispute resolution.

Family law was a major interest to Marty and the law school where Marty attended also offered classes in alternative dispute resolution. Marty participated in several of those classes including alternative dispute resolution and arbitration. Marty was interested in dispute resolution classes because of their significance in family law matters. While practicing law for five years, Marty was able to participate in many trials and resolved many disputes as a certified mediator.

*Interview question 4: What is your process for working through a conduct case?*

Although language and execution of the process varied throughout the responses to this question, commonalities of theory and action did emerge. Many of the responses to this question began with the announcement the participant’s institution utilized the same software system to manage student conduct cases. Additionally, the distinction between a non-expellable offense and an expellable offense were explained throughout the responses to this inquiry. All of the participants spoke about the importance of additional information gathering and investigation by the conduct office before any actions

commenced and the overall importance of the availability of informal resolutions to conclude a conduct matter. Kim indicated if a case involving an expellable offense is received in her office, the student participant is given notice of the charge and contacted by the conduct office to set up a time for a hearing or a time for an initial meeting to talk about the case that has been charged against the student. However, if a non-expellable is presented, the student is only asked to come into the conduct office to have a hearing.

All participants with a formal education background discussed the need to conduct additional investigation and fact gathering when a conduct matter is forwarded to their office. Participants noted the conduct office may receive incident reports from a variety of campus and non-campus sources. Kim stated the university conduct office receives incident reports from “a number of places, whether that is faculty, police, or maybe a student or staff member.” Many participants reported the university conduct office generally receives incident reports from the residence halls, but that some reports do come from the university department of public safety, which employs officers who are certified law enforcement officers. Taylor answered by stating the source of the report often depends on the type of case that it is. For example, if a case involved a Greek organization, those reports are usually issued by the local municipal police department. Jamie repeated that a lot of incident reports are sent to the university conduct office by the university campus police. However, Jamie also reported that faculty, staff, and students are other sources of incident reporting for the conduct office.

Regardless of the sources of the reporting, all participants indicated the need for further investigation and review before any action takes place. Alex said incident reports are “received with varying degrees of accuracy.” As a result, Alex conducts further

investigation and “will call folks in to have some more intentional conversations and get more information.” Jamie reviews reports submitted and then requests an interview with the complainant to explore additional information. In addition, Jamie interviews the respondent, as well as faculty and staff, and also reviews social media, or even camera feeds, to gain additional insight into the alleged conduct violation. As part of the additional investigation, Kim stated that an inquiry is made as to whether the matter should be forwarded to a different office or department and the additional facts received in the internal investigation aid the conduct office in determining the classification of the alleged defense.

After the additional investigation concludes and the evidence is indicative of a violation of the student conduct code occurring, all of the participants’ responses indicated that an informal resolution option is key to the successful resolution of the violation. Participants reported that the first contact with a student who has allegedly violated the code of conduct is an informal meeting to discuss the alleged actions and the possible consequences for those actions. Taylor affirmed the availability of an informal process explaining the alleged violator has the opportunity to choose an informal route through the conduct office or a formal hearing through the judiciary board. Taylor stated, “a vast majority choose us,” indicating the informal route is the most popular of the two choices allowed for a conduct violation adjudication.

Alex also indicated that an informal resolution option is important in her university’s conduct process. Alex stated that students are invited into the conduct office to have “open and honest conversations” and that those conversations will go on “for as long as I feel we need to, or the student feels that we need to and then come together and

hopefully make some decisions on what we're doing." However, if those talks with the student are not fruitful and an informal resolution cannot be reached, "then we'll go to a hearing."

Although words used by the participants varied slightly, again the processes used by the participants with a legal education when working through a conduct case was very similar. The importance of ensuring that an actual violation of the code had occurred was an important step in the conduct process. Robin stated, "from an initial report, we have to do an assessment on whether or not there seems to be any applicability to the code." Logan stated, "my process is to review all of the complaints that we receive and see whether or not we have support to charge students with violating the student code of conduct." If in fact there is a valid violation by a university student, an investigation begins to gather the relevant facts necessary to ensure a fair and equitable process.

All of the participants stated the investigation involves bringing the charged student to the office to gather information. In addition to the charged student, participants indicated they also interview witnesses and the complainant. If the matter goes forward, participants provide the charged student with the opportunity to choose how the process will proceed. Participants stated that an informal resolution option is important to the process. Lee stated, "students have the option to have a student discipline committee handle it which is like our student board or they can have me handle it informally, which is an administrative hearing." Marty stated that after the initial meeting with the charged student, the student is given an opportunity for a preliminary conference, "where the conduct administrator attempts to resolve the case by meeting with the student and hopefully resolving the case."



However, if the case cannot be decided with an informal resolution, the participants with a legal education indicated that a more formal process is available. Marty stated that a student is given the opportunity to take his or her matter to a conduct board, where the university presents its case and the student is given the opportunity to present his or her information, and the board rules on the matter. This more formal route also includes appeal rights, which transfer the decision-making to other university administrators such as the Dean of Students.

Additionally, participants discussed another mechanism for how their respective office handles cases arising out of the residence halls. Marty stated hall directors are empowered to help resolve the conflict between roommates and other disputes arising in the residence halls. Lee commented that if a conflict is a “residence life issue and if it’s just kind of a run of the mill minor sort of thing, then most likely, a resident director would be the conduct officer for the case.”

*Interview question 5: What student development theories are utilized when dealing with student conduct issues?* None of the research participants with a formal education background indicated they utilized any of the same student development theories when dealing with a student conduct issue. Taylor explained the “medical model” is the development theory most utilized in conduct situations which seek to find where the student is and how the student’s environment is impacting choices and outcomes. Taylor further explained the conduct office examines how changes in the student’s environment can result in better outcomes for the student’s success at the university.

Finally, the major question when implementing the medical model is, “so how do we get them out of this lifestyle and into a kind of better, hopefully, a better plan for their college environment?” Alex indicated that Chickering’s seven vectors of identity development is a crucial student development theory utilized in student conduct scenarios (Chickering & Reisser, 1993). Alex also stated that critical race theory is an important tool to use when working with students of color (Crenshaw, Gotanda, Peller, & Thomas, 1995).

Jamie and Kim stated there is not one student development theory that is utilized more over another. Jamie explained that reflection by the student is important to the process. Kim noted conduct officers must keep the student’s stage of development in mind and be able to meet the student wherever he or she may be developmentally. Additionally, Kim noted that one of the most important things to keep in mind “is that they are students, they’re young people and they are developing and they’re not making decisions with an intent to harm.”

Similarly, none of the participants with a formal legal education indicated they utilize the same student development theories when dealing with a student conduct matter either. Robin stated it is important to meet a student where he or she is, so the social change model comes into use most often is conduct setting. Logan stated that utilizing Kohlberg’s theory of moral development is crucial when handling a student conduct situation (Kohlberg & Hersh, 1977). When asked to expound, Logan stated:

So restorative justice and Kohlberg, it just seems to make sense. We want for students not to be in that pre-conventional stage where they don’t want to do something because they’re going to get in trouble or it’s ok for them to do

something as long as they don't get caught. We want for them to understand their obligations to the community. So, if we can get them to that conventional stage that is great, I'm fine with students honoring policies, because they're concerned about what people will think of them if they don't or they want to be held in high esteem with their peers. If we can get to that post-conventional stage, that's great.

Marty indicated that Boyer's (1990) principles are important in the conduct setting.

Marty stated these principles have to do with respecting the individual authority of students. Additionally, Marty believed it is also important to utilize a counseling theory that "respects the inherent worth and dignity of each individual." Finally, Lee commented, that in his opinion, conduct is "most aligned with Astin's theory on student development" (Astin, 1999).

*Interview question 6: What is your end goal when dealing with a student conduct matter?* Although none of the research participants with an education background indicated they used the same student development theories, they explained education is their end goal in a conduct matter. Additionally, participants agreed it depends on the severity of the violation, but the end goal in most conduct cases is educational. Explaining further, participants indicated the conduct process should give the student who violated the policy, a soft place to land. Jamie stated, "on a personal level, I would hope that anytime someone is on the verge of being sanctioned for some sort of violation, they would reflect and learn from the process." To ensure that education is available to students, Jamie intentionally chooses specific wording to help the student realize why his or her choices were not the best. Introspection by the student is also important in the educational end-goal of conduct. As Kim explained:

I think what we hope is that students will gain enough through our process they will recognize, whether it's harm to themselves or harm to others, that they really did not maybe consider what could occur with the type of decision making that led to whatever the violation was.

Additionally, Kim indicated that it is important the conduct process help students to find and rely on support systems so they are no longer placed in situations or scenarios where repeated conduct violations may occur.

Taylor expressed the same sentiment regarding the end-goal of the student conduct process. Taylor stated:

My approach is educational. We do have some punitive sanctions, but my goal is not to throw the group or the student out. The goal is to try to have them be in school and hopefully learn something along the way. Whether that's a group or a student, and even in sexual assault cases, my approach is not an immediate suspension, dismissal, expulsion if a student is found in violation.

Echoing participants with an educational background, all of the participants with a legal background unanimously stated the overall goal in a conduct situation is education.

According to Robin, the end-goal is two-pronged where "you make sure the student is provided the opportunity to have room for a growth moment, you know, meeting them where they are, and stopping the conduct if it is harming the community or the student." Robin continued that conduct needs to help teach the students making mistakes is part of being human, and they are going to do it again.

Logan stated the end goal "is to help students learn and help them be a better citizen." Continuing, Logan stated protection of the community is also a priority in

conduct, but, “if we can help students learn from their mistakes, so they don’t repeat them, that in a way can protect the overall community.” Marty stated, “education is our end-goal and we are very much based in how we are moving the student developmentally to understand how they can be successful both in the workplace and in their community.” Lee responded, “ultimately, my goal is to try to help everybody learn and grow when possible.” Continuing, Lee stated:

I mean, people make mistakes, and sometimes tuition is expensive. But sometimes the tuition for life mistakes can be even more expensive, but at the same time, through education and development, people really can grow from their mistakes, and so long as it’s a remedial error, my goal is for the student to learn, and it is also to make everybody whole.

*Interview question 7: Do your student conduct processes differ when faced with a Title IX issue? If yes, please explain.* Participants with a formal education background stated the process may be slightly different when addressing a Title IX issue; however, most of the differences are more procedural than substantive. Taylor responded the reporting party is able to know what is happening to the alleged offender, which is different than non-Title IX matters. Additionally, Taylor commented that best practices are followed in a Title IX case, which mandates that separation be created between the alleged offender and the victim, and that no contact orders are issued as well. However, the other processes that are followed are generally the same whether a Title IX or non-Title IX issue is present.

Jamie agreed the differences are mainly procedural and also commented on the necessity of no contact orders and separation between the parties. Additionally, Jamie

noted that parties involved in a Title IX matter receive more information than a student involved in non-Title IX conduct issue. Alex stated processes are generally the same; however, “there's a little bit more process with the Title IX piece just in terms of nuts and bolts of like you know when information is needed and how information is communicated.” Finally, Kim’s comments echoed those of the other participants but also added that a Title IX matter may not even reach the conduct office. Kim stated:

[Title IX matters] ...differ from the perspective of we're not involved in the investigation process and we do have a different process for, initially, for Title IX cases. In Title IX cases, they can meet with investigators who are in the Title IX office and could do informal resolutions depending upon the student's wishes before they ever get to our office.

The answers from the participants holding juris doctor degrees varied slightly from the participants with a more formal education background. Robin and Logan responded in much the same way participants with education degrees answered the question. Robin and Logan stated that more procedures focused on due process and students’ rights were implemented to address the behavior in question and reduce the likelihood of the behavior occurring again. Specifically, Robin and Logan noted the additional policies and procedures found in the guidance issued by the OCR, which mandates how a Title IX matter is to be handled. Logan stated because of the procedures found in the OCR guidance, “we do not have the autonomy when we have a Title IX case that I have when I have a regular academic or non-academic misconduct case.”

Marty noted, Title IX issues are generally not investigated by conduct officials and are instead handled by Title IX personnel who are housed in an entirely separated

campus department. However, Marty said the conduct office is involved in the sanctioning of Title IX matters after a finding of responsibility has been made. Finally, Marty stated the conduct office is “the entity that has the authority to ban people so if a Title IX case involves an interim measure that involves banning, that is reviewed by us and then we issue the banning.”

Lee, in agreement with other participants, noted there are policy differences in the way Title IX and non-Title IX matters are resolved. However, Lee further stated procedural differences were present in the resolution of Title IX cases. A single investigator model is utilized, and the findings of the Title IX investigator is then sent to the conduct office for review. The findings are then forwarded to a student discipline committee, which reviews the matter, interviews the parties, and allows the parties to rebut any claims made against them. The procedure also involves multiple appeals leading to a final appeal at the Dean of Students office. Finally, sanctions are imposed on the offending party.

*Interview question 8: What is your understanding and perception of restorative justice or restorative practices? In what ways could the practices be useful in a student conduct setting?* When asked about their understanding and perceptions of restorative justice, participants with an education background expressed that a major function of restorative justice or restorative practices was to help heal the harm that had occurred. Alex’s conceptualization of restorative justice is, “it is really just an effort to stop the behavior and to repair the harm” that has been done. Taylor added, “my impression of restorative justice is to try to help with the healing.” Kim responded, “restorative justice and restorative practices for me really look at what harm was done to the individual and

to the community.” Also noted was the sentiment the healing of the community where the harm occurred was an important component of restorative justice or restorative practices. Alex mentioned that restorative justice practices also allow for an impactful experience for the offender. Not only does the offender have an opportunity to understand the impact of his or her behavior on the victim and the community, but the offender is able to understand and express the impact that this behavior has had on him or her.

Although all of the participants expressed that restorative justice or restorative practices could be useful in student conduct settings, many of the participants did express concerns about potential problems related to its implementation. Alex was concerned about the potential for restorative practices to re-traumatize the parties who had been harmed and about the potential due process issues associated with conduct issues. Taylor echoed this sentiment and stated that restorative practices cannot be the only manner with which to solve conduct issues. Taylor also stated that restorative justice has some good uses, “as another measure if all the parties are interested in doing that.”

When asked about their understanding and perceptions of restorative justice, the participants with a formal legal education focused on the importance of healing and the repairing of the harm that occurred as a result of the action in question. Robin stated restorative justice tries to “repair the harm and to address it outside of a traditional charge process, trying to intercept it at a moment where room for growth can happen in a different environment.” Lee stated restorative justice attempts to make the community and the student whole, as well as the victim, if there is one. Additionally, Lee said conversations between the parties are how the community is generally made whole.



Marty commented restorative justice “is the community taking responsibility for the individual and the individual taking responsibility for the community.” To be successful, Marty added, “restorative practices must be voluntary, and community led.”

*Interview question 9: Do you know if your institution has any kind of dispute resolution center? If yes, please explain.* All but one of the participants with an education background responded their institution does not have any type of dispute resolution center on their campus. Taylor stated that no formal center existed, but Taylor’s office often serves as a place where disputes could be addressed. In addition to Taylor’s office, resident hall directors often serve as a resource to help students resolve the conflict that occurs in student housing. Jamie indicated there was no official dispute resolution center available to students but also responded that disputes in the residence halls were often resolved by the resident assistants assigned to the conflicting students’ residence halls. Because of this, Jamie noted that, “with this coming fall, we’ve tried to do a little to beef up the resident assistant mediation training.” Kim responded an ombudsman is available at that institution, but that the ombudsman is primarily utilized by graduate students and staff and not utilized by faculty nor undergraduate students.

Alex indicated that a dispute resolution center was institutionally available for students, faculty, and staff. The conduct office at Alex’s university has actually partnered with the dispute resolution center to provide resolution for issues concerning harassment cases, roommate disputes, or “things you would need another person to really help you understand why you’ve violated these policies.” Alex further noted that the partnership has also provided a good professional development opportunity for the conduct office staff.

All of the participants with a legal education indicated their respective institution did not have a specific university dispute resolution. Robin noted that a mediation program was present, but it was not a dispute resolution center. Logan and Marty indicated that no dispute resolution center is available but that ombudsmen were available on his or her respective campuses. An ombudsman serves as a third-party neutral who addresses disputes within an organization (Shiroma, 2018). Marty further explained there are places on campus where dispute resolution occurs, but there is no specific center. Marty also indicated the human relations office on campus had a list of mediators who are used to settle employment disputes, and a very limited number of sexual harassment matters were mediated through the Title IX office.

*Interview question 10: Do you have any training or experience with alternative forms of conflict resolution, i.e., mediation, restorative justice, restorative practices? If yes, please explain.* Although participants with an education background generally answered they had not received formal training on alternative forms of dispute resolution, all of the participants acknowledged they had received some training through professional conferences and seminars. Jamie received training by attending the Gehring Institute presented by ASCA. During these sessions presented at the Gehring Institute, Jamie received training on restorative practices and mediation but recognized the need for more training to fully understand and be able to implement successful practices. Although not actively trained for mediation, Kim has received training in restorative justice practices “merely in terms of conferences and sessions.” Additionally, Kim noted that mediation is strictly prohibited from being used in the conduct process, whether a Title IX issue or not.

All of the participants with a formal legal education indicated they had received training and/or had experience with alternative methods of conflict resolution. Lee attended professional conferences where dispute resolution practices have been the topic of learning. Specifically, Lee attended sessions on mediation and conflict resolution. These trainings have focused on higher education practices. Marty has received training in restorative justice practices and has learned how to engage students in a restorative justice conference, as well as learning how to hold a community conference, particularly in a residential hall setting. Robin has also received training in alternative dispute resolution with a specific focus on mediation.

*Interview question 11: Have you ever used dispute resolution techniques in your student conduct process? Follow up: What were the results?* The participants with an education background had varied answers to this question. Alex stated mediation happens all of the time. Although students at the center of a dispute are not often brought into the same room to discuss the issues in person, mediation occurs, and a resolution is often achieved. Alex continued, “we do that all of the time, and I used to do that all of the time as the residence hall director, just mediating roommate disputes. Hourly, it felt like. So, yeah, we’ll do that.” Furthermore, Alex detailed how restorative practices have been utilized in conduct settings where instances of racism had occurred.

Although participants indicated dispute resolution techniques had been utilized in the conduct setting, Kim’s response was much different. Kim stated dispute resolution techniques are not used in the conduct setting. Further, Kim specified no dispute resolution nor dispute management techniques are learned by the conduct staff, because the institution does not utilize any form of mediation.

All of the participants with a legal education indicated they had used different techniques to solve conduct issues on his or their respective campus. As previously mentioned, each participant stated the use of informal resolutions is an important aspect of the conduct process. However, each participant also described different utilizations of techniques to arrive at these informal solutions. Robin noted mediation is not used in the conduct process, but students are sent to a mediation program found at the university law school. Robin stated the law students who assist in dispute resolution have been “through a practicum and know all of the finer points of mediation, of reaching an agreement in writing that is actually a binding contract.” Because this program is available on campus, Robin is comfortable referring student disputes and actually diverting some conduct cases to the mediation program.

Logan also utilized dispute resolution techniques but in a different way than Robin. The conduct process at Logan’s campus employs restorative sanctioning:

When we’re sanctioning a student, my staff is trained to look at what harm the student has done to members of the community, what harm they’ve done to the community itself, and also to consider what harm they have done to themselves. So, every student that we sanction, they’re going to have a sanction that focuses on those types of harm. If they stole something from someone or they damaged property of another person, they’re going to be sanctioned for restitution.

Logan stated students, are very responsive to restorative sanctioning.

Marty indicated both mediation and restorative justice practices have been utilized in the conduct process. Alternative forms of dispute resolution are used often in the housing setting. At Marty’s institution, the hall directors are given mediation training

and are empowered to mediate roommate conflicts or other conflicts arising out of the residence hall setting. For a conflict that does not involve housing, Marty stated the conduct office is listed as a mediation resource for students, and about once a year, a conflict is directed to the conduct office.

Marty has also attempted to utilize restorative justice principles in the campus conduct process. These principles have been implemented when solving housing or residence hall disputes. Although the staff has been trained in restorative practices, Marty indicated it is hard to gather the affected community together to discuss and address community standards, because “students just aren’t engaged in them.” Additionally, restorative justice principles outside of the housing environment have been utilized. Marty’s conduct office has attempted to use restorative practices on a couple of occasions “when there has been a conflict within a Greek organization or another student organization.”

*Interview question 12: If you have not used dispute resolution techniques, would you ever consider using an alternative form of dispute resolution?* As previously mentioned, almost all of the participants with formal education, as well as all of the participants with formal legal education, have used some form of dispute resolution technique. Kim was the one participant with an education background who had not really implemented or utilized many dispute resolution techniques such as mediation. Although Kim stated mediation and other forms of dispute resolution are generally prohibited in the conduct setting, Kim did note an informal resolution process had recently been implemented for campus conduct issues. Although relatively new, Kim was encouraged

by the possibilities provided by an informal resolution process. During the interview, Kim responded:

We've just transitioned to a new policy that will be utilizing this informal resolution process, and that is something. I think it has the potential to lead to a greater satisfaction in overall outcomes for these cases if both parties are engaged, because you are really looking at a more balanced understanding of this is the, this is the issue and then having the input of here's what, here's what the best paths are to kind of address those issues. I just feel like it could potentially lead to a much greater satisfaction, really, with the outcomes for all people.

Therefore, all of the participants, despite educational or experiential background, had positive perceptions of using some form of dispute resolution in the conduct process.

*Interview question 13: What are your perceptions of using restorative justice or restorative practices in a Title IX matter?* All of the participants with a formal education background answered, in certain circumstances, restorative justice may have a place in the resolution of a Title IX matter. Although positive about the possibilities, the participants also urged great caution when implementing restorative practices in a Title IX conduct issue. Taylor stated not every Title IX issue is the same. Although there are instances where a perpetrator is a true predator, Taylor responded many Title IX matters do not involve a true perpetrator, and, in those cases, restorative justice can be valuable to the healing of the parties involved. In these cases, Taylor saw opportunities for the parties “to come back together and have structured conversation.” However, Taylor acknowledged restorative practices may have to be implemented after the traditional adjudication process has occurred.

Alex indicated restorative practices do have a place in both Title IX and non-Title IX matters. The issue concerning Alex was whether restorative practices would be effective in a culture where few people are on the same page concerning Title IX and sexual assault and sexual harassment. Alex stated, “I think it’s hard to impart something as conceptual as restorative justice in that arena because no one’s really on the same page about some of those things.” However, with the amount of emotion and trauma associated with Title IX matters, Alex thought restorative practices, can theoretically, be a positive tool to help parties heal.

Jamie added, while restorative practices could be helpful, “there is a fear that it could be enacted too far” and add more uncomfortableness to the situation. However, Jamie stated restorative practices allow for more informal resolutions to come forward when dealing with a Title IX matter. In turn, Jamie commented more satisfaction is usually gained by the parties when an informal resolution is proposed and accepted. Jamie concluded, “that’s just sort of the nature of it because if they aren’t satisfied they’re not going to agree to the informal resolution.”

In agreement with the other participants, Kim stated it is very possible restorative practices could be used in a Title IX matter. Kim echoed Jamie’s sentiment and stated if all of the parties were engaged in the process, the potential for greater satisfaction with the outcome would be possible. In conclusion, Kim stated the engagement of both parties could be “the best way to address the harm that’s been done, and I think that would have a very positive impact on cases that often don’t always have positive impacts.”

The participants with a legal education were more polarized in their responses. Robin indicated the conduct office is extremely eager to use more restorative justice

practices in Title IX cases. The day before the interview, Robin had discussed with the university Title IX coordinator the desire to utilize restorative practices “in all level of cases, even the most serious ones.” Robin stated:

We have been finding that our students will come here, and they will tell us what they want is an apology. They are not seeking necessarily their full rights, if you will, through a criminal justice process or even seeking a full student conduct investigation with sanctions. They really want the other party to know how they hurt them, and they want to know that the other person is receiving information, so they don't repeat this behavior.

By using restorative practices, the students at Robin's institution are able to be engaged in the process, and the conduct office can ensure all the students' needs are being met.

Although Robin is very eager to use restorative justice in Title IX matters, two of the other participants were a little more cautious in their responses. Lee was a little more cautious in his answer and stated, “well it really depends, it really depends on the circumstances.” In some cases, Lee indicated the use of restorative practices would not be appropriate, and its use “shouldn't even be entertained.” However, Lee could see the merits of restorative practices being utilized in some cases.

Marty's answer was less cautious than Lee's but focused on the possible systemic problems associated with Title IX and restorative justice. According to Marty, Title IX cases inherently contain power imbalances, which make the successful use of restorative practices difficult. Marty explained the perceived difficulty, because with a power imbalance, “the facilitator has to do dual roles, one is to keep the process going and the other is to negate any power differential.” However, Marty also indicated the current



legal approach to Title IX is “burdensome and re-victimizing” and the “victim has very little control in that process.” Marty thinks restorative practices might be able to “empower the victim to have little more control in the process.”

Logan was more definitive in response to the question regarding the use of restorative justice or restorative practices in Title IX matters. In acknowledging that mediation can now be used in Title IX cases, Logan explained, “I never saw a distinction” between mediation and restorative justice” and “everywhere I worked didn’t see a distinction as well.” As a result, Logan stated:

I don't know how comfortable I am to use restorative justice or mediation in Title IX incidents. It would have to be something like harassment, I wouldn't feel comfortable using it in an assault or like a dating violence or stalking.

*Interview question 14: Are you familiar with the prohibition on using mediation in Title IX matters? If yes, how so?* All of the participants were very familiar with the prohibition that had been placed on using mediation in Title IX matters. Although participants with a formal education background acknowledged the potential for restorative practices to be a helpful tool in Title IX cases, the opinions regarding mediation as a tool were not as positive. Although familiar with the ban and then the subsequent lifting of the prohibition on mediation, participants had great concerns about using mediation in a Title IX situation. One of the primary concerns stemmed from the participants understanding of survivor psychology. Instead of helping to heal the parties, the concern is the survivor, when faced with confronting the person who assaulted him or her, who might start to blame himself/herself for the behavior of the other party. Additionally, concern was expressed survivors may just wish for the conduct process to

conclude and may be pressured into agreements or a resolution with which they are not truly comfortable.

Taylor was also aware of the prohibition and the subsequent decision by the U.S. Department of Education to relax the ban on mediation in Title IX cases. Taylor's response was, "mediation is not a reasonable way to handle a sexual assault situation." Although mediation is not appropriate, Taylor did state a structured conversation may be appropriate, and in fact, helpful, in resolving the conflict. In conclusion, Taylor proposed the following:

Now that being said, I've had multiple, I've had multiple (*sic*) female reporting parties tell me "I don't want this person kicked out of school. I don't want to ruin his life. I want him to know that I want him to know that what he did was wrong and that he hurt me badly." And so, in those situations, I don't think mediation is the answer. But, I think again after the adjudication process, I think if, you know, if there's a way to get them together, mediate, I think that would be, you know, and talk, and have structured conversations. Maybe that's not a mediation. Maybe that's, you know, being in a room having structured conversations, and maybe that's more restorative justice than I realize. But, you know, letting them talk to each other, and you know, maybe that helps with the healing process. But, I would see it as part of a healing process, not part of a resolution process.

Alex was aware of the prohibition and subsequent relaxing of the ban on mediation but was still on the fence regarding the decision. In looking at the possible positive implications mediation might provide in a Title IX setting, Alex stated it is important for conduct officers to "have a whole arsenal of tools with which to deal with

these things.” However, “I’m aware though that people do it wrong often, and it is nice to have some standard in place.” Continuing, Alex said, “I understand the reason of the prohibition was put in place, because a lot of people were doing it wrong and re-traumatizing” and showing “a general lack of understanding of what empathy really is.”

Jamie was aware of the ban and subsequent relaxing of the ban on mediation but stated, with the current conduct structure it is unlikely the conduct staff would ask a student if he or she would like to have a mediation to settle the matter. However, if a student were to suggest an informal resolution that would help in the healing process, Jamie’s office would be open to proposing that suggestion to the other party. Jamie acknowledged this might not be a true mediation, but a resolution and healing might be assured through the informal resolution process.

Kim, also aware of the ban in question, reiterated the fact mediation is prohibited in conduct situations occurring on campus whether Title IX related or not. However, Kim indicated the conduct staff is willing to include all parties in the discussion toward a resolution, but the parties likely will not ever be in the same room. Through this process, Kim indicated the parties feel as though they have been heard, but the danger of the unknown of putting them in the same room is avoided. In conclusion, Kim stated it is not foreseeable the institution’s conduct office would be moving to a mediation-based resolution process.

All of the participants with formal legal education were very familiar with the prohibition that had been placed on using mediation in Title IX matter. However, the participants had very different opinions on the prohibition and its subsequent removal.

Logan indicated there is really no distinction between mediation and restorative practices when it comes to Title IX adding “everywhere I worked didn’t see a distinction as well.”

Robin indicated mediation is not an appropriate method to utilize in Title IX issues. Robin stated:

A successful mediation results essentially with a contract between two people on their future behavior together. And, that approach assumes that there’s no blame or culpability. When you do a mediation, you are treating the parties equally, you’re not litigating, you’re not judging. No one is more at fault, you’re just looking to erase the conflict and have a plan for those two parties going forward. So, in many ways, it isn’t a good framework to look at serious allegation that involve violence, whether sexual violence or other forms of violence. It’s really not the venue for that.

Lee responded to the appropriateness of utilizing mediation in a Title IX matter was dependent on the individual facts of each case. Employing mediation as the default method for resolving Title IX issues was concerning to Lee. Conversely, Lee answered “there are certainly cases where it wouldn’t be appropriate. However, in other situations, mediation should be available if the “accused and the victim” wish for it to be.

Marty also indicated there are situations where mediation might be appropriate in helping to resolve a Title IX matter. However, mediation, for it to be effective in these situations, would have to be conducted by trained professionals who understand the complexities and issues involved in a Title IX situation. Marty stated:

From a pure systems perspective, I supported the restrictions of mediation, because I thought a lot of people who were doing that work were not trained in

the standards for mediation and best practices. However, in individual cases, I can see the merit in mediation when appropriately utilized in a limited basis. So, from a systems perspective, it's not a good idea because people are going to abuse the power. But on an individual basis, if you could get around the abuses of power and have a truly well-trained mediator that is aware of the professional expectations for that, there is some benefit in some case. No victim is the same, and there are some who very much feel the need to come to a consensus with the participant.

*Interview question 15: In your opinion, how does mediation differ from restorative justice?* All of the participants with a formal education background noted there was a distinction between mediation and restorative justice. Taylor noted the distinction between mediation and restorative justice as the impact on the victim in the matter. Continuing, Taylor stated restorative justice includes a true victim to whom something very bad has happened. Although it could be mental or physical, someone has been offended. Mediation, on the other hand, can include everything else.

Alex noted, mediation is a component of restorative justice, but not all restorative justice is mediation. Jamie expressed mediation is a journey between two people to find a resolution to a conflict. However, "restorative justice is an inward journey to look at themselves and find their own truth and their resolution to something." Additionally, Jamie stated in a restorative justice situation, the facilitator is trying to "guide that process for the individual, while in a mediation, I think you're trying to guide that process between two people or a group of people to have that all come together on the same page." Finally, Kim stated a mediation focuses on both of the parties that are

involved, “the party that was harmed and the party that did the harm, being in the same space.”

The participants with a legal education expounded on the difference between restorative practices and mediation. Marty indicated mediation “is coming to a consensus between two individuals and restorative justice is an approach that looks at what is good for the community.” Restorative justice tends to look at the individual needs and wants of the students in the aggregate. Because of this view, Marty stated, “in my opinion, in student conduct, a lot of times restorative justice is more powerful than mediation because it kind of keeps the community on track and it requires that the community act together.”

Lee responded, “mediation is a form of restorative justice and it can be seen as one of the tools in the toolbox.” Additionally, Lee stated mediation can help in situations and “make everybody feel whole.” Logan indicated the end goal of the resolution was important in the distinction between mediation and restorative justice. Logan stated, “with restorative justice, I’m looking more so on restoring the harm.” However, Logan also stated there is not a lot of difference between the two, “and I think sometimes things are just semantics.” Robin stated restorative justice tries to “repair the harm and to address it outside of a traditional charge process, trying to intercept it at a moment where room for growth can happen in a different environment.” In contrast, Robin indicated a mediation “results essentially with a contract between two people on their future behavior together.”

*Interview question 16: Please describe your relationship and interaction with the university counsel.* The responses from the participants with a formal education

background were mixed. Taylor stated the conduct office does not have great access to the university counsel. There have been no communications seeking permission to use mediation or restorative practices, and all requests for communication to the university counsel must go through the executive staff of the university. Jamie stated the conduct office does not directly communicate or correspond with the university counsel, but a good relationship exists between counsel and Jamie.

Alex and Kim described very different relationships with the university counsel. Alex stated a good relationship exists with the university counsel and further said, "I talk to them quite a bit personally and professionally." Kim indicated university counsel is very engaged in the conduct process and also serves as a consultant and liaison for the Student Affairs Department. Additionally, the university counsel sits on many boards and committees with Kim and also meets with Kim on a monthly basis.

Despite the differences in organizational structure and campus makeup, all of the participants with a law degree indicated they had a very strong relationship and frequent interaction with university counsel. Robin stated the relationship is "very good" and has, "if not daily, at least weekly conversations" with university counsel. Logan stated, "so where I work now, I have a lot of interaction with them." However, Logan also indicated this was something relatively new that had not been true in the past. Additionally, Logan stated university counsel is, "not as hands on or in the weeds with me as they used to be with my predecessor, and I think it might be my JD that makes them be a little more hands-off."

Lee has a weekly standing meeting with university counsel and indicated a very good professional working relationship with counsel. Lee concluded, "and I would say if

there's anything, our Title IX coordinator is also an attorney, so I think if there's anything that is a little more unique, and that is that we are all lawyers, so we all have some common shared experiences, and so I would say a very good relationship." Marty also reported a very close working relationship with university counsel and stated:

I think that's probably a function of my being an attorney more than my position.

When I look at problems and systems, sometimes I don't understand something, and I will pick up the phone and call general counsel and ask for their opinion.

When I talk to other people in other parts of the university who are not my colleagues but other student affairs professionals or other academics, they don't do that and/or they say, well, I never get a response, and I'm like, why am I getting a response and they're not? And, I think it's because I'm asking specific questions.

In addition to the participants indicating they have a good working relationship with university counsel, the participants also emphasized they were very careful to convey their professional role is not to practice law nor to be an attorney for the university.

*Interview question 17: Has the university legal counsel ever given you advice or an opinion regarding restorative justice or restorative practices?* All of the participants with an educational background answered this question with a resounding, *no*. However, the answer was very different from the participants with formal legal education. All of the participants indicated he or she have discussed restorative justice practices with university counsel.

Differing answers were given when discussing if university counsel had ever given advice or opinion regarding restorative justice. Robin answered, "no, in fact, I



think the most recent thing is we're really hoping our counsel's office is eager to learn more about it." Lee stated restorative justice is something the university counsel's office has discussed but not given specific advice or opinions regarding its use or appropriateness. Logan stated university counsel had given advice on restorative practices and has been supportive of its use, "with the exception of Title IX cases." Finally, Marty responded, "yes, and they have indicated that I have the authority for restorative justice principles throughout."

*Interview question 18: Is there any question I did not ask that you wish I had asked?* None of the participants with an educational background had any additional questions or information to add to their responses. However, Marty and Robin, both participants with a formal legal background, offered insight into the use of restorative practices in student conduct. Marty stated:

I think one point I'd like to bring up is a lot of the restorative justice measures we have put in place are dependent on administrators outside student conduct. So, I have to have a relationship with my housing director if I'm going to engage in restorative justice. I have to have a relationship with my chief diversity officer if we have a bias incident. So, it's developing those relationships and the trust to engage in restorative justice that makes it successful.

Additionally, Robin added regarding restorative practices:

I'm actually hoping that if we can do more restorative justice across the board that maybe we won't be doing so many hearings, So, we're very excited. Our Title IX coordinator is very excited about it. And, it really is, I think, a representation of the evolution of thinking in a positive way by universities and colleges. You

know, it's not reflective perhaps of the changes at OCR and the guidance there. It is much more of an understanding of what serves our students' needs better and ultimately what serves our community, and our chief obligation in many ways with Title IX and sexual misconduct is to remedy the discrimination. And, if it is better to use restorative practices to more directly and quickly and successfully remedy and end the discrimination, then those are the practices we should be using.

### **Themes**

To analyze qualitative data in a phenomenological study, codes are used to breakdown the information into useful common information (Creswell, 2014; 2016). The codes are then broken down further into emerging themes, which are “distinct categories of information that do not overlap” (Creswell, 2016, p. 155). The emerging themes represent the meaningful essence of the participant's experiences (Creswell, 2014). The emergent themes are included in this section.

**Educational experience counts.** Educational experiences make a difference in the perceptions of dispute resolution. The participants with a formal legal education indicated they have been exposed to alternative forms of dispute resolution during their law school experience. Although Robin did not actively participate in specific classes focused on dispute resolution, the curriculum provided at most law schools integrate dispute resolution theories and techniques into the core substantive class objectives. The other participants with a legal education indicated they had specific instruction in alternative dispute resolution. In addition, Logan and Marty participated in arbitrations and mediations while they were practicing attorneys.

The participants with a formal education background indicated they had received some training in alternative dispute resolution but only through professional conference sessions and meetings. Participants also stated the information gained through the ASCA's Gehring Institute was valuable in providing a baseline knowledge of dispute resolution techniques. Additionally, several of the participants with an education background noted their desire for additional training in specific dispute resolution techniques such as restorative justice.

**Professional experience counts, too.** In addition to the importance of educational experiences, professional experiences also impact conduct officers' perceptions of restorative justice and its potential use in Title IX and non-Title IX matters. All of the participants with a formal education background were proponents of restorative practices when utilized in non-Title IX issues. However, the same participants were cautious when considering the use of restorative justice in matters involving sexual harassment and even more cautious when considering the use of restorative justice in matters of sexual assault. Although the participants were not entirely opposed to utilizing a restorative justice approach in Title IX matters, the participants were not necessarily charging forward to implement restorative practices across their university campus.

The opposite reaction was true for the participants with a formalized legal education. Although all of the participants indicated restorative justice had its place in student conduct, the responses became very polarized when asked to consider implementing restorative practices as a way to resolve Title IX matters. Robin's response indicated a very positive perception of the use of restorative practices in matters of sexual assault and sexual harassment resulting in Robin being at one end of the spectrum. At the

other end of the spectrum was Logan, whose response indicated restorative practices had no application in matters involving sexual assault. Lee's response was more centered on the spectrum but fell closer to Logan's side in being cautious about restorative justice and its application in sexual assault matters. Conversely, Marty's response was also more centered but fell closer to Robin's end of the spectrum.

**Informal resolutions are widely accepted, up to a point.** All of the participants, regardless of educational or professional experience indicated informal resolutions are an effective and efficient means of resolving conduct issues. Despite the varied student development theories used by the participants, the end goal of the conduct process is education. Instead of focusing on purely punitive processes, each of the participants noted the importance of using the conduct process as a learning and teaching opportunity for the involved students. However, the more serious the charge, the more cautious some of the participants became in utilizing informal practices, particularly when sexual assaults were involved.

**Relationships matter.** Although some of the participants with education backgrounds had a relationship with the university counsel, the relationship did not appear to be as strong as those relationships between participants with legal backgrounds and university counsel. Additionally, the relationship between the participants with educational backgrounds and university counsel were more hierarchical than the relationships between participants with legal backgrounds and university counsel. Access to communication with university counsel was also more free flowing between participants with a legal background as opposed to their peers with an educational background.

## **Summary**

A total of eight conduct officers serving at public universities in the Midwest region of the United States were interviewed regarding their perceptions of and propensity to utilize dispute resolution techniques, particularly restorative practices, in both Title IX and non-Title IX matters. Four of the participants had a traditional education background, and the other four participants had a formalized legal background. Through the use of a semi-structured interview protocol, the participants' experiences were documented.

After the interviews were complete, responses were analyzed and broken down into more useful information utilizing a coding process (Creswell, 2014, 2016). Subsequent to the coding process, a series of four themes emerged which were a culmination of the participants' experience (Creswell, 2014, 2016). These emergent themes are further discussed in Chapter Five of the research. Additionally, implications for practice and recommendations for future research are discussed in the following chapter.

## Chapter Five: Conclusions and Recommendations

The role of the university conduct officer is one that is complex and broad (Bennett et al., 2014; Waryold & Lancaster, 2008). Further complicating the conduct process is the diverse background of student conduct officers throughout colleges and universities in the United States (Hyde, 2014; Jackson, 2014). In this chapter, findings of the research regarding differences in education and career background of student conduct officers are discussed in detail. Additionally, conclusions drawn from the findings are revealed and supported by relevant literature. After a discussion of the conclusions, implications for future practice in the areas of student conduct officer education and experience are addressed. Finally, recommendations for future research regarding student conduct officers' perceptions of restorative practices are considered.

### Findings

This qualitative study was designed around three research questions. The questions were written to examine the perceptions of student conduct officers in regard to his or her knowledge of, and propensity to use, dispute resolution methods including restorative justice (Riskin et al., 2014; Zehr, 2002). The research design utilized an interview of student conduct officers, and data provided from interview sessions resulted in the following findings.

**Interview question one.** Participants with educational backgrounds, as well as those with formal legal training, all had varied undergraduate degrees with only one participant holding a bachelor's degree in education. However, all of the participants with an educational background had graduate degrees in education, and two of the participants with formal legal education also held a graduate degree in education. One of

the participants with an educational background held a doctorate degree, and another of the participants with an educational background was working on his dissertation. All of the participants with a legal background held a juris doctorate degree.

**Interview question two.** All of the participants with an educational background started their careers in a field completely unrelated to student conduct, but eventually found his or her place working with students. Participants with a formal legal background also had varied careers; however, two of the participants began in education, transferred to a legal career, and then came back to education. The other two participants started their careers in law, worked through a variety of legal careers, and then entered the field of education.

**Interview question three.** All of the participants with a formal legal education had very different focuses during their law school careers. Although participants followed a general law school curriculum, they were able to participate in many elective classes that peaked their specific interests. The interests of participants varied from constitutional and corporate law to family law and dispute resolution.

**Interview question four.** All of the participants with an educational background noted that information gathering was the most important initial step when working through a conduct matter. Additionally, conduct officers with a formal education background commented that an informal resolution option is important when pursuing a student conduct matter. Similarly, the participants with a formal legal background stated fact gathering was an integral part of the conduct process. Additionally, participants with a legal background also noted the importance of an informal resolution process when working through a student conduct matter.

**Interview question five.** All of the participants, regardless of educational or career experiences, stated they used a different student development theory to guide them through a student conduct matter. Participants with an educational background noted the medical model of development and Chickering's seven vectors of identity development were used when working with students (Chickering & Reisser, 1993). The participants with a legal background noted they also utilized a variety of development theories including Kohlberg's theory of student development, Astin's theory on student development, and Boyer's principles regarding the individual authority of students (Astin, 1999; Boyer, 1990; Kohlberg & Hersh, 1977).

**Interview question six.** Despite the use of varied student development theories, all of the participants with an education background, as well as those participants with a legal background, stated education was their end goal when dealing with a student conduct matter. Although it really depends on the severity of the violation, usually the end goal in any conduct cases has to be educational to maintain alignment with the mission of the institution. Explaining further, participants indicated the conduct process should give the student who violated the policy a soft place to land.

**Interview question seven.** Participants with an educational background and participants with a formal legal education all generally approach Title IX matters in the same way the participants approach non-Title IX conduct matters. Although a Title IX matter requires additional steps and some additional procedures, participants, regardless of educational or professional experiences, focus on the involved students and the protection of the involved student's rights and making sure the resolution process is an



educational experience for all involved. Despite the type of violation, an investigation of the facts leading to the truth is imperative.

**Interview question eight.** When discussing their understanding of restorative justice, participants indicated the major function of restorative justice is to help heal the harm that has occurred between the parties. Additionally, participants noted that stopping the harm was also an important function of restorative practices. The participants with a legal education agreed that healing was an important principle involved in restorative practices but also noted the importance of the inclusion of the community as a part of the healing between all of the involved parties.

**Interview question nine.** None of the participants, regardless of their education and professional experience, indicated their campus had any type of dispute resolution center. One of the participants with an educational background noted his office often served as an unofficial dispute resolution. Additionally, one of the participants with a legal background stated students were often sent to the university's law school for assistance in resolving disputes.

**Interview question ten.** The participants with an education background generally answered they had not received formal training on alternative forms of dispute resolution. However, participants with an education background did acknowledge they had received some training through professional conferences and seminars. Participants with a formal legal background indicated they had received training and experience with alternative methods of dispute resolution through professional conferences, professional development opportunities, and through their law school curriculum and experience.

**Interview question eleven.** Participants with a formal education background indicated they had utilized informal resolutions and dispute resolution techniques. However, the participants also indicated the techniques had been limited and focused mostly on mediation techniques. Participants with a formal legal education indicated they had used a variety of techniques to solve conduct issues on their respective campus.

**Interview question twelve.** All of the participants with a formal education background, as well the participants with a formal legal background indicated they have used some form of alternative dispute resolution in the conduct process. The participants with an education background had generally used a form of mediation to resolve conflict. Participants with a formal legal background had utilized more diverse methods of dispute resolution including restorative justice.

**Interview question thirteen.** The participants with a formal education background answered that in certain circumstances, restorative justice may have a place in the resolution of Title IX matters. However, participants with a formal education background were cautious about the implementation of restorative practices in Title IX matters. The participants with a formal legal background were much more polarized in their perceptions of using restorative practices in a Title IX matter.

**Interview question fourteen.** All of the participants, regardless of their educational or professional experience, were familiar with the prohibition on using mediation in Title IX matters. Although familiar with the ban and then the subsequent lifting of the prohibition on mediation, participants had great concerns about using mediation in a Title IX situation. One of the primary concerns stemmed from the participants understanding of survivor psychology. Additionally, concern was expressed

as survivors may just wish for the conduct process to conclude and may be pressured into agreements or a resolution with which they are not truly comfortable.

**Interview question fifteen.** All of the participant's answers varied slightly regarding the specific distinctions between mediation and restorative justice. The participants with a formal education background noted there was a distinction between mediation and restorative justice but were not very specific on the differences. The participants with a formal legal background expounded on the differences between mediation and restorative with the major distinction being the involvement of the community in the restorative justice process.

**Interview question sixteen.** Answers from participants with a formal education differed with half having some type of relationship with general counsel and the other half not having any type of relationship with the university counsel. The participants with a formal legal background indicated they have a very strong relationship with university counsel, generally having weekly informational meetings or phone calls. Participants with a legal background attributed the strong relationship with the university counsel as a result of their shared experiences in being an attorney.

**Interview question seventeen.** The participants with an educational background answered this question with a resounding, *no*. The participants with a formal legal education indicated they had at least discussed the topic of restorative practices, and some had received direct guidance on the subject of restorative justice in Title IX matters. At least two of the participants with a legal background had initiated the conversation regarding restorative practices with the university counsel.

**Interview question eighteen.** None of the participants had any other questions they wished the researcher would have asked during the interview process. However, Robin noted the use of restorative practices in student conduct “really is I think a representation of the evolution of thinking in a positive way by universities and colleges.” Additionally, Marty noted, “a lot of the restorative justice measures we have put in place are dependent on administrators beyond student conduct.”

During analysis of study findings, four dominant themes emerged from the data. The themes are pertinent to the research questions which guided this study and are supported by the literature found in Chapter Two of this study. Relevant themes are outlined below.

## **Conclusions**

Several dominant themes emerged from the participants’ answers. The four prevalent themes were educational experience counts; professional experience counts too; informal resolutions are widely accepted, up to a point; and relationships matter. These emerging themes are further discussed as they help form the conclusions of the research.

**Research question one.** *How do the educational and professional backgrounds of student conduct officers influence their knowledge and perceptions of alternative dispute resolution methods such as mediation and restorative justice?* Those with educational and professional backgrounds are provided more exposure to dispute resolution techniques, which directly influences a conduct officer’s knowledge and perceptions of dispute resolution methods (Menkel-Meadow, 1993; Riskin et al., 2014). The participants with an education background, stated they had received some training regarding alternative dispute resolution and its application to the field of student conduct.

All of the participants also stated their exposure to alternative dispute resolution had been provided through conferences and professional development opportunities. The conferences and professional development opportunities tended to be short term in nature, lasting from a few hours to a few days. Although training such as the Gehring Institute, attended by many of the participants, is highly intensive, the exposure to alternative dispute resolution techniques is still limited.

The limited exposure to the multitude of alternative dispute resolution techniques provides participants with an education background a brief glimpse of the applications in which alternative dispute resolution techniques can be used. Dispute resolution techniques have been successful in various disciplines including education (Clark, 2014; Fronius et al., 2016; Giacomini & Schrage, 2009). When asked to discuss their understanding of restorative justice, all of the participants with an education background knew the term restorative justice and had a general knowledge of the possible applications to student conduct. Restorative justice can be utilized to successfully solve problems and heal harms that have occurred (Zehr, 2002). Because of their training, participants with an education background were able to discuss the major premise of restorative justice as bringing healing to the harm that had occurred. However, very few participants spoke about the importance the community holds to the concept of restorative justice. Restorative justice seeks to heal and balance the needs of the victim, the offender, and the community which have been harmed (Derajyts & McDowell, 2014; Koss et al., 2014; Obi et al., 2018; Zehr, 2002).

The participants with a formal legal education had been exposed to more intensive training regarding alternative dispute resolution techniques and have also been part of a

curriculum that teaches the practical and theoretical aspects of dispute resolution. All but one of the participants with a legal education participated in law school classes that focused on at least one aspect of dispute resolution. Even if not enrolled in specialized alternative dispute resolution classes, most law school curriculums teach some aspect of legal analysis that involves dispute resolution (Preston et al., 2014; Riskin et al., 2014). Additionally, several of the participants with a legal education have actually participated in some form of dispute resolution technique in a professional capacity.

A formal legal education, as well as experience as a professional in the legal field, provides a more robust exposure to the nuances of alternative dispute resolution (Riskin et al., 2014). When asked about their knowledge and understanding of restorative practices, participants with a legal background were able to speak more confidently regarding the particulars of restorative justice. The participants were able to define the restorative justice process as a measure to help heal a harm and were also able to speak about how the healing of the impacted community is a key component of restorative justice (Derajyts & McDowell, 2014; Koss et al., 2014; Obi et al., 2018; Zehr, 2002).

**Research question two.** *How do the educational and professional backgrounds of student conduct officers influence their propensity to implement alternative dispute resolution methods such as mediation and restorative justice in non-Title IX cases?*

Participants with an education background, as well as those with a legal background, believed in the utilization of informal methods of resolution in matters not concerning Title IX. Despite educational and professional backgrounds, the participants agreed that informal resolutions bring greater success and provide a better experience for the involved students. Opinions regarding informal resolutions formed by the participants

are highly consistent with the literature regarding student conduct and student development (Paul & Dunlop, 2014; Riskin et al., 2014).

Regardless of education and experience, the participants stated their goal, when working with a student in a non-Title IX matter, was to further the education of the student. Although every participant, regardless of education or experience, subscribed to and utilized a different student development theory, each participant noted education to be the overall objective in all they do with the student in the conduct process. The focus on education and student development marks a shift in student conduct that is consistent with the information provided in the pertinent literature (Bennett et al., 2014; Clark; 2014; Hyde, 2014; Wawrzynski & Baldwin, 2014).

The education and experience of student conduct officers did influence what type of dispute resolution technique was implemented in non-Title IX matters. Participants with an education background primarily implemented mediation as the preferred method of informal resolution in non-Title IX conduct cases. However, participants with a formal legal background not only utilized mediation in their informal resolution techniques but also used forms of restorative practices in their efforts to provide informal resolutions in non-Title IX student conduct matters. The use of restorative practices by participants with a legal background in non-Title IX student conduct matters is consistent with the research, which shows legal professionals have more exposure to varying forms of alternative dispute resolution through their legal education and professional experience (Benston & Farkas, 2018; Malizia & Jameson, 2018; Menkel-Meadow, 1993; Riskin et al., 2017).

Additionally, participants with an educational background had more concerns regarding the implementation of mediation, restorative practices, and other dispute resolution techniques in non-Title IX conduct matters. In regard to the implementation of restorative practices in non-Title IX issues, participants with an education background were concerned the restorative justice process could re-traumatize the people involved in the conduct issue. Additionally, participants with an education background expressed concern the person responsible for the harm in a non-Title IX conduct matter could have due process rights jeopardized if a restorative justice process were utilized in the matter.

Participants with a legal background were much more comfortable utilizing different alternative dispute resolution techniques in non-Title IX related conduct matters. Again, participants with a legal background each received more exposure to dispute resolution techniques while they were law students (Benston & Farkas, 2018; Malizia & Jameson, 2018; Menkel-Meadow, 1993; Riskin et al., 2017). Additionally, two of the participants participated in different types of dispute resolution in their career while they were practicing law.

The increased exposure to, and comfortability with, varying types of dispute resolution is consistent with literature concerning law school curriculum and dispute resolution. In non-Title IX conduct matters, the participants with a legal background had implemented restorative sanctioning processes and also had utilized restorative justice practices in other matters regarding residence hall disputes, fraternity and sorority life disputes, and even in instances of racism on campus. Additionally, participants with a legal background more often diverted conduct issues to other equipped campus professionals and were more willing to delegate informal dispute resolution actions to



other campus divisions, such as residence life. The willingness to learn, implement, and utilize forms of dispute resolution, such as restorative practices, is consistent with the literature recognizing the implementation of restorative practices to creatively solve campus issues is slow to be adopted but generally successful in truly educating the involved parties (Fronius et al., 2016; Gallagher et al., 2014; Hyde, 2014; Karp & Sacks, 2014).

**Research question three.** *In consideration of the prohibition on the use of mediation in Title IX cases, does the educational and professional background of student conduct officers influence their perceptions of the use of restorative practices in Title IX cases?* It appears the educational and professional background of student conduct officers does influence their perceptions of the use of restorative practices in Title IX cases. All of the participants, despite their educational and professional backgrounds, were aware of the prohibition of using mediation to resolve Title IX matters. Additionally, the participants were aware of the subsequent rescission of the mediation prohibition, which was very recently enacted by Secretary of Education DeVos (Anderson, 2016; DeVos, 2017; Edelman, 2017; Osland et al., 2018). Participants were very well versed in the prescribed actions and protocols required when working through a Title IX matter on a college and university campus (Bernard et al., 2018; U.S. Department of Education, OCR, 2011). Also, participants regardless of educational or professional background, were very familiar with the consequences involved if the prescribed actions and protocols for a Title IX investigation are not followed (Anderson, 2015; Edelman, 2017; Novkov, 2016; U.S. Department of Education, OCR, 2011).

Participants with an educational background stated restorative justice might have a relevant place in a Title IX matter. Although positive about the possibilities that restorative practices might present in Title IX cases, the participants with an educational background urged great caution when asked about implementing a restorative justice process for working through Title IX matters on their respective campus. The caution and hesitation relayed by participants with an educational background are consistent with the literature expressing concern by many higher education practitioners (Derajyts & McDowell, 2014; Fronius et al., 2016; Giacomini & Schrage, 2009). Although traditional methods of conduct adjudication are not as impactful and helpful as informal resolutions can be, there has been a real hesitation to implement restorative practices in certain fields of higher education, such as student conduct (Armenta et al., 2018; Clark, 2014; Janosik & Stimpson, 2017; Paul & Dunlop, 2014).

Participants with formal legal education were more polarized in their perceptions of implementing restorative practices in a Title IX matter. One participant, Robin, had already discussed with her Title IX coordinator, the possibility of implementing restorative practices to handle even the most serious Title IX offenses. Robin was convinced the way forward in preventing unwanted behavior is through community restoration, which can be accomplished with restorative justice practices (Gallagher et al., 2014; Karp, 2015; Karp & Frank, 2016; Karp & Sacks, 2014; McMurtrie, 2015).

On the other end of the spectrum, Logan, indicated restorative practices are not appropriate for any type of sexual assault or sexual harassment issues. Logan's response aligns with many scholars who are critical of the use of restorative practices in Title IX

issues. These critics are concerned with the potential of re-traumatizing the victim of sexual assault or sexual harassment (Fronius et al., 2016; Gallagher et al., 2014).

The other two participants with formal legal education were positioned in the middle of Robin and Logan on the spectrum. Marty was a proponent of restorative practices and had even implemented restorative justice programs on her campus for non-Title IX matters. Although positive about restorative practices, Marty was concerned about the potential facilitators of restorative practices not implementing the correct techniques. However, Marty was more positive than cautious in her assessment of implementing restorative practices for Title IX matters. Lee was certain restorative practices were not appropriate for some types of Title IX cases and was hesitant about implementing restorative practices as the only means of resolving serious conflict on his or her campus.

The common denominator which explains participants' perceptions of implementing restorative practices for resolving Title IX matters was the education and experience and the influence of the relationships that they developed through the experiences. The participants with an education background were proponents of the use of informal resolutions to solve conflict and conduct issues. In non-Title IX matters, participants had participated in some form of informal resolution, which is consistent with the literature regarding student conduct and conflict resolution.

However, when the issue changed to the implementation of restorative practices for Title IX matters, the willingness to implement those practices stalled. Although thought to be a positive way to resolve a Title IX issue, participants with an educational background were very hesitant to move forward (Giacomini & Schrage, 2009; Karp &

Sacks, 2014). The hesitation to utilize restorative practices in Title IX matters is consistent with the literature (Giacomini & Schrage, 2009). The stakes are not as high in non-Title IX matters, and the college or university does not generally face losing federal funding if certain procedures are not followed explicitly (Anderson, 2015; Edelman, 2017; Novkov, 2016; U.S. Department of Education, OCR, 2011). Although participants with an educational background have been trained on theory and practice, their understanding of conflict resolution and restorative justice techniques has generally been gleaned from conferences or professional development sessions, and the confidence in implementing a program that could result in a loss of funding is understandably low (Eaton, 2016; Kupo, 2014; Perez, 2017).

Although responses from participants with formal legal education were more polarized, a similar pattern emerged from the qualitative data. Participants with a legal education had more definitive opinions about the implementation of restorative practices in Title IX issues. Although polarized, opinions of the participants with a legal education fell more to the ends of a spectrum than did the responses from the participants with an education background. The perceptions of Marty and Robin fell to the positive side of the spectrum, representing a great desire to implement restorative practices in Title IX matters. However, the opinions of Lee and Logan fall to the other end of the spectrum, urging great caution or complete negativity toward implementing restorative practices in Title IX matters.

The definitiveness of the responses by participants with a formal legal education can be attributed to their educational and professional experiences. Law school trains people to think like lawyers, and through the law school experience students think

creatively, logically, and definitively (Brostoff, 2017; Preston et al., 2014). Law students are trained to make decisions based on facts and apply those decisions to other seemingly non-similar situations (Holloway & Friedman, 2017; Whalen-Bridge, 2014).

Additionally, those drawn to the law are often more dominant and risk-taking than students from other disciplines (Reich, 2015). Therefore, it is logical that participants with legal education are more likely to be definitive in their opinions regarding a controversial and relatively un navigated area.

Another interesting revelation was found in the career experiences of the participants. It had previously been established that participants with an education background were cautious about implementing restorative practices in Title IX matters and the participants with formal legal education were more polarized in their beliefs. Beyond this, participants with a legal education can further be broken down into the way career experiences influence their opinions.

Robin and Marty responded they were positive about the opportunities of restorative justice in resolving Title IX matters. Both Robin and Marty were lawyers first and educators second. They both enrolled in law school, graduated, and actively practiced law. Subsequent to practicing law, both Robin and Marty entered academia and eventually student conduct. Their academic experiences were somewhat limited, and many of their formative years in a career were spent in the legal field. The professional relationships formed by Robin and Marty were generally with other lawyers who had similar experiences, both professionally and academically (Burton, 2016; Holloway & Friedman, 2017; Whalen-Bridge, 2014).

However, on the other side of the spectrum, Lee and Logan began their careers in education. Subsequent to beginning careers in the law, both Lee and Logan worked in higher education, particularly in student affairs positions. Although Lee and Logan subsequently attended law school, many of their professional influences derived from the education field (Eaton, 2016; Ortiz et al., 2015). Additionally, many of their professional relationships were formed during the initial career in education (Kupo, 2014; Ortiz et al., 2015). The realm of influence from professional and educational experiences cannot be overlooked and is an important influencing factor when determining a conduct officer's propensity of implementing restorative practices in Title IX conduct matters (Kupo, 2014; Menkel-Meadow, 1993; Ortiz et al., 2015; Riskin et al., 2014).

### **Implications for Future Practice**

A thorough study of the data leads to many implications for future practice. By using the four emerging themes as a framework, it became clear there are differences in the ways that conduct officers perceive and utilize restorative practices, especially in Title IX matters. The following implications are offered as ways differently educated conduct officers perceive and use restorative justice.

Educational experience is important. It is important to talk about the impact different educational experiences impart on student conduct officers. The participating participants, regardless of their experiences, were all extremely well-educated individuals. However, the participants with a formal legal background had received much greater exposure to alternative dispute resolution techniques, as well as a wider variety of techniques.

Many law schools provide specialized training and educational tracks that focus exclusively on dispute resolution (Menkel-Meadow, 1993; Riskin et al., 2014). These dispute resolution programs are not only focused on teaching the theory of dispute resolution but also instruct students on the intricacies and nuances of dispute resolution practice (Benston & Farkas, 2018; Menkel-Meadow, 1993; Riskin et al., 2014). Students enrolled in law schools with these intensive dispute resolution curriculums graduate having participated in countless practice exercises, as well as numerous real-life dispute resolution situations (Malizia & Jameson, 2018).

Law schools that do not focus on intensive dispute resolution training, still provide curriculums which generally integrate dispute resolution theories and practices into substantive classes (Menkel-Meadow, 1993; Riskin et al., 2014). The exposure to a great variety of dispute resolution concepts and techniques is invaluable to the student and provides a more well-rounded educational experience (Benston & Farkas, 2018; Malizia & Jameson, 2018). The ability to recognize the differences between dispute resolution techniques and confidence to implement the most appropriate technique for the situation are skills not easily learned outside of the law school environment (Menkel-Meadow, 1993; Riskin et al., 2014).

To help level the playing field of student conduct officers, it is imperative more intensive dispute resolution education is provided in student affairs advanced degree programs. Participants with a formal education background indicated their experience with dispute resolution came from conference sessions and professional development workshops. The curriculum guiding conference sessions and workshops are no doubt excellent; however, the intensiveness and depth of the sessions are not sufficient to help

student conduct officers feel comfortable in their ability to implement successful dispute resolution programming in new and impactful ways.

By adding inclusive dispute resolution classes to the student affairs curriculum, new conduct professionals will be well-versed in different types of dispute resolution techniques which are available and be able to appropriately apply the correct technique for the situation. The increased exposure to alternative dispute resolution will build confidence in student conduct officers allowing them to truly provide an educational experience for the involved students.

Also advisable is the addition of more combined degree programs, allowing law students to earn a masters or doctorate in student affairs, while also earning a law degree. Many law schools currently offer joint degree programs such as a juris doctor and Master of Business Administration, Master of Public Policy, or a Master of Public Health (Morehead, 2016; Mulloy & Santora, 2014). However, more careers in higher education are available for applicants with a legal background (Baum, Cosgrove, & Lukingbeal, 2016; Morehead, 2016; Mulloy & Santora, 2014). Although this specific career track might only interest a small portion of law students, the opportunity would well-prepare the students who desire a career in higher education.

Professional experiences and relationships matter. The themes of professional experiences and relationships matter converge when debating how to better prepare student conduct officers to be more proactive than reactive when implementing new programs regarding dispute resolution. A key factor identified through qualitative data analysis is the student conduct officer's sphere of influence is important. Participants who had a formal legal background were much more definitive in their decision-making



and much more willing to take risks when the stakes were high (Brostoff, 2017; Reich, 2015).

Additionally, participants with a legal education had great working professional relationships with the university counsel. Many of the participants attributed the relationship with the university counsel to the shared experiences they had because of law school and their law career (Burton, 2016; Holloway & Friedman, 2017). Participants with a legal background and the university counsel shared the same language, thought processes, and worked through issues in generally the same way (Whalen-Bridge, 2014). Although some of the participants with an education background had a relationship with university counsel, it was perhaps not the same as those participants with a legal background.

To help build future relationships between university counsel and all student conduct officers, rapport building exercises are crucial. An open line of communication between university counsel and conduct officers is critical to well serve students who are involved in the conduct process. Additionally, it is hopeful that a sense of trust and empowerment between the university counsel and the conduct officer can be built so creative means of informal resolution can openly be discussed and either accepted or rejected (Clark, 2014; Waryold & Lancaster, 2008). The goal of open communication between the university counsel and student conduct officer should be to create a clear and impactful plan to develop the involved students and provide a safe and protected place for the university community (Bennett et al., 2014; Hyde, 2014).

Informal resolutions are important, up to a point. Regardless of the educational or professional experiences, the participants acknowledged the importance of informal

resolutions in the conduct process (Menkel-Meadow, 1993; Riskin et al., 2014; Zehr, 2002). However, the participants with an education background hesitated when asked about implementing a restorative justice program for Title IX offenses. Although participants implied there are probably great benefits to such a program, the participants also stopped short of being willing to implement a restorative justice program. Through further teaching and collaborations with dispute resolution experts, the inaction can be turned to action (Riskin et al., 2014; Zehr, 2002).

It is also important that conduct officers are empowered to make creative decisions without facing undo repercussions from their institution or the government (Lave, 2016; Novkov, 2016; Smith, 2015). Again, conduct officers with an education background have been and are willing to be creative in implementing informal resolutions in the student conduct arena. However, when asked about implementing creative measures in matters concerning Title IX, the stakes become higher and the willingness to implement new resolution techniques diminishes quickly (Lave, 2016; Novkov, 2016; Smith, 2015). Part of this hesitation to implement new resolution techniques has to be a result of the dire consequences associated with non-compliance of Title IX regulations (Lave, 2016; Novkov, 2016; Smith, 2015).

Additionally, guidance and instructions given to universities and conduct officers has been, to say the least, less than clear and concise (Anderson, 2015; Novkov, 2016). Thus, it is important that conduct officers are equipped with a good understanding of the Title IX regulations concerning informal resolutions. Further, it is important to reduce some of the consequences involved with non-compliance to foster a more successful and comprehensive conduct process.

## **Recommendations for Future Research**

This study was designed using a qualitative methods approach to fully capture the essence of experiences of student conduct officers. However, this study is not comprehensive, because the research only includes conduct officers serving at public institutions in the Midwest region of the United States. Although this study captured the experiences of a small portion of conduct officers, there are countless numbers of other conduct officers serving in both private and public and small and large colleges or universities in other regions of the United States.

The perceptions of student conduct officers may vary by geographical location. This study was limited to the Midwest region of the United States. However, it is possible conduct officers' perceptions may differ in larger metropolitan areas or on either of America's coastal regions when compared to the perceptions of student conduct officers in the Midwest. Additionally, perceptions of conduct officers at smaller and/or private colleges and universities may differ from those in the study. Therefore, extending the research to examine whether institutional location by region impacts the perceptions of student conduct officers is one method that could expand the research. Another recommendation is to examine the perceptions of conduct officers of private colleges and universities to determine if the distinction affirms or contradicts the information determined in this study.

A longitudinal study is also recommended to follow up on the impact that restorative justice has at the universities where restorative justice programs have been implemented. A five-year follow-up to study student and community satisfaction would help determine if restorative practices are an appropriate technique to help heal a college

community. Additionally, a measurement of sexual assault occurrences might provide some insight into the effectiveness restorative practices have on changing culture on a college or university campus.

### **Summary**

The actions of student conduct officers and subsequent outcomes of the student conduct process directly affect college and university students' lives (Hyde, 2014; Jackson, 2014). The methods in which conduct officers investigate disciplinary matters and resolve conflict is often related to their educational and professional experience (Jackson, 2014). Some higher education systems seek conduct officers with a background in education and student affairs (Jackson, 2014). However, other colleges and universities employ conduct officers who possess a formal legal education and who have professional experience in the practice of law (Hyde, 2014; Jackson, 2014). Further, conduct officers with legal training often differ in their practice fields with some proficient and experienced in traditional litigation and others proficient in forms of alternative dispute resolution (Cooper, 2014; Kovach, 2014). The variances in education and experience can result in varied perceptions of and approaches to resolving conflict (Lamond, 2016).

As stated in Chapter One, the inclusion of learning into every aspect of the student experience has become the paramount mission for institutions of higher education (Bennett et al., 2014; Clark, 2014). Conduct officers must also integrate learning into the conduct process to align with the institution's mission (Bennett et al., 2014; Clark, 2014). To fully integrate learning in the conduct process, new and creative forms of dispute resolution techniques are being implemented across some American colleges and

universities (Riskin et al., 2014; Zehr, 2002). Many universities employ conduct officers with an educational background, but many other universities are beginning to employ conduct officers who have a formal legal education (Perez, 2017; Taub & McEwen, 2006). The focus of this qualitative study was to determine if education and experience have an impact on the knowledge and perceptions of student conduct officers regarding alternative forms of dispute resolution. Kohlberg's theory of moral development was used as the theoretical framework for this study.

In Chapter Two, a comprehensive review of the literature regarding student conduct, Title IX, and restorative justice, as well as the theoretical framework for the research was provided. Kohlberg posited people develop their moral and ethical behavior and responsibilities by passing through a series of stages of development, and a person's sense of right and wrong develops from a concern about the results of one's actions (Kohlberg, 1981, 1984; Kuhmerker et al., 1994). Additionally, Kohlberg theorized, progression through the stages occurs when values and normative behaviors become more dependent on interpersonal expectancies (Kohlberg, 1981, 1984; Kuhmerker et al., 1994; Modgil & Modgil, 1988). The literature also revealed the field of student conduct is ever-evolving field and utilizes many different tools, including restorative practices, to ensure education and development of the student are achieved (Bennett et al., 2014; Hyde, 2014; Waryold & Lancaster, 2008). Finally, literature concerning Title IX and its implications in student conduct was discussed.

In Chapter Three, an explanation of the methodology used in the study was provided. A qualitative methods approach was chosen to study the decisions and perceptions of student conduct officers with varying educational backgrounds, serving at

state universities in the Midwest region of the United States (Creswell, 2015, 2017; Yin, 2016). To conduct the study, the researcher sought state universities within the Midwest region and delivered information to potential subjects to garner interest. Once interested parties were identified, their individual educational and professional backgrounds were evaluated for the relevance of the study (Creswell, 2015, 2017; Yin, 2016). Based upon the gathered information, a total of five participants with a formal education degree (Master's., Doctor of Education, Doctor of Philosophy), were selected for the study. Similarly, a total of five participants with formal legal education (Juris Doctor, Bachelor of Law, Master of Law) were selected for the study. Once identified, participants were scheduled for either a phone interview or an in-person interview time, reserving one hour of their time for the study (Creswell, 2015, 2017; Yin, 2016).

In Chapter Four, findings from the interviews were recorded and analyzed. Through the analysis of participants' answers, four themes emerged. The themes included educational experience counts; professional experience counts too; informal resolutions are widely accepted, up to a point; and relationships matter.

In Chapter Five, relevant findings of the three research questions were discussed. Logical conclusions were drawn from the findings and supported by the literature. Several implications for practice emerged from the data and suggested greater training in dispute resolution for conduct officers with an educational background is critical. Additionally, rapport building exercises between conduct officers and university counsel are important, as is an open line of communication between university counsel and conduct officers. Finally, it is also important that conduct officers are empowered to

make creative decisions without facing undo repercussions from their institution or the government (Menkel-Meadow, 1993; Riskin et al., 2014).

To address limitations of this study, future research should focus on different populations of conduct officers to determine if the region or geographic location has an impact on student conduct officers' knowledge and perception of dispute resolution techniques, such as restorative justice practices. Additionally, long range studies should be implemented to determine the value of creative dispute resolution techniques on the university campus. Student conduct officers must be knowledgeable of and free to utilize creative and impactful measures in student conduct situations. The education and experiences of student conduct officers does have an impact on their knowledge and perception of dispute resolution techniques, such as restorative justice.

## Appendix A

### Interview Questions

1. Please tell me about your educational background.

Follow up if necessary: School(s) attended; educational emphasis

2. Please tell me about your professional career experiences.

Follow up if necessary: Years in education; have you always been in education; departments worked in; length of time in the current role; length of time involved in the area of student conduct.

**If a participant has a legal background, proceed with question number three. If the participant has no legal background, please proceed to question 4.**

3. What was your emphasis in law school?
  - a. Did your school offer any classes in alternative dispute resolution?
  - b. Did you participate in any of those courses? Why or why not?
  - c. Did you work in the legal field prior to working in higher education?
  - d. What was your practice field?
  - e. Were you a litigator? If so, how many cases did you try during your legal career?
  - f. Were you ever involved in any negotiations, arbitrations or mediations?
  - g. Are you still a member of your state's bar?
4. What is your process for working through a conduct case?
5. What student development theories are utilized when dealing with student conduct issues?
6. What is your end goal when dealing with a student conduct matter?
7. Do your student conduct processes differ when faced with a Title IX issue? If yes, please explain.



8. What is your understanding and perception of restorative justice or restorative practices? In what ways could the practices be useful in a student conduct setting?
9. Do you know if your institution has any kind of dispute resolution center? If yes, please explain.
10. Do you have any training or experience with alternative forms of conflict resolution, i.e., mediation, restorative justice, restorative practices? If yes, please explain.
11. Have you ever used dispute resolution techniques in your student conduct process?  
Follow up: What were the results?
12. If you have not used dispute resolution techniques, would you ever consider using an alternative form of dispute resolution?
13. What are your perceptions of using restorative justice or restorative practices in a Title IX matter?
14. Are you familiar with the prohibition on using mediation in Title IX matters? If yes, how so?
15. In your opinion, how does mediation differ from restorative justice?
16. Please describe your relationship and interaction with the university counsel.
17. Has the university legal counsel ever given you advice or an opinion regarding restorative justice or restorative practices?
18. Is there any question I did not ask that you wish I had asked?

**Appendix B****IRB Approval**

# LINDENWOOD

LINDENWOOD UNIVERSITY ST. CHARLES, MISSOURI

DATE: March 8, 2018

TO: Greg Weaver  
FROM: Lindenwood University Institutional Review Board

STUDY TITLE: [1066429-1] Perceptions of Student Conduct Officers

IRB REFERENCE #:  
SUBMISSION TYPE: New Project

ACTION: APPROVED  
APPROVAL DATE: March 8, 2018  
EXPIRATION DATE: March 7, 2019  
REVIEW TYPE: Expedited Review

Thank you for your submission of New Project materials for this research project.

Lindenwood University Institutional Review Board has APPROVED your submission.

This approval is based on an appropriate risk/benefit ratio and a study design wherein the risks have been minimized. All research must be conducted in accordance with this approved submission.

This submission has received Expedited Review (Cat 7) based on the applicable federal regulation.

Please remember that informed consent is a process beginning with a description of the study and insurance of participant understanding followed by a signed consent form.

Informed consent must continue throughout the study via a dialogue between the researcher and research participant. Federal regulations require each participant receive a copy of the signed consent document.

Please note that any revision to previously approved materials must be approved by this office prior to initiation. Please use the appropriate revision forms for this procedure.

All SERIOUS and UNEXPECTED adverse events must be reported to this office. Please use the appropriate adverse event forms for this procedure. All FDA and sponsor reporting requirements should also be followed.

All NON-COMPLIANCE issues or COMPLAINTS regarding this project must be reported promptly to the IRB.

This project has been determined to be a Minimal Risk project. Based on the risks, this project requires continuing review by this committee on an annual basis. Please use the completion/amendment form for this procedure. Your documentation for continuing review must be received with sufficient time for review and continued approval before the expiration date of March 7, 2019.

Please note that all research records must be retained for a minimum of three years.

If you have any questions, please contact Michael Leary at 636-949-4730 or [mleary@lindenwood.edu](mailto:mleary@lindenwood.edu). Please include your study title and reference number in all correspondence with this office.

If you have any questions, please send them to [IRB@lindenwood.edu](mailto:IRB@lindenwood.edu). Please include your project title and reference number in all correspondence with this committee.

This letter has been electronically signed in accordance with all applicable regulations, and a copy is retained within Lindenwood University Institutional Review Board's records.

## Appendix C

### Request for Participation Email

Date :

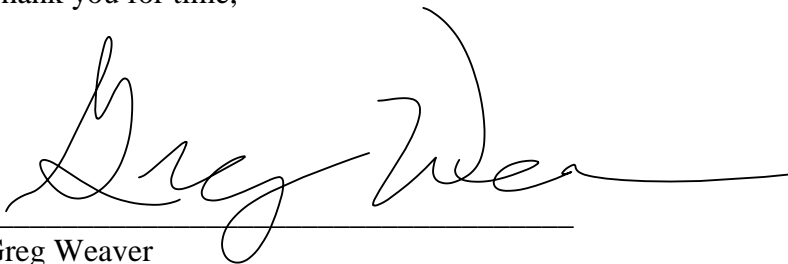
Dear \_\_\_\_\_:

My name is Greg Weaver and I am a doctoral student at Lindenwood University. For my dissertation research, I am examining the effect of student conduct officer's formal education and experience on their perceptions and willingness to utilize restorative justice in student conduct issues. Because you are a student conduct officer in a public educational institution in the mid-west, I am inviting you to participate in this research study by completing an in-person or telephone interview. I am seeking student conduct officers with a formal student affairs educational background (M.A., Ed.D. or Ph.D.) and officers with a formal legal educational background (J.D., L.L.B. or L.L.M.). If you have either one of these educational backgrounds and are interested in participating in this study, please contact me.

The interview will require approximately one hour to complete. There is no compensation for responding nor is there any known risk. In order to ensure that all information will remain confidential, your name and institution will not be used. Copies of the project will be provided to my dissertation committee. Participation is strictly voluntary, and you may refuse to participate at any time.

Thank you for taking the time to assist me in my educational endeavors. The data collected will provide useful information regarding student conduct processes. A return of this correspondence will indicate your willingness to participate in this study. If you require additional information or have questions, please contact me at the number listed below.

Thank you for time,



Greg Weaver

Email: [REDACTED]

**Appendix D****LINDENWOOD****Research Consent Form****Student Conduct Officers' Perceptions of Restorative Practices Based on Educational and Professional Background**

You are asked to participate in a research study being conducted by Greg Weaver under the guidance of Dr Rhonda Bishop at Lindenwood University. We are doing this study to examine the perceptions of student conduct officers regarding the use of restorative practices in conduct situations. It will take about one hour to complete this study. Participating in this interview is voluntary. We will be asking about 5-10 other people to answer these questions.

**What are the risks of this study?**

We do not anticipate any risks related to your participation other than those encountered in daily life. You do not need to answer any questions that make you uncomfortable or you can stop the interview at any time.

We are collecting data that could identify you, such as information about student conduct on college campuses. Every effort will be made to keep your information secure and confidential. Only members of the research team will be able to see your data. We do not intend to include any information that could identify you in any publication or presentation.

**Will anyone know my identity?**

We will do everything we can to protect your privacy. We do not intend to include information that could identify you in any publication or presentation. Any information we collect will be stored by the researcher in a secure location. The only people who will be able to see your data are: members of the research team, qualified staff of Lindenwood University, representatives of state or federal agencies.

**What are the benefits of this study?**

You will receive no direct benefits for completing this survey. We hope what we learn may benefit other people in the future.

If you have any questions about your rights as a participant in this research or concerns about the study, or if you feel under any pressure to enroll or to continue to participate in this study, you may contact the Lindenwood University Institutional Review Board Director, Michael Leary, at (636) 949-4730 or [mleary@lindenwood.edu](mailto:mleary@lindenwood.edu). You can contact the researcher, Greg Weaver directly at [REDACTED] or [gww948@lindenwood.edu](mailto:gww948@lindenwood.edu). You may also contact Rhonda Bishop at [rbishop@lindenwood.edu](mailto:rbishop@lindenwood.edu).

I confirm that I have read this form and decided that I will participate in the project described. I understand the purpose of the study, what I will be required to do, and the risks involved. I understand that I can discontinue participation at any time. My consent also indicates that I am at least 18 years of age. Please feel free to print a copy of this consent form.

_____	_____
<b>Participant's Signature</b>	<b>Date</b>
_____	
<b>Participant's Printed Name</b>	
_____	_____
<b>Signature of Principal Investigator or Designee</b>	<b>Date</b>
_____	
<b>Investigator or Designee Printed Name</b>	

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### **Vita**

Gregory William Robert Weaver currently works for Parmele Law Firm in Springfield, Missouri. Weaver graduated from Drury University with a degree in Political Science and a master's degree in Communication before graduating from the University of Missouri-Columbia Law School.

Upon graduating from law school, Weaver practiced as an attorney for 15 years. As a successful criminal defense attorney, he owned a private practice for nearly five years. Following his criminal defense practice, he served as an attorney advisor for the Social Security Administration. Following his work at the Social Security Administration, Weaver began teaching legal studies at a local college and was quickly appointed to Dean of Student Services followed by higher administrative roles.

Weaver enjoys being active in the Springfield community. He serves as the District Lay Leader for the Ozarks District of the Missouri Annual Conference of the United Methodist Church as well as Lay Leader at King's Way United Methodist Church. Weaver is a current board member for the Developmental Center of the Ozarks, with previous board membership of CASA and Habitat for Humanity. Weaver was named a Springfield 40 Under 40, as well as a Council of Churches Gift of Time award recipient.