

**Factors to Consider when Balancing Campus Safety Concerns with Students' Civil Rights**

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### **Abstract**

On April 16, 2007, a student at Virginia Tech University, known to be mentally ill, went on a rampage shooting 49 people on campus before taking his own life. When it was over, 32 people were dead, and the concept of a safe campus was forever changed. The incident revealed the inherent conflicts between campus safety concerns and students' civil rights, an issue campus across the nation have grappled with over the past 10 years. Public colleges, which are legally viewed as quasi-governmental entities, must satisfy the civil rights compliance requirements that apply to governmental entities. Community colleges have the additional challenge of maintaining a reasonably safe campus while preserving the mission of "open access." Efforts to balance campus safety concerns with students' civil rights have been unsuccessful and have caused confusion, chaos, and litigation.

This dissertation is a critical interpretive synthesis of scholarly, legal, and grey literature research that addresses the tension between campus safety concerns and students' civil rights. Scholarly resources included peer-reviewed journals. Legal resources included the constitution, federal statutes, federal and state court opinions, federal agency documents, federal reports, and articles from recognized and reliable authors and/or publications. Grey literature included articles from recognized and respected publications that covered current events. Experts provided valuable feedback and guidance on the topic, research and resources.

The dissertation examines civil rights selected based on their tension with campus safety concerns. The civil rights addressed are due process, free speech, gun rights, and privacy. The findings of this dissertation provide guidance on factors to consider when evaluating how best to balance campus safety concerns with students' civil rights.

### **Dedication**

The people for whom I have the greatest gratitude are my family. If life were fair, the doctorate degree would be conferred on a team rather than an individual. My family was the team that made this paper possible. Thank you to my wonderful husband David for being patient, understanding, and supportive. Thank you for editing this paper and thank you for forcing me to take breaks and vacations. Thank you to my daughter for Vera, my art director, image-maker, and proofreader, this paper would not look the way it does without you. Thank you to my sons Colin, Caleb, and Fernando for continuing to provide love, humor and distractions when I needed them most. And, thank you to Lucy, my constant companion who kept my feet warm and made sure that I went outside at least once every few hours.

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## **Chapter One: Introduction**

Over the past fifty years, the responsibility of the public college to balance campus safety concerns and students' civil rights has changed dramatically. Factors that have influenced this change include the evolving expectations of what constitutes a safe campus and how a college may create a safe campus, the evolving expectations of the college's requirement to recognize the civil rights of students, evolving court decisions that have overruled historical precedents, and the evolving role that the government has taken in both regulating campus safety and recognizing students' rights. These factors have combined to create a complex and sometimes-contradictory mix of regulatory requirements, student expectations, and college responsibilities.

### **Background**

#### **The Historical Development of the Safe Campus Concept**

To understand the current concept of the safe campus, it is helpful to review the historical development of the concept. Prior to the 1960's the concept of a safe college expanded from a consideration limited to the maintenance of campus facilities, to a broader consideration that included student behavior.

- ***The Original Safe Campus Concept: The College Watchman***

Until 1894, administrators, faculty and students were not directly involved in issues concerning campus safety. Safety issues were perceived to be limited to issues concerning the physical plant. Campus safety concerns and issues were the responsibility of employees who acted as elevated custodians. The elevated custodians were typically referred to as "watchmen" in that their primary responsibility was to watch the facilities to ensure that they were secure and to address service issues (e.g. boilers, electricity, etc.) (Hopkins & Neff, 2014, p. 126).

Watchmen had minimal interaction with students and faculty, and the community did not perceive watchmen to have any role or responsibilities that would create interactions with individuals outside of the college campus.

Students did not perceive the watchmen as having any authority outside of facilities. Safety issues connected to student behavior were addressed by college administrators (Hopkins & Neff, 2014). In 1894 the role of the watchmen began to evolve when Yale University hired two local police officers to serve as the campus security force. This change was a response to problematic relations between students and the New Haven police. Other colleges observed Yale's approach and adopted the practice of hiring local law enforcement to serve as campus security officers (Hopkins & Neff, 2014).

- ***The Historical Absence of Students' Civil Rights***

Colleges were able to operate successfully without formal campus safety offices due in part to the doctrine of "*in loco parentis*," which means "in the place of the parents." *In loco parentis* has historical roots in the 1700s when English schools developed the doctrine to define the relationship between the student and the school. William Blackstone (1765), a legal scholar studied by both British and American lawyers, noted:

[A parent] may delegate part of his parental authority, during his life, to the tutor or schoolmaster of his child; who is then *in loco parentis*, and had such a portion of the power of the parent committed to his charge, viz. that of restraint and correction, as may be necessary to answer the purposes for which he is employed (p. 441).

The application of *in loco parentis* to higher education allowed college administrators to act (in relation to the students) with the authority of a parent. As such, disciplinary actions determined by the college did not require any type of due process or recognition of the students'

civil rights (Lake, 1999). Colleges actively exercised their quasi-parental powers by regulating students' civil rights to speech, association, and movement. Common regulations included curfews, socialization regulations, and dress regulations. Without due process rights, students could not question the exercise of power within the college, or question the exercise of power outside of the college in the court system (Lee, 2011). Colleges had no formal process for deciding when local law enforcement would be contacted.

Students rarely contested college regulations or determinations of expulsion. Students who did contest faced a difficult battle. As Lake (1999) noted, "colleges typically won cases even when rules were vague, imprecise, and salutary, and when enforcement of rules was so procedurally casual that it bordered upon arbitrariness and capriciousness" (p. 5).

- ***The Recognition of Students' Civil Rights***

The powers afforded by the doctrine of *in loco parentis* were first seriously limited in the 1961 case of *Dixon v. Alabama*. That case concerned the appeal of a group of African American students who had been dismissed from Alabama State College for participating in a civil rights demonstration. The students argued that the college was acting as the state in violating their right to due process. The United States Court of Appeals for the Fifth Circuit agreed and noted specific procedural protections recommended for state colleges to follow in the event of a student expulsion (Lee, 2011).

In 1967, the doctrine of *in loco parentis* was challenged on due process grounds in the case of *Goldberg v. Regents of the University of California*. The court held: "there are no considerations of immediate danger to the public or of peril to the national security that would prevent the college authorities from exercising at least the fundamental principles of fairness by giving the accused students notice of the charges and an opportunity to be heard in their own

defense” Goldberg v. Regents of the University of California, 1967, p. 881). A year later, the District Court of Colorado held, “the doctrine of ‘In Loco Parentis’ is no longer tenable in a university community...we do not subscribe to the notion that a citizen surrenders his civil rights upon enrollment as a student in a university” (Buttney v. Smiley, 1968, p. 286).

Throughout the 1960s court cases, campus protests, and the public movement towards social equality, led many to question the application of *in loco parentis* to higher education (Lee, 2011). As colleges shifted away from the doctrine of *in loco parentis*, the relationship between the college and the student shifted, and with it the liability that a college would have for a student shifted. Colleges could no longer act without concern for students' civil rights. Colleges were no longer viewed as alternative parents. Colleges were now expected to recognize and respect the civil rights of students. The historical shift was noted in the Bradshaw v. Rawlings case (1979), where the concept of *in loco parentis* and the rights it afforded to colleges was described by the United States Court of Appeals for the Third Circuit in the past tense:

There was a time when college administrators and faculties assumed a role in loco parentis. Students were committed to their charge because the students were considered minors. A special relationship was created between college and student that imposed a duty on the on the college to exercise control over student conduct and, reciprocally, gave the students certain rights of protection by the college (1979, p. 139-140).

The court went on to identify two key changes in the relationship between students and colleges that ended any argument regarding a special relationship “the modern American college is not an insurer of the safety of its students... society considers the modern college student an adult, not a child” (p. 138, 140).

While the doctrine of *in loco parentis* was being challenged in court, social unrest and



student protests were challenging orderly operations on college campuses. In November 1965, a student protest at Berkeley met with a heavy police presence devolved into a riot (Engler, 2015). Student protests continued. In 1969 a Berkeley student protest resulted in one death and hundreds of injuries (Engler, 2015). In May 1970, four students were killed by the National Guard at Kent State University when the national guard was called in to restore order (Sloan & Fisher, 2014). Student protests were viewed as examples of the problems within higher education (Engler, 2015; Sloan & Fisher, 2014). In California, Governor Reagan referred to student protesters as "criminals" (Engler, 2015, p. 8). In Ohio, Governor Rhodes declared martial law and described the student protesters as "worse than the 'brownshirt' and the Communist element and also the night-riders in the vigilantes...the worst type of people that we harbor in America," (Newsweek, 2015, p. 1).

In an attempt to manage campus security with college personnel, and to avoid reliance on local law enforcement, colleges focused on developing professional security forces (Anderson, 2015). During that time, according to Hopkins and Neff (2014), "colleges began to create university police forces, complete with well-educated, law enforcement trained police officers responsible for full-fledged law enforcement on campus" (p.128). The process of professionalizing the campus safety office connected it to the campus judicial system without defining how the college would balance safety concerns with students' civil rights. As Carlson noted, "colleges are the only American institutions that can create a private police force, and under campus control, these cops prop up a system of justice that is not accountable to elected officials" (2015). Wilson and Wilson echoed Mangan's observations and added "in no other environment are the perceptions of the role of law enforcement officers and their authority as convoluted and contested as in the academic setting" (2011).

- *The Government's Role in Campus Safety*

As campus safety departments evolved, the public's expectations of safe campuses also evolved. Specific regulations were developed and implemented to formalize safety procedures and ensure recognition of students' civil rights. The expectation of public information on the safety of campuses was codified by federal statute in 1990 with the passage of the Crime Awareness and Campus Security Act. The Act required colleges to disclose statistical information on campus crimes. The act was subsequently amended twice to add more detailed requirements for information disclosure and to establish a "Bill of Rights" for sexual assault victims. The second amendment to the act, which occurred in 1998, included the renaming of the law to the "Clery Act" (Clery Act 1990; Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act, 1998). In addition to the Clery Act, the Violence Against Women Act (1994) (VAWA), the expanded interpretation of Title IX (Dear Colleague letter, 2011), and passage of the SaVE Act (Campus Sexual Violence Elimination Act, 2013), heightened expectations for both the responsibilities of the campus safety office and the recognition of students' civil rights.

As federal regulations focused on sexual violence, another form of violence became more commonplace on college campuses: gun violence. In 2007, a student at Virginia Tech went on a deadly rampage, killing 32 students and faculty members before killing himself (Gardner, Wilgoren & Schneider, 2007). In the first 10 months of 2015, there were 23 shootings on college campuses. Five of those shootings occurred on community college campuses (Sanburn, 2015). At Sacramento Community College two people were shot, one fatally (Reed & Brennan, 2015). At Umpqua Community College, a student shot 18 people. Eight students and one professor died (Sidner & Lah, 2015). The open access mission of community colleges presents an unusual

hurdle to efforts to secure the community college campus.

Press coverage of violence on college campuses led to a groundswell of legislative proposals designed to address and regulate policies and procedures connected to campus safety (Campus Safety Violence Elimination Act, 2013; Dear Colleague letter, 2011; Mangan, 2015; Thomas, 2016). Press coverage of violence on campus also provided ammunition for the argument that college students (and other members of the college community) should be permitted to carry concealed weapons on campus (Archer, 2015). This argument ignored the statistics behind gun violence, 45 percent of gun violence incidents on college campuses concern interpersonal disputes. 12 percent concern premeditated acts of violence against an individual. 12 percent concern suicides or murder/suicides. 2.4 percent concern an individual shooting multiple strangers (Everytown for gun safety, 2016).

During the same time period, the campus safety office (CSO) was evolving to be more similar to law enforcement by increased usage of both sworn and armed officers (Reaves, 2008; Reaves, 2015). Comparing CSOs nationwide, the U.S. Department of Justice reviewed the current state of CSOs for the 2011-2012 academic year. The report found that, compared with 2008, there was a 2 percent increase in the use of sworn officers and a 7 percent increase in the use of armed officers. Approximately 41 percent of CSOs were staffed by a combination of sworn officers and security officers (Reaves, 2015). While this report did not include 2-year colleges or colleges with less than 2,500 students, data provided was consistent with previous reports (the 2004-2005 academic year and the 1994-1995 academic year reports) that did include 2-year colleges (Reaves, 2008; Reaves, 2015).

The campus safety office's evolution into a more traditional police department model of

operation created conflict with the regulations pertaining to student rights. An area that presented an immediate issue was the handling of sexual assault incidents. Police departments are not obligated or encouraged to defer to the wishes of a victim in regard to the victim's privacy or the victim's desire to pursue an investigation and/or arrest of an alleged perpetrator. However, colleges are barred from taking the same approach that police departments take when handling sexual assault incidents. Colleges are required to take measures to maintain the victim's privacy. Colleges may not require a victim to report an assault to either law enforcement authorities or campus judiciary authorities (Campus Sexual Violence Elimination Act, 2013). Instead, colleges are required to institute a parallel process that combines portions of standard police practices with unique practices and policies designed to protect victims of sexual assault. These unique practices and policies conflict with students' civil rights.

### **The Current State of Campus Safety Issues**

Colleges and legislative bodies throughout the United States have been examining how best to balance campus safety with students' civil rights (Lighty & Dizikes, 2015; Mangan, 2015; Scalora, Simons & Vanslyke, 2010; Wilson, 2015). The culture of the campus influences student behavior and, as such, impacts and influences the policies and procedures designed to support campus safety (KatzJameson, 1998; Smith & Danley, 2007; Winerip, 2014). Gelpi observed that campus safety plans "must reconcile two conflicting interests- campus security and individual rights" (2011, p. 17). When security and individual rights are not balanced, lawsuits frequently occur alleging violations of civil rights (Gelpi, 2011; Lake, 1999; Lee, 2011; Stamatakos, 1990).

The unique goals of a college, the individualized culture of each college, and the system of shared governance that recognizes multiple viewpoints in certain decision-making processes,

combine to create a murky picture that makes it difficult to consider how best to balance campus safety concerns with students' civil rights. Yet now, more than ever, questions and cases regarding the civil rights of college students, are not being resolved at the campus, and are making their way into the court system.

Cases that involve a college's violation of students' civil rights affect a college on multiple levels. There is a cultural impact on the college when college procedures may directly conflict with the values and goals of the college. There is a financial impact on the college with attorneys' fees, settlement costs, remediation plans required by governmental agencies, and increased insurance rates. There is a public relations impact on the college in that publicity of these events may reach current students, future students, alumni, future employees and current employees, and leave a negative impression. There is a safety impact on the college in that the determination of how to balance college safety concerns with students' civil rights, has campus-wide implications.

### **Problem Statement**

A major problem community colleges face today is the difficulty of balancing the competing interests of campus safety concerns and students' civil rights. Conflict between campus safety concerns and students' civil rights has emerged in situations involving issues of due process, free speech, gun rights and privacy rights.

Until quite recently, issues involving students' civil rights had typically centered on a conflict between the policies and procedures of a campus, and the civil rights of a student or students. Examples of court cases in which a college was found to have violated a student's civil rights, include:

- A case in which a college was found to have violated a student's due process rights and made an unreasonable seizure when a student's dorm room was searched without consent (Gelpi, 2011).
- A case in which a college was found to have made a false arrest and maliciously prosecuted a student for disorderly conduct when the student's behavior did not meet the definition of disorderly conduct (Gelpi, 2011).
- A case in which college faculty have asked to delay to the implementation of campus carry law (GunFree UT, 2016).
- A case in which a warrantless search was found to violate a student's privacy rights (State v. Houvener, 2008).
- A case in which a college officer was found to have violated students' rights to peacefully demonstrate by pepper spraying students who were not creating any danger during a peaceful demonstration (ACLU, 2013).

As Campbell and Longo observed, "Campus safety efforts must temper security practices with civil rights and liberties of individual students" (2010, p. 309).

More recently, issues involving civil rights on a college campus have expanded beyond the conflicts that occur between a student and a college safety officer to include conflicts that involve the civil rights interests of campus visitors, faculty, and staff, as well as civil rights issues involving conflicts between the civil rights of an individual and the processes required by federal administrative agencies. Examples of these conflicts include:

- The due process requirements of notice and an opportunity for a full and fair hearing before an individual may be deprived of rights, are applicable to public colleges and universities and the procedures that they follow in student judiciary hearings (Gorman

v. University of Rhode Island, 1988; Sibley v. Colorado State Bd. of Agriculture, 1995). Those due process rights are now in conflict with the Department of Education's interpretation of Title IX (Weizel, 2012). As a result, colleges that have complied with Title IX have been found to violate the accused's due process rights (New, 2015).

- The civil rights of invited guest speakers who are unable to speak due to student protests (VOA News, 2017; Zamudio-Suarez, 2017).
- The protest by law professors concerning the conflict between the civil rights of free speech and due process, and the United States Department of Education's interpretation of Title IX (New, 2016).

The problem is further exacerbated by the quickly evolving theories and frameworks for the consideration of how to balance the civil rights of college students with the safety concerns of the college. Judge Taylor's comments from fifty years ago are still relevant today:

The academic community has been unique in having its own standards, rewards and punishments. Its members have been allowed to go about their business of teaching and learning largely free of outside interference. To compel such a community to recognize and enforce precisely the same standards and penalties that prevail in the broader social community, would serve neither the special needs and interests of the educational institutions, nor the ultimate advantages that society derives therefrom (Goldberg v. Regents of the University of California, 1967).

The evolving expectations, together with the surge in federal and state regulations, have created confusion and misunderstandings, directly contributing to violations of students' civil rights, and generating inconsistencies between the culture of the college and the efforts to

maintain a safe campus (Gelpi, 2011; Hopkins & Neff, 2014; Jaros, 2014; Wilson, 2015). Given the increased pressure on community colleges to provide for student safety, the community college must consider how best to balance campus safety with students' civil rights.

### **Significance of the Problem**

This problem of how to balance campus safety concerns and students' civil rights is especially significant for community colleges. Community colleges are created and supported by the government for the purpose of providing the community with affordable and accessible education along with employment training. As such, the community college is a quasi-governmental entity. The quasi-governmental model was first recognized with public service corporations by Osborne and Gaebler (1992). The quasi-governmental model was applied to higher education institutions by Greer and Klein, who noted that "applying this concept to public higher education might sound like a new idea, but institutions based on this model already exist... They are publicly owned organizations that are independently governed by their own boards of trustees" (2010). The quasi-governmental status of the community college determines the scrutiny a court should apply when reviewing actions taken by the college, and the degree of discretion recognized as appropriate for a community college. Courts have long recognized that a student's interest in education is a right rather than a privilege (Dixon v. Alabama State Board of Education, 1961; Hamilton v. Regents of California, 1934). As such, it is critically important to consider and balance the tension between campus safety and students' civil rights (Kaplin, 1983).

- ***Due Process & the Community College***

Due process rights are those rights that are guaranteed by the 14<sup>th</sup> Amendment to the United States Constitution, which states:



No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S. Const. amend XIV).

Public colleges are considered state actors and, as such, are responsible for complying with the requirements of the 14<sup>th</sup> Amendment (Goss v. Lopez, 1975; Gorman v. University of Rhode Island, 1988). To satisfy the requirements of requirements of due process, before depriving a student of a right, the college must provide “some kind of notice” and “some kind of hearing” (Goss v. Lopez, 1975, p. 579).

Community colleges, like all colleges and universities, struggle to balance the civil rights of students with campus safety and order goals. In an effort to resolve issues in an expeditious manner, community colleges may violate students' due process rights by barring students from campus without first providing them adequate notice and process. Example of this type of violation include:

- A student being placed on disciplinary probation at St. Louis Community College for sending emails to classmates advising them that he would be leaving his science class and enrolling in a science class at another college due to his displeasure with the science professor (Foundation for Individual Rights in Education, 2008).
  - An incident at Asnuntuck Community College during which a student was banned from campus with the option of voluntarily withdrawing from college or agreeing to a hearing at which there would be “no technical rules of evidence” (Foundation for Individual Rights in Education, 2014).
- ***Free Speech and the Community College***

The civil right to free speech is recognized in the First Amendment to the United States Constitution, which states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (U.S. Const., First Amend, 1791)

As a quasi-governmental entity, a community college has very little control over who may access the campus. A public space is legally recognized as that which is open to everyone without requirement of invitation or payment (Mitchell, 1995). Public spaces are recognized to generally be areas of constitutional protection for peaceful protests (Shuttlesworth v. Birmingham, 1969; Thornhill v. Alabama, 1940). Examples of the violation of student free speech rights include:

- A student at a Los Angeles Community College was not permitted to distribute copies of the United States Constitution on campus because he was outside of the designated “free speech zone” (Watanabe, 2017).
- The Peralta Community College District was not permitted to institute “free speech zones” that would effectively limit free speech to specifically designated areas on campus (Chen, 2017).

- ***Gun Rights & the Community College***

The civil right to bear arms is recognized through the Second Amendment to the United States Constitution, which states: “a well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed” (U.S. Const., 1788). The application of second amendment rights for personal (versus militia) purposes was addressed on a state by state basis until the 2008 United States Supreme Court decision in

District of Columbia v. Heller. In *District of Columbia v. Heller* the court held that the Second Amendment right to bear arms cannot be subject to an interest-balancing analysis and, as such, a ban on the possession of handguns in private homes was a violation of the Second Amendment (*District of Columbia v. Heller*, 2008). The court held that while the constitutional right to bear arms is not unlimited, a total prohibition of that right is unconstitutional (*District of Columbia v. Heller*, 2008). The Heller decision firmly established the right to possess guns in a private home. The Court's recognition of the right to possess guns was qualified. As the court noted: "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings" (*District of Columbia v. Heller*, 2008, p. 2817).

The Heller decision created an opportunity to expand gun rights in public places. Following Heller, legislators in Texas proposed and passed a statute requiring public colleges to permit individuals who are licensed to carry concealed weapons to carry concealed weapons while on campus (Martinez, 2016; S.B. 11, 2015). At this time, no other state has followed Texas' approach to guns on college campuses, and the right to carry guns in a public space continues to be regulated at the state level with regulations varying from state to state (Armed Campuses, n.d.).

Student civil rights issues connected to the Second Amendment have focused on free speech rights. Recent civil rights issues have included:

- A student who wanted to post a sign in support of gun rights successfully argued that the college procedures required for approval of posting signs violated her free speech rights (Foundation for Individual Rights in Education, 2016).

- A student group has protested the faculty right to declare their offices “gun free zones” (Flaherty, 2016).

Future court decisions, that consider the application of *Heller* to a public college campus, will likely focus on two arguments. Student will likely argue that the rights that are applicable to a home are applicable to a dormitory. Public colleges will likely argue that the campus is a public governmental space and, as such, campus buildings are government buildings that fall within the “sensitive places” exception recognized in the case of *District of Columbia v. Heller* (2008).

- ***Privacy Rights & the Community College***

Privacy is a civil right that is not explicitly stated in the Constitution, but rather has been inferred through interpretations of the Constitution and recognized and described in case law (*Bell v. Wolfish*, 1979; *Griswold v. Connecticut*, 1965; *Katz v. United States*, 1967; *Wisconsin v. Yoder*, 1972). Through those constitutional interpretations, courts have found that individuals have privacy rights that may not be violated by the government.

Community colleges share the concern of many colleges in how to balance the privacy rights of the student with the safety concerns of the college. This balance comes into play when a college has reason to believe that a student may pose a risk of danger to himself or others. Recent cases that concerned the balancing of campus safety concerns with students' civil right to privacy include:

- The 2007 mass shootings at Virginia Tech, in which a post-incident report noted that a “rich history” of well-documented information on the shooter's apparent mental health illness existed well before the incident occurred. Records and reports existed with the campus counseling center, faculty, student-initiated reports, and campus police. The report noted that the college's “confusion” regarding state and federal

privacy laws hampered the effective collection of the various pieces of information (Gardner, Wilgoren & Schneider, 2007).

- The 2011 shooting incident in which Jared Loughner, a former student at Pima Community College, shot and killed six people and injured 16 others. Loughner had been suspended from PCC on the basis of his disturbing, bizarre behavior and outbursts in class. The college had maintained detailed reports on his behavior, but due to a confused interpretation of privacy rights, had not shared that information with local law enforcement. Loughner had been informed that, in order to return to the college campus, he would have to provide a psychologist's letter certifying that he did not pose a danger to himself or others. The college did not attempt to have him involuntarily evaluated by a psychiatrist, an option under Arizona law (Anglen, 2011; Sulzberger & Gabriel, 2011).

The challenge of balancing campus safety concerns with students' civil rights, has been exacerbated by recent acts of violence, new and pending, federal regulations, efforts by state legislatures to create regulations that would define and regulate the responsibilities of the campus safety office, and students suing colleges for violations of civil rights (Lighty & Dizikes, 2015; Mangan, 2015). There is a clear need for guidance on how to balance campus safety concerns with students' civil rights. A model for balancing campus safety and students' civil rights would provide guidance for communicating expectations to college stakeholders, and managing incidents that occur on campus.

### **Statement of Purpose**

The purpose of this dissertation is to provide a model for considering how to balance campus safety interests with students' civil rights. This paper will discuss the application of the legal

doctrine of *stare decisis* as a basis for both an understanding the judiciary's interpretation of how to balance of campus safety interests with students' civil rights, and a reasonable prediction of how the courts may rule in future cases that concern conflicts between campus safety concerns and students' civil rights.

## **Theoretical Framework**

### **Students' Civil Rights**

The term "civil rights" has historically been applied to refer to the specific legal rights that were fully recognized in the 1960s to provide African-Americans, and other minorities, full access to the rights applicable to all citizens of the United States (Patterson, 2016). Currently, when considering the relationship between a student and a college, the term civil rights has been used to refer to those rights noted in the Bill of Rights (e.g., freedom of expression, freedom of assembly, freedom from unreasonable search and seizure, due process, etc.), rights against discrimination as noted in statute (e.g., ADA, Age Discrimination Act, etc.), and other rights recognized as applying to all citizen (e.g., privacy) (Campbell & Longo, 2010; Stamatakos, 1990). The United States Department of Education, Office of Civil Rights, investigates allegations of civil rights violations and, at all United States colleges and universities, enforces civil rights recognized in federal statutes (About OCR, 2015). Balancing campus safety with the civil rights' of students has been described as "complicated" (Campbell & Longo, 2010, p. 309).

### **Students' Civil Rights Recognized Through *Stare Decisis***

Court decisions are commonly referred to as case law. The impact and value of a particular case law is determined by how case laws that follow the particular case law refer to and respect the particular case law. The belief that the value of a case law is determined by how

cases that follow refer to that case, is called “*stare decisis*.” *Stare decisis* is Latin for: “to stand by things decided.” It establishes the principle of “precedent.” Precedent is a legal principle that obligates judges to honor and respect legal decisions previously made that involve similar facts or concepts. Thus, *stare decisis* provides a sense of predictability to the legal system. However, courts are not always inclined to follow precedent. New cases may contradict the holdings of previous cases for any number of reasons. The most common reasons may be: changes in cultural beliefs, changes in statutes, and disagreement with the reasoning and/or decision of the earlier case (Brenner & Spaeth, 1995; Garner & Black, 2004).

*Stare decisis* provides a structure for the review of court decisions involving the legal roles and responsibilities of a college in relation to the provision of safety services. *Stare decisis* may provide predictability and guidance to colleges grappling with how best to balance security with student rights. “Campus safety efforts must temper security practices with civil rights and liberties of individual students” (Campbell & Longo, 2010, p. 309). Twenty-five years have passed since Theodore Stamatakos traced the evolution of the concept of *in loco parentis*. More recently, Oren Griffin discussed various alternative theories that could be applied to the question of a college’s liability (2006). A review of current cases will provide a model of how to consider apparent conflicts between campus safety concerns and students’ civil rights. As Stamatakos noted, “a coherent model of this relationship is of critical importance for the adjudication of these claims” (1990, p. 471).

### **Research Question**

Given the increased pressure on community colleges to provide a safe campus while also recognizing students' civil rights:

1. What factors should be considered when determining how to balance campus safety concerns with students' civil rights?
2. What recommendations should be considered when determining how balance campus safety concerns with students' civil rights?

### **Definition of Terms**

#### ***Civil Rights:***

Civil rights are those rights that are memorialized in the first 10 Amendments to the United States Constitution, which are known as the "Bill of Rights," or recognized by United States Supreme Court case law. The Bill of Rights recognizes, among other rights, an individual's right to speech and assembly, the right to bear arms, and the right to due process (Campbell & Longo, 2010; Stamatakos, 1990).

#### ***Due Process:***

Due process rights are those rights that are guaranteed by the 14<sup>th</sup> amendment of the United States Constitution which states:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S. Const. amend XIV).



***Free Speech:***

The civil right to free speech is recognized in the First Amendment to the United States Constitution, which states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances (U.S. Const., First Amend, 1791)

***In Loco Parentis:***

“*In loco parentis*,” means “in the place of the parents.” The doctrine recognized that parents could assign an alternate parent to their child when they were not readily available and when the alternate person/s had responsibility for the child’s well-being and discipline (Blackstone, 1765).

***Precedence:***

Precedent is a legal principle that obligates judges to honor and respect previous legal decisions that involve similar facts or concepts, thus providing a sense of predictability (Brenner & Spaeth, 1995; Garner & Black, 2004).

***Privacy Rights:***

Privacy is a civil right that is not explicitly stated in the Constitution, but rather has been inferred through interpretations of the Constitution and recognized and described in case law (Bell v. Wolfish, 1979; Griswold v. Connecticut, 1965; Katz v. United States, 1967; Wisconsin v. Yoder, 1972). The right of privacy is a fundamental personal right, emanating "from the totality of the constitutional scheme under which we live" (Griswold v. Connecticut, 1965, p. 494).

***Right to Bear Arms:***

The Second Amendment of the United States Constitution states: “A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed” (U.S. Const.).

***Stare Decisis:***

Stare decisis is Latin for “to stand by things decided” (Oyer, 2017). Stare decisis provides a structure for the review of a court decision, and an assessment of the impact of the decision.

**Summary**

The process of balancing campus safety interest and students' civil rights has become more complex as colleges recognize the evolving expectations of students, the public, and the institution itself. Colleges are also challenged to understand and enforce frequently changing governmental regulations and expectations. The difficulty of providing a safe campus while also recognizing students' civil rights has been exacerbated by recent acts of violence that have occurred on college campuses and which have created a sense of urgency for the development and implementation of safety procedures. In addition, certain non-violent incidents which have occurred on college campuses, and which have received national attention, have increased public interest, and governmental scrutiny, in the balancing of campus safety interests and students' civil rights. This research will consider the factors that influence the balance between campus safety concerns and students' civil rights.

## **Chapter Two: Methodology**

### **Introduction**

Chapter One provided the context and background for a current problem that community colleges face today: how to balance campus safety concerns with students' civil rights. The purpose of this dissertation is to provide a model for considering how to balance campus safety concerns with students' civil rights.

This chapter sets forth the process by which an appropriate research methodology was selected, and the application of the methodology to this research. Additionally, this chapter describes the purpose of an expert panel and the process employed to collect, summarize and consider the feedback provided by the expert panel.

### **Choice of Research Methodology**

Critical Interpretive Synthesis (CIS) is a research framework designed to support the research on a question that has not yet been addressed by extensive scholarly literature (Wilson et al. 2014). CIS has been described as "a fresh approach for tackling diverse and complex literature (Medcalf & McFerran, 2016, p. 23). Dixon-Woods et al noted that CIS provided a good fit to the "emergent and exploratory nature" of research questions that have not yet been addressed (2006, p. 3). CIS is an appropriate methodology for this research, in that diverse literature exists on this topic. Literature that was researched included scholarly research, legal research (recent federal and state statutes and regulations, recent federal and state case law, and administrative law, guidance and procedures), recent literature that explored the evolution and expectations of campus safety, and other sources of information that would be described as "grey literature." The term "grey literature" refers to the literature that does not meet the requirements of scholarly publication (Keir, 2014). The research conducted for this paper explored, and

addressed the emergent issue of how to balance campus safety concerns with students' civil rights. The research culminates with a model for considering how to balance campus safety concerns with students' civil rights.

CIS is distinguished from traditional systematic reviews in two key respects: purpose and process. The purpose of a traditional systematic review is to “identify, appraise and synthesize all relevant studies” (Petticrew & Roberts, 2006, p. 9). Systematic reviews are designed to test theories (Dixon-Woods et al. 2006). The purpose of CIS is to develop a theory (Dixon-Woods et al. 2006; Wilson et al. 2014) and/or a concept (Medcalf & McFerran, 2016). The CIS framework establishes a method that allows researchers to “answer different kinds of questions, refine conclusions and act as a scoping exercise for conventional systematic reviews” (Hannes & Macaitis, 2012, p. 35).

The process of traditional systematic review begins with a “precise” and “focused” research question which is then researched with care to “adhere closely to a set of scientific methods that explicitly aim to limit systematic error (bias)” (Petticrew & Roberts, 2006, p. 9). The process of CIS also begins with a research question, but the question may be “tentative, fuzzy and contested.” The research process is “more organic” and the question may be modified “in response to search results and findings” (Dixon-Woods et al. 2006, p. 3; Wilson et al. 2014).

Another key difference between traditional systematic review and CIS is described as “translating” (Thomas & Harden, 2008). “Translating” is the term used for the process of recognizing, and considering, and relating concepts and or theories from one study to another, without requiring the concepts to be identical in vocabulary (Thomas & Harden, 2008). Thorne, Jensen, Kearney, Noblit, & Sandelowski recognized, that translating allows for:

integrations that are more than the sum of parts, in that they offer novel interpretations of

findings. These interpretations will not be found in any one research report but, rather, are inferences derived from taking all of the reports in a sample as a whole (2004, p. 1358).

For this topic, the process of translating will allow for the recognition of connections between findings that may use different vocabulary and for the integration of diverse findings. Connections will be made between legal resources, and non-legal resources, to provide a model for considering how to balance campus safety concerns with students' civil rights.

The CIS methodology provides a framework for the study of contemporary issues for which there is limited literature (Medcalf & McFerran, 2016). CIS is an appropriate choice of research methodology for this research in that the issue of how best to balance campus safety concerns with students' civil rights, has evolved with recent events of violence on college campuses, and recent regulations designed to address campus safety. The CIS methodology will allow for the inclusion of more diverse sources of information (Dixon-Woods et al. 2006; Medcalf & McFerran, 2016). The CIS methodology recognizes the process of translating and, as such, will serve the chief purpose of this research; the development of a useful framework for considering how best to balance campus safety concerns with students' civil rights.

### **The Application of Critical Interpretive Synthesis**

#### **Question Formulation**

The research question is: given the increased pressure on community colleges to provide for student safety, what theoretical models or approaches could provide guidance in the process of balancing campus safety concerns with students' civil rights? The CIS method has recognized the research question to be "a compass rather than an anchor" (Eakin & Mykhalovsky, 2003). The concept map below reflects both the research question, and the research sources, that were

used to address the question.



The research question, and research framework, were designed to provide an understanding of the factors that are considered when attempting to balance campus safety concerns with students' civil rights.

### **Literature Search and Review**

An organic approach was applied to develop a broad data base that addressed the matters noted in the research and review questions. "(CIS allows) a more organic process that fitted better with the emergent and exploratory nature of the review questions" (Dixon-Woods, et al, 2006, p.3). An exhaustive literature review was performed to identify published material that was relevant to the research. The published material was not limited by design criteria, or quality criteria (Wilson et al, 2014). Once the literature search and review was completed, a purposive sampling process was applied to identify relevant sources.

### **Identification of Relevant Literature**

The framework for relevant literature is defined by the research question (Petticrew & Roberts, 2006, p. 57). The research question focused on current factors that would be considered when balancing campus safety concerns with students' civil rights. The research process had three prongs: scholarly research, legal research and current events.

#### **Scholarly Research**

The question of how best to perform scholarly research on topics that explore the intersection of law and social, cultural, norms, has been explored at length by Richard Posner. Posner, a professor at University of Chicago Law School, is a recognized authority on the intersection of law with both social and business theories and practices. In 1986, Posner noted that law reviews were transitioning from student- edited journals focused on doctrinal analysis to faculty-edited journals focused on scholarly publication. In 2002, Posner re-visited the subject of law reviews as scholarly journals. Over the intervening 16 years Posner noted that the legal scholarship continued to become less internal (by lawyers, for lawyers) and more external (not directed at lawyers, but rather at academics). He specifically focused on constitutional law noting that “much constitutional scholarship today is external, directed not at judges and practitioners but at academics” (Posner, 2002, P. 1321). Scholarly research for this paper focused on law reviews and other peer reviewed journals.

Scholarly research focused on journals that addressed the civil rights of students on campus, and journals that focused on research techniques, campus safety concerns, college student mental health theories and practices, and other topics connected to the question of how best to balance students' civil rights with campus safety concerns.

- Peer reviewed journals that focused on the civil rights of students on campus included

both journals focused on higher education and law review journals. Journals focused on higher education that were consulted included: Campus Legal Advisor, Higher Education in Review, NASPA Journal, The Review of Higher Education, and others. Law review journals consulted included, among others, the Boston University Public Interest Law Journal, Indiana Law Journal, and the Michigan Journal of Gender and Law.

- Peer reviewed journals that focused on research techniques, campus safety concerns, student mental health theory and practice included, among others: Change: The Magazine of Higher Learning, College Student Journal, and the Journal of Evolution in Clinical Qualitative Research.

### **Legal Research**

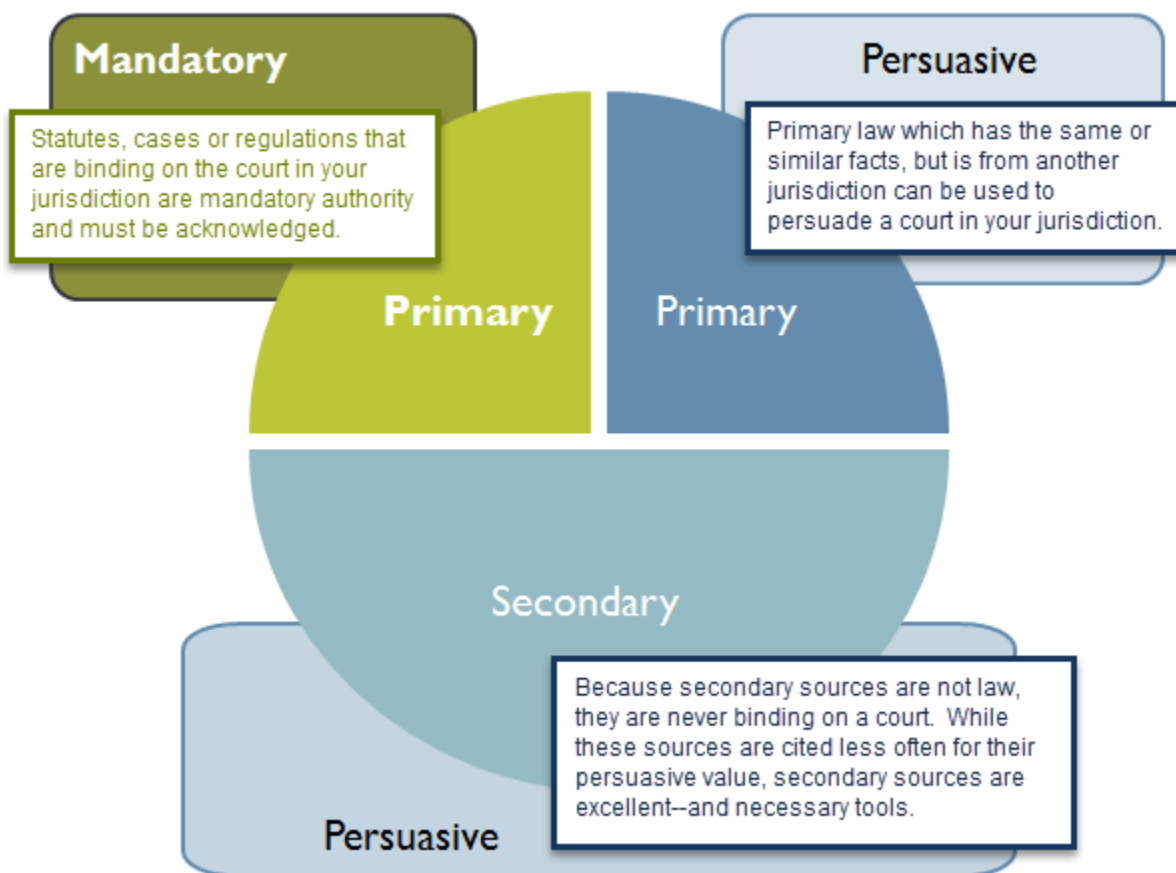
Legal research focused on primary, mandatory, legal sources (e.g., legislation and case law). Primary sources of law are sources that come from governmental bodies and, as such, carry the force of law (Introduction to legal authorities, 2016). Mandatory legal sources are those sources that are binding upon others (Introduction to legal authorities, 2016). A source may be primary but not binding in that the issuing authority does not have jurisdiction over the person in question (e.g. a Texas court decision interpreting federal law is not binding upon Pennsylvania). Primary sources that are not binding, may nevertheless be “persuasive” (Introduction to legal authorities, 2016).

Secondary legal sources were also considered. Secondary sources included reports, white papers and other literature that are not case law, statute, or regulation. Examples of secondary sources include legal encyclopedias, treatises, restatements of law, and regulatory guidance papers (e.g., Dear Colleague letters from the U.S. Department of Education) (Introduction to



legal authorities, 2016). The weight accorded a secondary source varies and is determined by a number of factors including the author, references, and primary sources available on the topic.

The organization and prioritization of legal sources is illustrated by the images below.

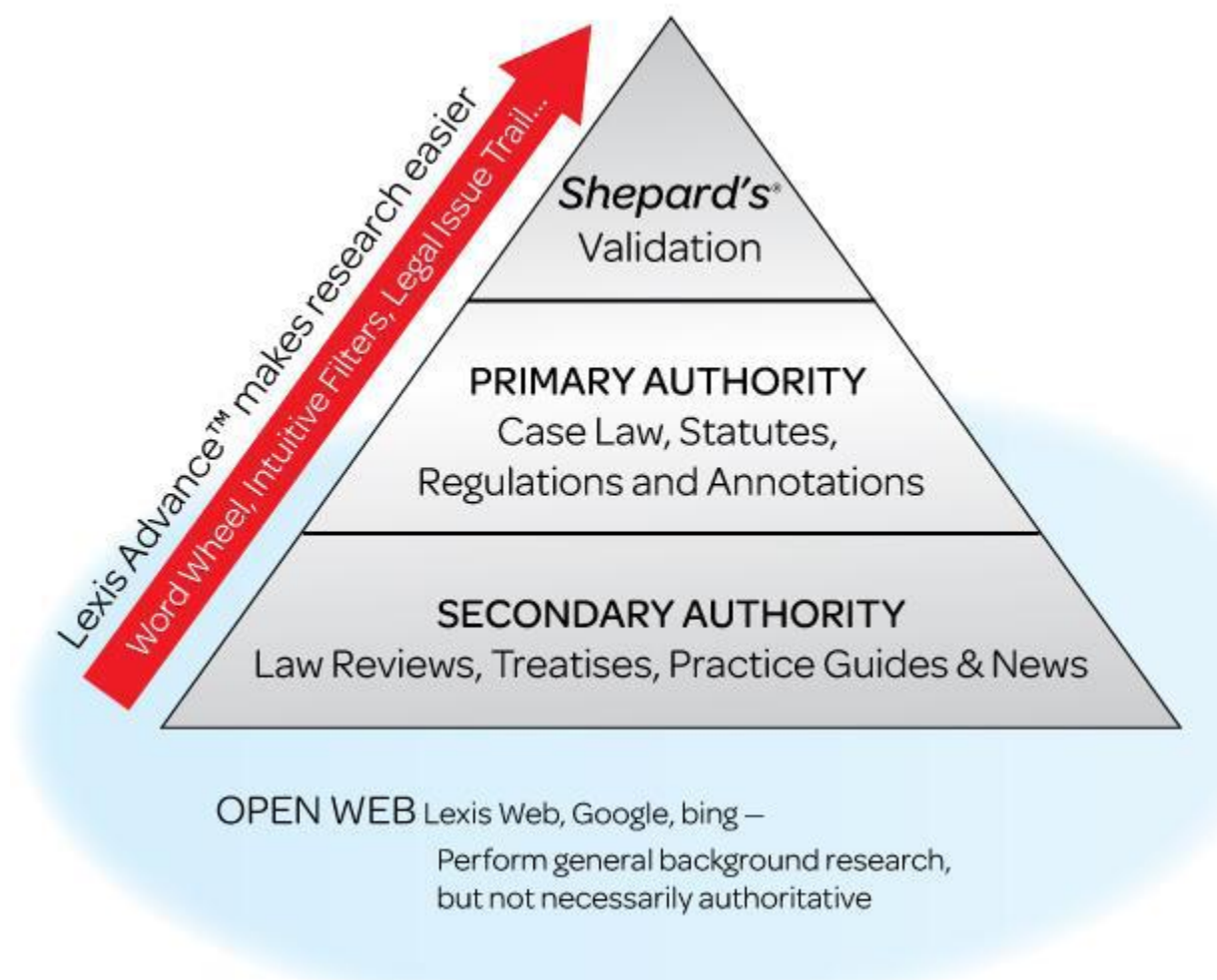


(Mandatory & persuasive authority: A diagram, 2016)

- ***Appraisal of Quality***

The “pyramid” process was applied to the analysis of the legal research. The pyramid process is a three step process that begins with a review of secondary sources to establish a foundation of understanding. Secondary sources are the base of the pyramid. Through the secondary resources, research terms, legal concepts and theories, and statutory references, the research led to primary resources. Primary resources are the second level of the pyramid.

Primary resources include case law, statutes, and regulations. Once primary resources were identified, those resources were shepardized. The process of shepardizing reviews the history of the particular legal source from its time of publication to the present day. Through the process of shepardizing, it was determined whether the source in question was recognized to be currently valid (in whole or in part), and the current weight, or value, of the source in question. The process of shepardizing is the pinnacle of the pyramid.

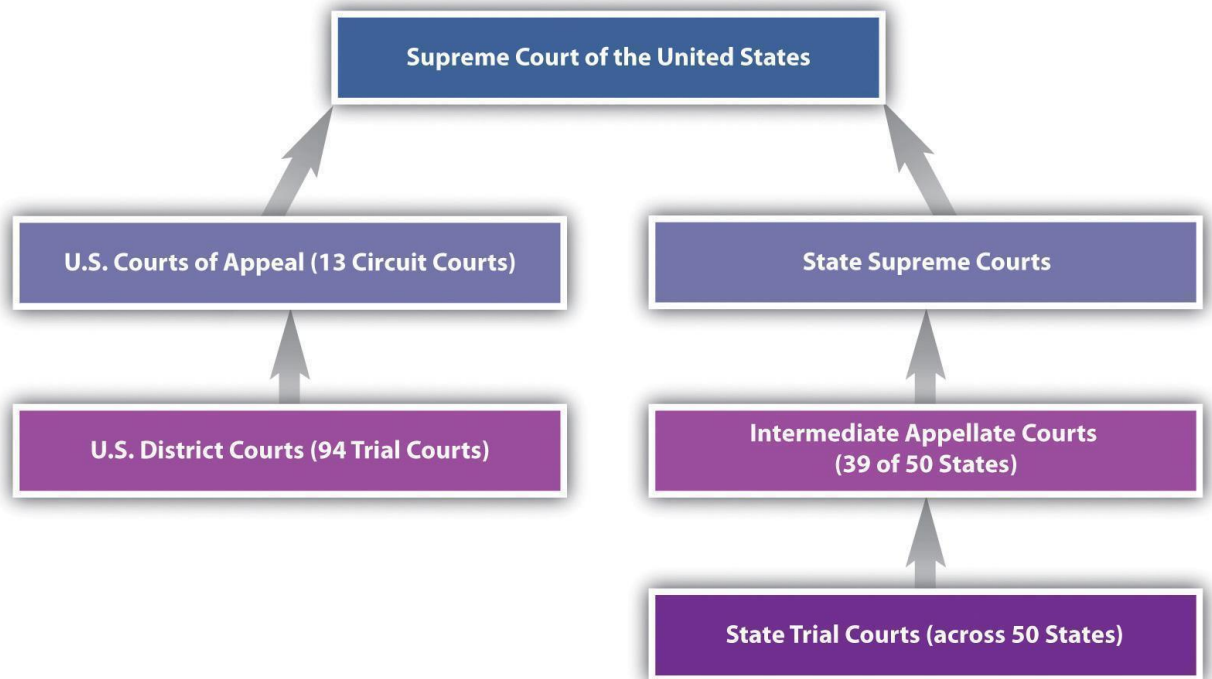


(How to do legal research, n.d.)

Relevant cases, statutes, and regulations were grouped in order of jurisdictional weight.

As such, for case law, Supreme Court decisions held the most weight, followed by federal court

decisions and state court decisions. Likewise, federal statutes and regulations were recognized as more relevant than state statutes and regulations.



(State & federal court systems, n.d.)

The research focused on four specific civil rights: due process, free speech, gun rights, and privacy. Distinct nomenclature was utilized in the search process. Thorough research required multiple searches and the utilization of Boolean operators to ensure that all relevant literature was captured.

The literature search for relevant and current legal and regulatory requirements utilized two search engines Westlaw, and Google Scholar. Westlaw is an online legal research service that provides primary case law, statutes, administrative law and other legal research resources. Google Scholar includes a legal research function that allows for searches by key words,

searches by specific court systems, and shepardization by topic, by court, and/or by date. Google Scholar also provides connections with secondary resources.

- ***Inclusion and Exclusion Criteria***

Legal research was limited to sources that focused on campus safety requirements, and sources that examined the civil rights of college students in relation to the college. Cases and statutes were included if they pertained to the rules and regulations of public colleges that may impact a student's civil rights. Cases that pertained to private colleges were excluded. Cases that pertained to personal (as opposed to public) safety (e.g. regarding students who are a danger to themselves), were excluded. Cases that did not directly pertain to the civil rights of public college students, were excluded.

- ***Case Law Research Process***

A court decision (also known as case law) that is mandatory, must be followed by other courts (Introduction to legal authorities, 2016). Mandatory case law is more influential than non-mandatory case law. The analysis of whether a court decision is mandatory considers the relation of the court that issued the decision to the court that is considering whether to follow the decision, as well as the similarity of facts between the decided case and the case currently before a court. Case law from the United States Supreme Court is mandatory upon all other courts that subsequently consider the same issue. Case law from any of the United States Courts of Appeal is mandatory upon all courts within the particular circuit of the specific court of appeal, that subsequently consider the same issue. Case law from a particular state Supreme Court is mandatory upon all courts within that state that subsequently consider the same issue. Court decisions that are not mandatory may still be influential if they are "persuasive." A court decision is persuasive upon another court if the decision considers questions that have not been

considered by courts that are mandatory, or if it has some relation to the jurisdiction of the considering court (e.g. within in the same circuit) (Candler, n.d.).

Legal research began with a review of United States Supreme Court decisions that discussed, or established, the civil rights legal doctrine that would apply to an analysis of the relationship between college safety considerations and the civil rights of college students. A second search was conducted to identify Federal Appellate court decisions that discussed, or established, the civil rights legal doctrine that would apply to an analysis of the relationship between college safety considerations and the civil rights of college students. A third search was conducted to review state court decisions that were cited as authoritative in a United States Supreme Court decision that discussed, or established, the civil rights legal doctrine that would apply to an analysis of the relationship between college safety considerations and the civil rights of college students.

A record of every search was maintained, noting the specific query terms, the number of results, and the specific information of each result. Each result is noted in the table "Case Law Search Method."

Case Law Search Method			
Court	Search Terms	Results	Exclusions
U.S. Supreme Court	"Civil Rights" and "college" or "university"	3,420	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Supreme Court	"Civil Rights" and "college" or "university" + "free speech"	1,370	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Supreme Court	"Civil Rights" and "college" or "university" + "safety"	1,200	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Supreme Court	"Civil Rights" and "college" or "university" + "community college"	76	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Courts of Appeals	"Civil Rights" and "college" or "university"	3,420	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Courts of Appeals	"Civil Rights" and "college" or "university" + "free speech"	1,370	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Courts of Appeals	"Civil Rights" and "college" or "university" + "safety"	1,200	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. Courts of Appeals	"Civil Rights" and "college" or "university" + "community college"	76	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. District Courts	"Civil Rights" and "college" or "university"	3,420	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. District Courts	"Civil Rights" and "college" or "university" + "free speech"	1,370	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. District Courts	"Civil Rights" and "college" or "university" + "safety"	1,200	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)
U.S. District Courts	"Civil Rights" and "college" or "university" + "community college"	76	Employment Cases (7) Not Concerning Education (42) Not Concerning Safety (19)

Following each of the three searches, identified cases were shepardized. "Shepardizing" is the process by which the history of a court opinion, the number of times that it has been referenced by other courts from its time of publication to the present day, is reviewed to

determine if the case law in question is recognized and respected by other courts. The shepardizing process also reveals the state of the opinion in question (e.g. was it appealed, affirmed, overruled). The process of shepardizing provides a review of a particular case's weight and value by reflecting the number of times the case has been cited in other cases. The number of citations attributed to a case reflects that case's precedence. Precedent is a legal principle that obligates judges to honor and respect previous legal decisions that involve similar facts or concepts, thus providing a sense of predictability (Brenner & Spaeth, 1995; Garner & Black, 2004). When courts refer back to previous case decisions, they are applying the theory of *stare decisis*. *Stare decisis* is Latin for "to stand by things decided" (Oyer, 2017). *Stare decisis* provides a structure for the review of a court decision, and an assessment of the impact of the decision.

The "Civil Rights Controlling Case Law" table notes all cases reviewed. The table identifies the court that heard the case. The year that the court's decision was published, the number of other cases that referenced the opinion ("citation weight"), as determined by shepardizing, and the legal concept of the court's decision. The identification of the court that heard the case reflects whether the case law is "mandatory."

The "Civil Rights Controlling Case Law" table reflects the relevant case law retrieved and analyzed for this paper. The table arranges case law in order of influence, beginning with United States Supreme Court case law. Within each court level (e.g. United States Supreme Court, United States Court of Appeals, state courts), the case laws are noted in historical order to reflect the evolution of the courts' approach to the issues surrounding the balance of campus safety concerns with students' civil rights.

Civil Rights Controlling Case Law				
Case Name	Court	Year	Notes	Number of References
Hamilton v. Regents of University of California	U.S. Supreme Court	1934	Education is a right not a privilege	1,716
Thornhill v. Alabama	U.S. Supreme Court	1940	Community college is a public place	6,636
Griswold v. Conn.	U.S. Supreme Court	1965	Privacy rights recognized	30,038
Katz v. United States	U.S. Supreme Court	1967	Privacy is a civil right	24,700
Tinker v. Des Moines Independent Community School Dist.	U.S. Supreme Court	1969	Precedence for requirement that an infringement of civil rights requires more than a generalized fear of disorder. Student wearing a black armband suspended from school.	13,313
Shuttlesworth v. Birmingham	U.S. Supreme Court	1969	Public spaces protected for peaceful protests	2,496
Healy v. James	U.S. Supreme Court	1972	Denial of recognition (of a student group) is a form of restraint of civil rights that requires a reasonable justification. The school bears a "heavy burden" to justify.	2,545
Wisconsin v. Yoder	U.S. Supreme Court	1972	Privacy is a civil right	15,454
Goss v. Lopez	U.S. Supreme Court	1975	Public colleges required to provide Due Process	8,170
University of California Regents v. Bakky	U.S. Supreme Court	1978	U. S. Supreme Court cites Goldberg case	15,219
Bell v. Wolfish	U.S. Supreme Court	1979	Privacy rights recognized	14,025
Hazelwood School Dist. v. Cuhlmeier	U.S. Supreme Court	1988	Freedom of expression	4,845
Ward v. Rock Against Racism	U.S. Supreme Court	1989	Fighting words not protected by freedom of speech	5,774
RAV v. City of St. Paul	U.S. Supreme Court	1992	Fighting words not protected by freedom of speech	8,025
District of Columbia v. Heller	U.S. Supreme Court	2008	Interpretation of 2nd Amendment expanded to cover personal protection rights	5,239
Hill v. Colorado	U.S. Supreme Court	2000	Limits on freedom of speech	2,505
McDonald v. City of Chicago	U.S. Supreme Court	2010	Federal government may not limit gun rights	3,234
Dixon v. Alabama State Board of Education	U.S. Court of Appeals	1961	<i>in loco parentis</i> limited	2,037
Knight v. State Board of Education	U.S. Court of Appeals	1961	<i>in loco parentis</i> no longer recognized	257
Burnside v. Byars	U.S. Court of Appeals	1966	Tinker before Tinker. Students wearing "freedom" buttons	1,410
Buttony v. Smiley	U.S. Court of Appeals	1968	<i>in loco parentis</i> not followed	308
Gay Lib v. University of Missouri	U.S. Court of Appeals	1977	Free speech rights	356
Bradshaw v. Rawlings	U.S. Court of Appeals	1979	<i>in loco parentis</i> not followed	418
Gay Student Services v. Texas A&M University	U.S. Court of Appeals	1984	Free speech rights	239
Bell v. Little Axe Independent School Dist.	U.S. Court of Appeals	1985	Religious meetings- establishment claus	206
Franklin v. Leeland Stanford Junior University	U.S. Court of Appeals	1985	Safety concerns balanced with free expression	61
Student Services for Lesbians/Gays v. Texas Tech University	U.S. Court of Appeals	1986	Students' free speech rights	24
Gorman v. University of Rhode Island	U.S. Court of Appeals	1988	Due Process rights for college students	273
Doe v. University of Michigan	U.S. Court of Appeals	1989	Overbroad speech code	1,123
UWM Post v. Board of Regents of U. of Wisconsin	U.S. Court of Appeals	1991	Overbroad speech code	601
Siblerud v. Colorado State Bd. of Agriculture	U.S. Court of Appeals	1995	Due Process requires notice and hearing	23
Chaudhuri v. State of Tenn.	U.S. Court of Appeals	1997	Not applicable- prayers at graduation	152
Saxe v. State College Area School Dist.	U.S. Court of Appeals	2001	Highschool case that applies to colleges	679
Comfort v. Lynn School Committee	U.S. Court of Appeals	2004	High School desegregation	223
Hudson v. Craven	U.S. Court of Appeals	2005	Reasonable and limited safety concern	66
Wisniewski v. Weedsport Cent. School Dist.	U.S. Court of Appeals	2007	Communication suggesting violence (teacher should die) not protected	426
Dejohn v. Temple University	U.S. Court of Appeals	2008	Overbroad speech code	172
State v. Houvener	U.S. Court of Appeals	2008	Warrant list search violates student privacy	9
Lopez v. Candaele	U.S. Court of Appeals	2010	Overbroad speech code	100
Dariano v. Morgan Hill Unified School Dist.	U.S. Court of Appeals	2014	Clothing choices as freedom of speech	27
Keefe v. Adams	U.S. Court of Appeals	2014	Due Process requires notice and hearing	6
Goldberg v. Regents of the University of California	California State Court	1967	<i>in loco parentis</i> conflicts with Due Process	404
Tarasoff v. Regents of University of California	California State Court	1976	Privacy rights limited when safety involved	5,635
Doe v. University of Southern California	California State Court	2016	Due Process rights	8



## **Current Events Research**

The second prong of the research was the process of researching current events that have influenced college safety concerns in relation to students' civil rights. Current events research was performed by reviewing periodicals that focus on higher education. Those periodicals included, amongst others, The Chronicle of Higher Education, Inside Higher Ed, and Community College Daily. News sources that are not limited to higher education matters were also researched. Those resources included The Atlantic, The New York Times, The Philadelphia Inquirer, Newsweek magazine and others.

- ***Appraisal of Quality***

The quality of the article was appraised on the basis of the author, the publication, and the factual nature of the information provided. The author was evaluated on both the number of articles published by the author, and the subject matter specialization of the author. The publication source was evaluated on reputation of the publication, the history of publication and the circulation of publication. The factual nature of the publication was evaluated on the basis of the article's primary purpose (educate, inform or persuade), and the quality of the factual information presented.

- ***Inclusion and Exclusion Criteria***

Articles and other literature that provide current information focused on the current balance of public college safety concerns with the civil rights' of students, were included. To ensure currency of information, articles that predated 2000 were excluded.

## **Combining Legal Research and Current Events Research**

The Critical Interpretive Synthesis (CIS) methodology allowed for the inclusion of more

diverse sources information (Dixon-Woods et al. 2006; Medcalf & McFerran, 2016). The (CIS) methodology recognized the process of “translating.” “Translating” is the term used to describe the process of recognizing, considering, and relating concepts or theories from one study to another, without requiring the concepts to be identical in vocabulary (Thomas & Harden, 2008). Through translating, the terms applied during the legal research process could connect to non-identical terms used for the research of current events articles. The legal research informed the current events research. Through the translating process, connections between the two research prongs emerged, despite the prongs not having the exact same terminology. Examples of translating applied in the research process include the legal term “the right to bear arms” translating to “campus carry,” and the legal term “freedom of speech” translating to “student protests.”

### **Synthesis of Literature**

As Dixon-Woods et al recognized, when performing a critical interpretive synthesis there is a “value of deferring judgments of credibility and contribution until the synthesis” (Dixon-Woods et al, 2006, p. 4). The literature review identified and appraised appropriate literature. Literature was then organized by theme and assessed for “translatability.” Translating allowed for the application of concepts and theories from one source to another source, without the sources sharing identical vocabulary (Thomas & Harden, 2008). The process allowed for the integration of legal research findings, with the factors and trends observed in current events, that will influence future legal findings. The integration of those distinct (yet connected and overlapping) areas of research, provided a useful framework for developing a model of consideration to apply when attempting to balance campus safety concerns with and students’ civil rights.

### Expert Panel Review

The University of Maryland University College (UMUC) doctoral program requires students to solicit the opinions of others who have an expertise in the content of the dissertation. The author identified and contacted individuals with an expertise in the balancing of the civil rights of college students, with campus safety concerns. Three experts participated in the process of providing feedback on chapter one of this dissertation. Table 1 documents the qualifications of the experts.

Expert Panelists Qualifications		
Panelist	Position	Other Qualifications
Panelist A	Senior Vice President of Legal and Public Advocacy at nationally recognized college student civil rights think tank	Author of numerous publications on the civil rights of college students, in-demand speaker on the topic of the civil rights of college students.
Panelist B	Director of Office of Student Conduct at college that has grappled with the civil rights of students	Previously worked as a social worker, and Assistant District Attorney. Serves as a board member for a charter school that houses a college program.
Panelist C	First Title IX Coordinator at University of Virginia; a position that was created in response to a nationally covered investigation of the processes and procedures applied to a Title IX investigation.	Previously served as an Assistant District Attorney, Assistant Public Defender, and governor appointed safe schools advocate.

Table 1. Expert Panelists Qualifications.

The UMUC DMCCPA program uses a standard form for collecting feedback from identified experts. Experts evaluated the chapter on the basis of nine criteria: accuracy and

completion of the problem description, significance of the problem in the community college environment, adequacy of evidence supporting the problem statement, relevance of management and learning theories to the research issues, completeness of the theoretical background, scope and focus of research questions, organization, quality of writing, adequacy of the list of major references and scholarly works. For each criteria, the experts assigned a score on a scale of one (poor) to five (excellent), and were invited to provide additional feedback (e.g., referrals to other experts, recommended resources, etc.). Chapter four will include information on how the experts' feedback was incorporated in the dissertation.

### **Summary**

This dissertation is a critical interpretive synthesis of scholarly, legal, and grey literature research that addresses the tension between campus safety concerns and students' civil rights to identify key factors and theories to consider when attempting to balance campus safety concerns with students' civil rights.

## **Chapter Three: Literature Review**

### **Introduction**

This chapter presents the conceptual model for identifying, and addressing, factors to consider when determining how best to balance campus safety concerns with students civil rights. The conceptual model directed the research for this study. Research performed included both legal and current events research. The research was conducted with the application of a Critical Interpretive Synthesis (CSI) model. CIS provided a framework for exploring both the historical context for the recognition of students' civil rights, and the present context, which has been, and continues to be, shaped by current events. Current events research was performed to both broaden the foundation of knowledge of factors considered, and theories applied, to the analysis of how to balance campus safety concerns with the civil rights of students, and to widen the research to include diverse literature that would provide an opportunity for "translating."

"Translating" is the term used for the process of connecting concepts or theories from different sources that may not employ identical vocabulary (Thomas & Harden, 2008). Thorne, Jensen, Kearney, Noblit, & Sandelowski described the value of translating in its ability to allow "integrations that are more than the sum of parts, in that they offer novel interpretations of findings (2004, p.1358). Research performed allowed for the "translating" of legal concepts and doctrines to current events on college campuses.

The conceptual model, together with the research, will inform the development of a discussion guide designed to assist colleges in the consideration of how to balance campus safety concerns with students' civil rights. The literature review began with legal research. The legal research was focused on primary, and secondary, legal resources. Primary resources are United States Supreme Court decisions, federal appellate court decisions, federal statutes and federal

regulations. The primary legal research was conducted through a series of searches designed to identify cases that discussed the impact of campus safety concerns on students' civil rights.

Secondary legal resources included law review articles, treatises, white papers, and seminal state court decisions. The value of each case was assessed by application of the doctrine of stare decisis, and by the shepardization process.

Following the review of legal sources, a review of current events was conducted. The review of current events applied the same search criteria terms that were employed in the legal research phase of the review, thus ensuring that the research was current and accounted for the lag in time that occurs between the recognition of legal issues and the publication of court decisions that address those issues.

This presentation of the literature review is organized with a brief discussion of the historical development of the recognition of the civil rights of college students. This is followed by a review of individual civil rights, presented in alphabetical order (e.g. due process, free speech, gun rights and privacy), that are in tension with campus safety concerns. The review of individual civil rights is followed by a discussion on college responsibilities, and concludes with a discussion of the tensions between students' civil rights and college safety concerns. The review ends with a discussion of the conceptual model as a whole, and each of the eight factors of the conceptual model individually.

### **Students' Civil Rights: An Evolving Interpretation**

Civil rights are those rights that are memorialized in the first 10 Amendments to the United States Constitution, which are known as the "Bill of Rights." The Bill of Rights recognizes, among other rights, an individual's right to speech and assembly, the right to bear arms, and the right to due process. Although a right to privacy is not explicitly stated, it has been

inferred through interpretations of the Constitution, and recognized and described in case law (Bell v. Wolfish, 1979; Griswold v. Connecticut, 1965; Katz v. United States, 1967; Wisconsin v. Yoder, 1972). The right of privacy is a fundamental personal right, emanating "from the totality of the constitutional scheme under which we live" (Griswold v. Connecticut, 1965, p. 494). A civil right is an individual right that cannot be interfered with by a government (Mount, 2010). A public college is seen as an extension of the government and, as such, an individual has civil rights in their relationship with a public college (Goss v. Lopez, 1975). Although it is well-recognized now that colleges must recognize the civil rights of students, that recognition is a relatively recent development, and the understanding of how college safety concerns intersect with students' civil rights, continues to evolve.

Until the 1960s the relationship between a college and a student was modeled on the legal doctrine of "*in loco parentis*." "*Loco parentis*," Latin that translates to mean "in the place of the parents," envisioned the college as a parent (Lee, 2011). In accordance with *in loco parentis*, the college was not obliged to recognize students' civil rights. The doctrine was formally recognized, and followed, in the 1931 case of *Gott v. Berea College*. In that case, the court held that the concept of *in loco parentis* allowed colleges to determine and apply any regulation the college saw fit for the "betterment of the public" (p. 206). As such, it was permissible for the college to bar students from "forbidden places" (one of which was a local restaurant) and expel students who did not comply with the "forbidden places" regulation (*Gott v. Berea College*, 1913). The doctrine of *in loco parentis* envisioned the college as an alternate parent to the student a child who would benefit from a parental relationship model. As Lake described it,

Until relatively recently, the college/student relationship was considered to be as much, if not more of, a college/*parent* affair than a direct college/*student* relationship. In other

words, a parent sent a “child” off to college- entering into an agreement with the institution- and delegating certain supervisory and disciplinary powers in the process...The college stood *in loco parentis*. The power of *in loco parentis* lay in the immunity that a college received from courts regarding lawsuits by students who were disgruntled over regulation and discipline (1999, p. 4).

The powers afforded by the doctrine of *in loco parentis* were first seriously limited in the 1961 case of *Dixon v. Alabama*. That case concerned the appeal of a group of African American students who had been dismissed from Alabama State College for participating in a civil rights demonstration. The students argued that the college was acting as the state in violating their right to due process. The Court agreed and noted specific due process steps recommended for state colleges to follow in the event of a student expulsion (Lee, 2011).

In 1967 a California appellate court considered an appeal by a student who was dismissed from the University of California on the basis of conduct that had occurred during a demonstration that was deemed to be in violation of the university's policy on student conduct (*Goldberg v. Regents of the University of California*, 1967). Although the student did not prevail in his free speech appeal, the court did note that the doctrine of *in loco parentis* was no longer appropriate to apply to college students. The court noted,

in earlier decades *in loco parentis* had some superficial appeal because the vast majority of college students were below 18. Today, in contrast, there are more students between the ages of 30 and 35 in universities than there are those under 18 (p. 886).

Further recognition of college students as autonomous adults is evident in the court's discussion of education as a right. The court held that “attendance at publicly financed institutions of higher education should be regarded a benefit somewhat analogous to that of public employment”



(Goldberg v. Regents of the University of California, 1967, p. 877).

A year later, the United States District Court of Colorado also discarded the doctrine of *in loco parentis* in the case of *Buttny v. Smiley* (1968). Like Goldberg, the *Buttny* case was an appeal by a student who had been dismissed from a public university on the basis of behavior deemed to be a violation of the code of student conduct. In that case the court held “the doctrine of *in loco parentis* is no longer tenable in a university community...we do not subscribe to the notion that a citizen surrenders his civil rights upon enrollment as a student in a university” (*Buttny v. Smiley*, 1968, p. 286).

Following Goldberg, students were treated as any other adult with the protection of civil rights. *Goldberg v. Regents of the University of California* was a state appeal court decision. As such it would be binding on all state trial courts in California and potentially persuasive to other courts considering cases with factual similarities (Bintliff, 2001). The persuasive influence of the Goldberg decision is reflected in the number and diversity of courts that have cited Goldberg with approval. The Goldberg decision has been cited 407 times. Approximately 20 citations are in federal cases outside of California including one United States Supreme Court decision (*University of California Regents v. Bakke*, 1978). Goldberg provided a framework for considering the students' civil rights at a public college that recognized both students' rights and college concerns. The court's recognition of college concerns established a differentiation between the analysis applied to public spaces and the analysis applied to a public college. The court noted:

Broadly stated, the function of the University is to impart learning and to advance the boundaries of knowledge. This carries with it the administrative responsibility to control and regulate that conduct and behavior of the students which tends to impede, obstruct or

threaten the achievements of its educational goals. Thus, the University has the power to formulate and enforce rules of student conduct that are appropriate and necessary to the maintenance of order and propriety, considering the accepted norms of social behavior in the community, where such rules are reasonably necessary to further the University's educational goals. (p. 879).

Goldberg recognized the tension that exists between college safety concerns and students' civil rights. By distinguishing the public college from other public spaces, the court created a framework for balancing college safety interests and students' civil rights.

Following Goldberg, other cases addressed and defined the unique public space that a public college is recognized to inhabit. The 1969 seminal case of *Tinker v. Des Moines*, which addressed the balance of the safety concerns of a high school with the civil rights of a student, was cited in many cases that explored the civil rights of college students (e.g. *Franklin v. Leland Stanford Junior College*, 1985; *Healy v. James*, 1972; *Hudson v. Craven*, 2005). In *Hudson v. Craven* (a case involving a community college charged with violating freedom of expression), the court referenced the 1988 case of *Hazelwood v. Kuhlmeier* and noted,

Hazelwood arose in a high school and not a community college setting, but that does not change the fact that the decision of a public institution of higher education to avoid sanctioned political entanglements is a judgment that is best left to the institution (2005, p. 698).

This research focuses on the unique public space inhabited by public colleges, the safety concerns connected to that unique space, and the factors considered when balancing safety concerns with the civil rights of students. Fifty years have passed since *Goldberg v. Regents of the University of California* overturned the concept of *in loco parentis* (1967). Melear noted:

As a result of the combined influences of historical events, judicial interpretations, and governmental regulations the relationship between institutions of higher learning and their students has shifted from the theoretical perspective of *in loco parentis*, in which the university wielded strict control over the lives of students, to a consumer orientation (2003).

The consumer orientation conceptualizes the shift of relationship from student as a child, and college as a parent, to student as a consumer and the college as a provider (Saunders, 2014).

Arguably, the student has always been a consumer in that the student pays for education.

However, the concept of student as consumer has grown to “supplant alternate understandings of the relationship between the student and the institution (e.g. public/teacher, apprentice/master, child/parent, etc.)” (Saunders, 2014, p. 199). Identifying the factors to consider when determining how best to balance campus safety concerns, with students' civil rights; will help determine the appropriate relationship between the institution and the student. This research examines four civil rights: due process, free speech, gun rights, and privacy. Those civil rights were selected on the basis of the tension that exists between those civil rights and campus safety concerns.

### **Students' Due Process Rights**

- ***Students' Due Process Rights: First Denied, Then Recognized, Now in Question***

Public colleges are considered state actors and, as such, are required to maintain compliance with the constitution (Goss v. Lopez, 1975; Gorman v. University of Rhode Island, 1988). Due process rights are those rights that are guaranteed by the 14<sup>th</sup> amendment of the United States Constitution which states:

No state shall make or enforce any law which shall abridge the privileges or immunities

of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws (U.S. Const. amend XIV).

Historically, colleges did not recognize the due process rights of students. Requirements that a public college had to satisfy to comply with the 14<sup>th</sup> Amendment were recognized to be minimal (Henrick, 2013).

In 1988 a federal appellate court established the requirements that a college must meet to be compliant with the due process rights of students (*Gorman v. University of Rhode Island*, 1988). The court held as follows:

The fourteenth amendment to the United States Constitution provides that no state shall deprive any person of life, liberty, or property without due process of law. There is no doubt that due process is required when a decision of the state implicates an interest protected by the fourteenth amendment. It is also not questioned that a student's interest in pursuing an education is included within the fourteenth amendment's protection of liberty and property (p, 12).

The *Gorman* court referred to the United States Supreme Court decision in *Goss v. Lopez* (a case involving a high school student) and established that the requirements of *Goss* were transferable to public colleges (*Gorman v. University of Rhode Island*, 1988; *Goss v. Lopez*, 1975). As such, for public colleges to comply with the 14<sup>th</sup> Amendment, for matters in which a student may be deprived of their opportunity to complete their education, a college must provide “some kind of notice” and “some kind of hearing” (*Goss v. Lopez*, 1975, p. 579). Courts traditionally have held that college processes satisfy the requirements of due process when they provide both notice and hearing and also are not “arbitrary and capricious” (*Keefe v. Adams*, 2014; *Martinson v.*

Regents of the University of Michigan, 2014). Examples of acceptable due process sufficient for dismissal include: mid-semester grades with warnings and meetings with follow-up letters outlining findings and procedures (Keefe v. Adams, 2014; Martinson v. Regents of the University of Michigan, 2014).

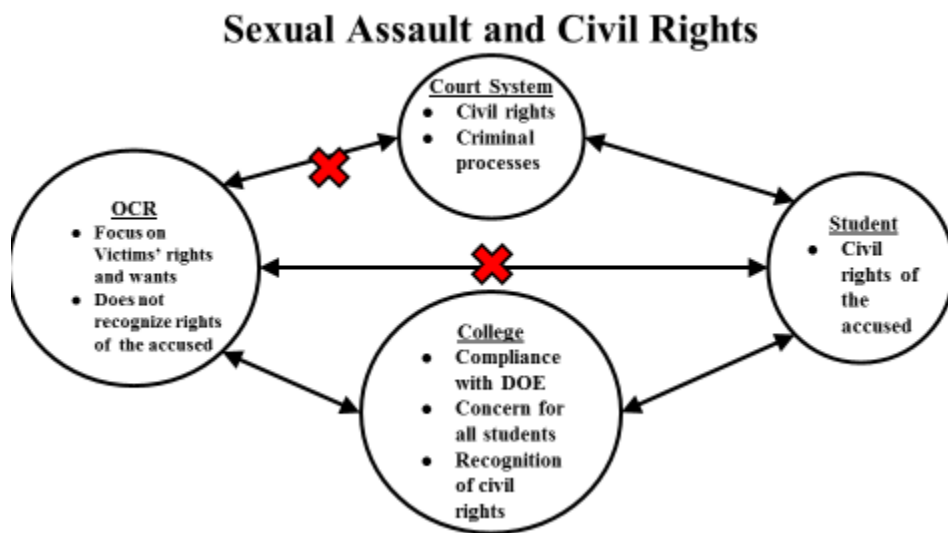
Following the *Goss v. Lopez* (1975) and *Gorman v. University of Rhode Island* (1988) decisions, colleges incorporated procedures designed to ensure compliance with students' due process rights. The due process rights of students did not come into question again until 1997 when the United States Department of Education's Office of Civil Rights published a guidance pamphlet entitled *Sexual Harassment Guidance* (U.S. Department of Education, 1997). U.S. Department of Education regulations regarding sexual harassment are an outgrowth of Title IX.

- ***Title IX: How Equality in Athletics Became Inequality in Due Process***

Title IX is a federal law that prohibits discrimination on the basis of sex in any federally funded education program. Until 1980 the Department of Health, Education and Welfare was responsible for the implementation of Title IX (Women's Sports Foundation, n.d.). In 1980 the Department of Education was formally created. The Department of Education was originally founded in 1867, but was immediately reduced to the Office of Education to calm fears that a federal department of education would "exercise too much control over local schools" (U. S. Department of Education, 2010, p. 1). The office of education was combined with a number of other offices to create the Department of Education (DOE) in 1980. The DOE was designed to increase federal commitment to, coordination of, and involvement in education, with a strong focus on access and administration. The U.S. Department of Education's Office of Civil Rights (OCR) is a sub-agency of the U.S. Department of Education that is focused on protecting civil rights in federally assisted education programs and prohibiting discrimination in those programs.

For educational institutions that receive federal funding, the OCR is the governmental agency charged with enforcement of civil rights and discrimination regulations and statutes. Colleges and universities receive federal funding in the form of federal financial aid and grants (OCR, 2016).

Recent changes in the interpretation of Title IX have created a shared jurisdiction between colleges and the federal government. The diagram “sexual assault and civil rights” provides a visual reference for the objectives of the four stakeholders involved in sexual assault cases and the relationships among those stakeholders.



In 1981 the OCR issued guidance regarding sexual harassment that was limited to employer employee relationships (Henrick, 2013). Since 1981, a number of publications issued by OCR have expanded the office's purview of sexual harassment incidents to include those in which a student would be a defendant. Until 1997, the OCR's scope of enforcement expanded, but with recognition of student due process rights (Henrick, 2013).

In 1997 the OCR published Sexual Harassment Guidance and a revised Pamphlet which

created potential conflicts with mandated college procedures and students' due process rights. In 2011 the OCR published a "dear colleague" letter (publication of a dear colleague letter is the procedure by which the OCR provides updates to educational institutions that receive federal funding) that created requirements directly conflicting with the due process rights of accused students (Creeley, 2013).

The Dear Colleague letter recognized the possibility that a sexual assault incident, subject to a college investigation, may also be subject to a criminal investigation. The letter stated, "...schools should not wait for the conclusion of a criminal investigation or criminal proceeding to begin their own Title IX investigation" (Dear Colleague Letter, 2011, p. 4). Additionally, the letter advised colleges to avoid using mediation to resolve sexual assault cases (Dear Colleague Letter, 2011). Since its publication, the letter has come under scrutiny on the question of whether it constitutes guidance or a new rule (New, 2016; Olson, 2015). The Department of Education has described the letter as guidance (Schow, 2015). A rule is different from guidance in two key respects: impact (a rule creates obligations) and procedure (a new regulatory rule must follow the procedures set forth under the Administrative Procedure Act (Administrative Procedure Act, 1946). The letter did not follow the requirements of the Administrative Procedure Act, which indicates that it serves as guidance. However, the letter seems to propose new rules, rather than guidance, when it states as follows:

When conducting Title IX enforcement activities, OCR seeks to obtain voluntary compliance from recipients. When a recipient does not come into compliance voluntarily, OCR may initiate proceedings to withdraw Federal funding by the Department or refer the case to the U.S. Department of Justice for litigation (Dear Colleague Letter, 2011).

The letter put college investigation procedures on a collision course with criminal court

proceedings, while simultaneously creating alternative proceedings analogous to criminal cases. Student due process rights that would be violated by a concurrent college investigation include, among other rights, the 5<sup>th</sup> Amendment right to not be forced to self-incriminate, and the application of a civil law burden of proof (*preponderance of evidence*) in a criminal law proceeding (Bartholet, et al., 2014).

Following the publication of the Dear Colleague letter, colleges attempted to satisfy the requirements of the OCR and found that they were violating the due process rights of the accused students (New, 2016). Compliance with the Dear Colleague letter required non-compliance with students' civil rights. In a single year, 10 court decisions were recorded in cases involving student allegations that their civil rights were violated during a Title IX proceeding. Since 2015, there have been approximately 10 cases in which students accused of sexual assault have successfully argued that their due process rights were violated (New, 2016). Circumstances that were found to be a violation of students civil rights included:

- A University of Southern California case in which the university failed to provide an accused student with any information regarding the factual charges against him (Doe v. University of Southern California, 2016).
- A University of California at San Diego case where a substantially different procedure was applied to the accused than that which was applied to the complainant effectively preventing the accused from having a fair hearing (New, 2016).
- A James Madison University case where an accused was not permitted to have a copy of the charges brought against him and was not provided with the date of an appeal board's meeting or permitted to appear before the appeal board (Doe v. George Mason University, 2016).



In each situation, the college was found to have violated the accused student's right to due process. Gary Pavela, Editor of the Association of Student Conduct Administration's Law and Policy Report, described the current situation as follows:

Colleges and universities are escalating and criminalizing the prosecution of sexual misconduct cases, while eliminating basic due process for the accused. Title IX does not require this approach and courts are unlikely to allow it. Silence on procedural fairness, however, sends the subliminal message that due process is an impediment to more 'convictions'. We're seeing the fruits of OCR's due process silence now. University sexual misconduct policies are losing legitimacy in the eyes of the courts...and OCR shares ample responsibility for it (New, 2016, p. 4).

At this time, it is difficult to predict how, or whether, the OCR, colleges, and the courts, will balance students' civil rights to due process with the procedural guidelines and requirements of the OCR. In May 2016, a group of law professors released an open letter to the United States Department of Justice to "protest a series of directives and enforcement actions by the U.S. Department of Education's Office for Civil Rights (OCR)" (Alexander et al., 2016). The letter was a direct plea to state and federal lawmakers, college administrators, and officials at the Department of Education, to clarify which directives issued by the OCR are to be considered guidance, and which directives are considered to be regulations. The letter stated:

Over the years, OCR has issued a succession of directives on the topic of campus sexual harassment. OCR characterizes these directives as "guidance" documents, which by definition consist of policy recommendations and suggested actions. Guidances do not constitute "administrative regulation," nor do they possess "the status of law." The majority of these directives did not undergo notice and comment procedures, which the

Administrative Procedure Act (APA) requires for all proposed regulations. But a cursory examination of these OCR documents reveals they frequently incorporate language such as “must,” “require,” and “obligation,” without citing any regulatory or statutory basis. . . . Several of these directives and enforcement actions have effectively nullified a landmark high court definition... thereby exerting a direct and deleterious effect on campus free speech and due process (p. 2).

At this time, colleges are struggling to balance students' civil rights and compliance with Title IX. Colleges are struggling not only with the confusion created by inconsistent legal standards, but also with a sharp increase in the number of OCR investigations. Prior to the 2011 letter, for the 2010 year the OCR received 391 complaints of sexual discrimination. After the letter, in 2012, the complaints received by OCR concerning sexual discrimination had more than sextupled to 2,354 (Layton, 2015). The costs associated with the current interpretation of Title IX are impacting both the OCR and colleges. The Department of Education's 2016 budget request included a \$30.7 million increase requested to fund the hiring of 200 additional lawyers and investigators (Layton, 2015). Colleges are investing in the hiring of Title IX coordinators (June, 2014). Recently, the Task Force on Federal Regulation in Higher education recommended as follows:

Congress should ask the Government Accountability Office to review the Department of Education's methodology for estimating the burdens and costs that institutions will incur in meeting the requirements of regulations, as required by the Paperwork Reduction act, and make recommendations for improvement (Kirwin & Zeppus, 2015, p. 34).

Parents of college students are joining the effort to ensure that students accused of sexual assault receive the protections of due process. An organization known as FACE (Families Advocating

for Campus Equality) was founded in 2013. In the first five months of 2017, the organization received 80 case inquiries (FACE, n.d., Opelka, 2017).

Colleges are caught between two conflicting forces: the OCR with its ability to impact a college's federal funding and the United States Constitution. Public colleges that do not recognize and uphold the due process rights of students risk being sued by those students. But colleges risk losing their federal funding if they do not follow the regulations of OCR conflicting with students' due process rights.

### **Students' Free Speech Rights**

The *Goldberg v. Regents of the University of California* case was a seminal case for both establishing a recognition of students' civil rights, and for establishing an accepted limitation on the exercise of free speech rights (1967). In *Goldberg*, students claimed that the university violated their rights to free speech by regulating their speech. The speech in question was a loud public protest during which certain words were repeated that "interfered with the minimum standards of propriety" (*Goldberg v. Regents*, 1967, p. 878). The students' claims were analyzed in conjuncture with the place and purpose of the college. The court noted that the students were not disciplined for protesting, but rather for the form of the protest. The *Goldberg* court decision struck a balance between students' civil rights and college concerns. The *Goldberg* court recognized the civil rights of students, while also recognizing college concerns that could infringe upon those rights. The court found that a college's concern for "order and propriety" was sufficiently important to justify the infringement of students' rights to free expression. The court held that "the University has the power to formulate and enforce rules of student conduct that are appropriate and necessary to the maintenance of order and propriety" (p. 879).

The idea that free speech could be limited to conform to "minimum standards of

propriety,” was considered by the United States Supreme Court in the case of *Tinker v. Des Moines Independent School District* (1969). In the *Tinker* case students were suspended from school for wearing black arm bands to protest the government’s Viet Nam policy. The lower court had found the school district’s actions reasonable as the actions were based on a fear of disturbance. The Supreme Court held that “undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression” (*Tinker v. Des Moines School District*, 1969, p. 506). The court recognized that a school does have special purposes that differentiate it from other public spaces. The unique purposes of a school allow it, where certain factors exist, to curtail free speech. But, the court held, no such circumstances were present in the case. The court noted, “it can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (*Tinker v. Des Moines Independent School District*, 1969, p. 506).

Three years later, the United States Supreme Court continued to strengthen the recognition of students’ civil rights by refusing to accept generalized safety concerns as an acceptable explanation for infringing on students’ rights to free speech (*Healy v. James*, 1972). The case of *Healy v. James* involved a student group that was denied official status at Central Connecticut State College. Official status was required for a student group to announce activities through campus flyers and postings in the campus newspaper. The college President denied official status to the student group on the basis of the group’s reputation as a left-wing organization that was associated with violence on other college campuses. The President stated that the group “would be a disruptive influence at the college” (Shibley, 2012). The Court affirmed public college students’ First Amendment rights of free speech and association. The court did not follow the Goldberg framework of differentiating a public campus from public

space, but rather found that free speech rights apply equally to public spaces and public college campuses (Healy v. James, 1972). The court noted, “the critical line for First Amendment purposes must be drawn between advocacy, which is entitled to full protection, and action, which is not” (Healy v. James, 1972, p. 192). The concepts established in Healy continue to be cited in cases that question a college’s curtailment of students’ free speech rights (Gay Lib v. University of Missouri, 1977; Gay Student Services v. Texas A & M University, 1984; Student Services for Lesbians/Gays v. Texas Tech University, 1986).

- ***Students’ Free Speech Rights: Communicating or Preventing Communication?***

Colleges continue to attempt to balance campus safety concerns with students’ civil right to free speech. However, students’ exercising their free speech rights have shifted from focusing on their right to speak to focusing on their right to disrupt other speakers. Recent conflicts between campus safety concerns and free speech rights involve students disrupting other speakers. Examples of this phenomenon include:

- Charles Murray, a controversial speaker scheduled to speak at Middlebury College, was met with intense student protests. The protests became so loud and chaotic that the speaker was moved to a separate room and the talk was live streamed. After the speaker completed the speech and attempted to leave campus, he was mobbed and the car in which he was traveling was damaged by angry protestors (Read, 2017).
- Milo Yiannopoulos, a controversial speaker was scheduled to speak at Berkeley University. The planned speaking engagement provoked violent protests that resulted in an estimated \$100,000. of property damage (Park & Lah, 2017)
- Ann Coulter, a controversial pundit, was scheduled to speak at Berkeley University in

April, 2017. Her speech was canceled when university officials stated that there was insufficient security for the identified venue on the scheduled date (Kennedy, 2017).

The safety concerns of the college were based on the violence that had occurred a few months earlier when another controversial conservative, Milo Yiannopoulos, had been scheduled to speak (Peters & Fuller, 2017). To prepare for potential violence, the college had arranged to call up “hundreds of police officers” at a “significant cost” (Peters & Fuller, 2017, p. 1).

Describing the safety precautions that created the need to reschedule the event, Chancellor Dirks noted that,

sadly and unfortunately concern for student safety seems to be in short supply...

We must make every effort to hold events at a time and location that maximizes the chances that First Amendment rights can be successfully exercised and that community members can be protected (Peters & Fuller, 2017, p. 1).

Nevertheless, the likelihood of violence and the need for protection was not universally recognized. As Senator Sanders commented, “what are you afraid of- her ideas” (Peters & Fuller, 2017, p. 1)? Interestingly, a casualty of the Ann Coulter speaking engagement drama was Dan Adamini, a Michigan politician, who resigned after his social media posts advocating for “another Kent State” to end student protests received widespread public scorn (Schallhorn, 2017).

- ***Students' Free Speech Rights; Determined by Location?***

Colleges have attempted to preserve campus safety and order by creating designated, specific “free speech zones.” A recent example of the “free speech zone” approach involved a community college in the Los Angeles Community College District. Kevin Shaw, a student at

the college, was barred from distributing Spanish-language constitutions on the campus, unless he distributed the constitutions from the “free speech zone that was limited to less than 1 percent of the entire campus” (Foundation for Individual Rights in Education, 2017). Shaw has filed a lawsuit which is currently pending.

Most recently, court decisions on the matter of when campus safety concerns may justifiably and constitutionally limit free speech have focused on the unique aspects of the educational setting.

- As observed in *Dariano v. Morgan Hill Unified School District*, “the Tinker rule is guided by a school’s need to protect its learning environment and its students and courts generally inquire only whether the potential for substantial disruption is genuine” (2014, p. 772). In *Dariano* the court held that the school had experienced a history of student violence during Cinco de Mayo celebrations, and had received a number of contemporaneous and credible warnings and expressions of concerns about potential violence during the current Cinco de Mayo celebration. The court found that the school’s security actions (requiring students who were wearing provocative t-shirts to turn their t-shirts inside out or leave school for the day with an excused absence) did not violate the civil right of free expression of those students, in that the concern about violence was reasonable and defined, with the response narrowly tailored to limit the impact on the students’ civil rights (2014). In *Saxe v. State Area School District*, the court reviewed an anti-harassment policy that prohibited certain speech, and noted that “the primary function of a public school is to educate its students; conduct that substantially interferes with the mission is, almost by definition, disruptive to the school environment” (2001, p. 211). The court found that

the proposed anti-harassment policy violated civil rights in that it prohibited protected speech without a specific and credible belief of disorder and without narrowly tailoring the impact of the regulation on the civil rights of students (*Saxe v. State Area School District*, 2001).

- In *Hudson v. Craven*, a community college was found to have had strong and justifiable concerns for the safety of the students that legitimized the college's ban on having college sponsored student attendance at an off-campus political demonstration (e.g. required attendance at the demonstration, field trips to the demonstration, assignments that would necessarily require a student to attend the demonstration, class credit points assigned to attending the demonstration, etc.) (2005). The ban was found not to be a violation of free speech rights, in that it was narrowly tailored to legitimate and justifiable concerns.

Recognition that the unique purpose of a public school or college may necessarily impact the civil rights of students, returns the courts to the *Tinker* case, which noted that when actions "materially and substantially disrupt the work and discipline of the school," they may be prohibited (*Tinker v. Des Moines Independent School District*, 1969, p. 513).

- ***Students' Free Speech Rights: Determined by Speech Codes?***

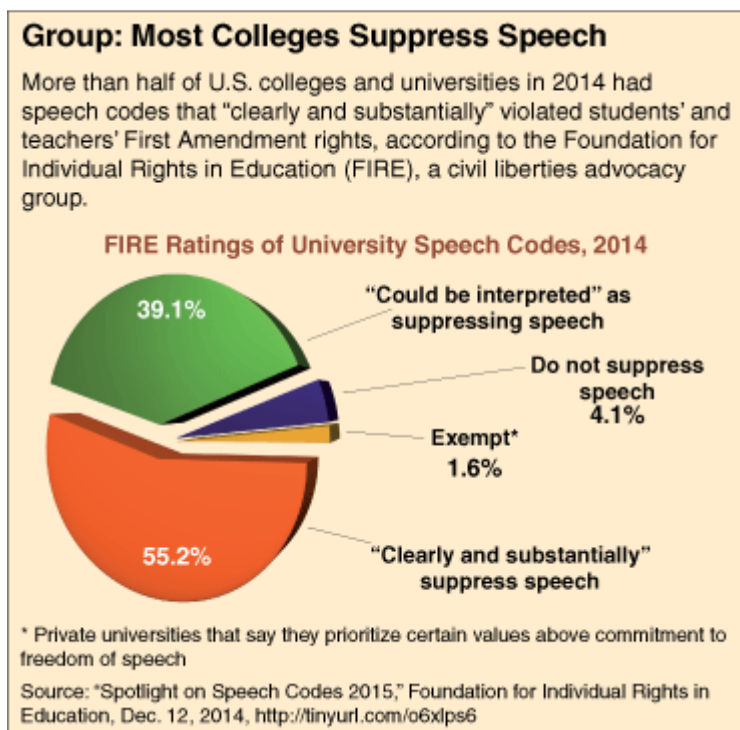
Speech codes are a relatively new phenomenon in which colleges are attempting to bring procedures and processes to the formerly organic and informal activity of student originated public communication, protests, and demonstrations. Colleges are struggling to balance students' civil rights with campus safety while responding to an increase in protests that originate with nationwide support from groups like "Occupy" and "Black Lives Matter," and large, organized groups like University of Missouri's Concerned Students 1950 movement. Recent



speech code initiatives have attempted to address safety concerns by identifying (and enforcing) specific locations, times, and procedures for student protests (Flaherty, 2016; Martinez, 2016).

The approach of limiting the locations where a protest may occur, involves establishing “free speech zones” which serve as designated areas for protests (Martinez, 2016). This approach has proven problematic for a number of schools (University of Georgia, University of South Carolina at Columbia, and North Carolina State University) that have been involved in legal actions as a result of their protest regulations (Martinez, 2016). As Langhofer, a lawyer who represents student groups, commented: “Students live on campus. It’s like their city. A city wouldn’t have free-speech zones” (Martinez, 2016).

The recent proliferation of speech codes was described by Majeed as follows: “starting roughly two decades ago, speech codes seemingly appeared out of nowhere and began to proliferate across college campuses” (2009). Three theories have emerged to explain the growth of speech codes. One theory attributes the increase in speech codes as a response to acts of intimidation that have increased as campus diversity has increased. Another theory holds that speech codes are hollow gestures designed to placate critics who have spoken out against the acts of intimidation. A third theory holds that the increasing popularity of speech codes is connected to the political correctness movement (Majeed, 2009). In a recent five-year span (1986-1991) 137 colleges adopted new speech codes (Gould, 1999).



Colleges that have attempted to regulate speech by defining acceptable conduct have been unsuccessful. Speech codes that attempt to define acceptable and non-acceptable conduct are usually proposed with the belief that the code will actually support free speech by providing clear advance notice of what speech is protected and what speech is prohibited. Examples of this type of speech code include:

- University of Michigan's speech code that prohibited "any behavior, verbal or physical, that stigmatizes or victimizes an individual on the basis of race, ethnicity, religion, sex" (Doe v. University of Michigan, 1989, p. 890).
- University of Wisconsin's speech code that prohibited "racist or discriminatory comments, epithets or other expressive behavior" if such conduct intentionally "demeaned the race, sex, religion," or "created an intimidating, hostile or demeaning environment for education, university-related work, or other university-authorized activity" (UWM Post, Inc. v. Board of Regents of the University of Wisconsin, 1991).

- Temple University's sexual harassment policy which prohibited: "expressive, visual, or physical conduct of a sexual or gender-motivated nature, when . . . such conduct has the purpose or effect of unreasonably interfering with an individual's work, educational performance, or status; or . . . has the purpose or effect of creating an intimidating, hostile, or offensive environment" (DeJohn v. Temple University, 2008).
- Los Angeles Community College District's sexual harassment policy which prohibited conduct having the "purpose or effect of having a negative impact upon the individual's work or academic performance" and defined sexual harassment to include "insulting remarks," "intrusive comments about physical appearance," and "humor about sex" (Lopez v. Candaele, 2010, p. 781).

Each of the aforementioned speech codes was struck down in court as a violation of students' civil rights. Case law has held that college speech codes violate students' free speech rights. The violations are based upon the code being overbroad, and/or vague, and/or content-based and/or viewpoint based (Majeed, 2009).

### **Students' Gun Rights**

The Second Amendment of the United States Constitution states: "A well-regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed" (U.S. Const.). Historically, the Second Amendment had been interpreted as a limitation on the federal government, and as such the federal government could not abridge the right to bear arms as it pertained to a well-regulated militia (McDonald v. City of Chicago, 2010).

In 2008, the case of District of Columbia v. Heller examined the balance between the

constitutional right of individuals to bear arms and the local authority's rights to limit gun ownership. The case involved an individual contesting a District of Columbia regulation requiring that any firearm maintained in a home must be unloaded and disassembled. The United States Supreme Court discarded the historic belief that the Second Amendment was limited to militia purposes. The court held that the Second Amendment recognizes an individual's right to bear arms for personal protection. The court stated, "we start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans" (District of Columbia v. Heller, 2008, p. 2791). The court held that though the constitutional right to bear arms makes a total prohibition of guns (which is what the requirement of having the gun disassembled was argued to be) unconstitutional, certain prohibitions and limitations were lawful (District of Columbia v. Heller, 2008). Specifically, the court noted that the case "should not be taken to cast doubt on...laws forbidding the carrying of firearms in sensitive places such as schools or government buildings" (District of Columbia v. Heller, 2008, p. 2817).

Two years later, in a similar case, the same court held that the Second Amendment could invalidate state law (McDonald v. City of Chicago, 2010). Once again, the court created confusion by affirming its recognition of the "sensitive places" exception which was established in the Heller case: "We repeat those assurances here. Despite municipal respondents' doomsday proclamations, incorporation does not imperil every law regulating firearms." (McDonald v. City of Chicago, 2010, p. 3047).

Application of the "sensitive places" exception to college campuses is consistent with the well-documented history on the separation of Second Amendment rights from college campuses. The Second Amendment is part of the Bill of Rights authored by James Madison, with

consultation from Thomas Jefferson (Bill of Rights Institute, n.d.). The Bill of Rights was passed by Congress December 15, 1791 (Bill of Rights Institute, n.d.). When the University of Virginia was being created in the fall of 1824 (to officially open in the spring of 1825), James Madison and Thomas Jefferson included in the establishing documents a specific reference to students not being permitted to carry guns (Li, 2016). Specifically, “no student shall, within the precincts of the University, introduce, keep or use any spirituous or vinous liquors, keep or use weapons or arms of any kind” (Jefferson, 1824).

Nevertheless, some states interpreted the Heller decision as an opening through which they could explicitly allow guns to be carried on college campuses. By 2009, guns could be carried on 12 campuses (Birnbaum, 2012; LaPoint, 2009). Three years later, the number of campuses that allowed guns had increased almost 10 fold to 200 public institutions in 12 states (Birnbaum, 2012; Soderstrom, 2012). Simultaneously, a number of states have passed concealed carry laws that allow non-law enforcement individuals to carry concealed weapons. Between 2008 and 2011, individuals who are authorized by concealed carry permits increased from 5 million to 7 million (Birnbaum, 2012).

Gun laws are created at the state level. As such, there is a wide-variety of gun laws that intersect with public college campuses. Some states prohibit guns on college campuses, some states leave the question of guns on campus to the trustees of the college or the college administration, some states bar guns anywhere on campus, some states bar guns in specific defined areas, and some states allow guns on campus without any restrictions of place (Birnbaum, 2012). Legislators have been focused on how to allow concealed firearms on college campuses. In 2013, legislation allowing concealed firearms on college campuses was introduced in 19 states. In 2014, an additional 14 states introduced legislation that would allow for

concealed firearms on college campuses (Hultin, 2016). The state that seems to have made the most progress in this area of legislation is Texas.

On August 1, 2016, a Texas law went into effect that allowed people with concealed-carry licenses to bring their weapons onto public four-year college campuses (Martinez, 2016). The law has a provision delaying application to community colleges. All Texas community colleges will be required to allow people with concealed-carry licenses to bring their weapons to campus effective August, 2017 (Lee, 2016). Colleges affected may identify sensitive spaces in which guns may be restricted. A report on those spaces and any regulations is, according to the legislation, required annually (S.B. 11, 2015). A students' civil right to bear arms is now recognized by statutory interpretation of the constitution. The impact of this initiative will not be fully recognized for years to come.

### **Students' Privacy Rights**

The word "privacy" does not exist within the United States Constitution. Nevertheless, it has been interpreted as a right through implication with a number of the amendments. The First Amendment has been interpreted as providing privacy in association and beliefs (Katz v. United States, 1967; Wisconsin v. Yoder, 1972). The Third Amendment has been interpreted as providing privacy in the home (Griswold v. Connecticut, 1965). The Fourth Amendment has been interpreted as providing privacy in the individual and the individual's possessions (Bell v. Wolfish, 1979). Through these constitutional interpretations, courts have found that individuals have privacy rights that may not be violated by the government. As previously noted, a public college is regarded as a government actor in these matters.

As the doctrine of *in loco parentis* came to be seen as a historic relic, other societal factors influenced the developing belief that college students were adults, and should be treated

as such. In 1971, the 26<sup>th</sup> Amendment of the United States Constitution was ratified giving the right to vote to eighteen year olds (U.S. Const. amend XXVI). The 26<sup>th</sup> Amendment was a response to the public's demand that men who were old enough to be conscripted into battle should be old enough to participate in the election of leaders who led the country into war (Willson, 1995). Following the ratification of the 26<sup>th</sup> Amendment a flurry of legislation continued to advance the notion that 18 year olds should be treated as adults. Many states lowered the minimum age for purchasing and consuming alcohol (Wagenaar & Toomey, 2002). In 1974 Congress passed the Buckley Amendment which would come to be known as FERPA (White, 2007). The intent of FERPA was to "protect records of individuals maintained by the government" (Penrose, 2011, p. 94). The rights that FERPA has provided individuals have been interpreted to include privacy rights for individuals. As such, through FERPA student records are recognized to be private with the student holding the right to privacy. FERPA is now more commonly cited as a privacy bar to the disclosure of records, than as (its original intention) a requirement for the disclosure of records according to the needs of the individual about whom the records were maintained.

- ***Students' Privacy Rights and Health Records***

The relationship between a college and a student may present multiple opportunities for the inadvertent violation of a student's privacy rights. Colleges collect and maintain records that pertain to student's academic information, healthcare information, behavioral information, and social information. When balancing campus safety concerns with students' privacy rights, the most pressing concern is student healthcare information and records.

Research on the 2007 Virginia Tech massacre reflects the confusion that colleges face when attempting to balance campus safety concerns with student privacy rights (Gardner,

Wilgoren & Schneider, 2007). The Virginia Tech massacre occurred when a Virginia Tech student who was struggling with mental health issues, went on a deadly rampage killing 32 students and faculty members before killing himself. A post-mortem investigation revealed that Virginia Tech administrators had a “rich history” of well documented information on the student’s mental illness. Records and reports existed with the campus counseling center, faculty, and campus police. Reports on the student’s behavior had been initiated by classmates, dorm mates, faculty, and campus safety. In addition, the student’s parents had attempted to discuss the student with members of the college administration. The post-mortem report noted that the college’s “confusion” regarding state and federal privacy laws hampered the effective collection of the various pieces of information (Gardner, Wilgoren & Schneider, 2007).

Five days after the Virginia Tech shootings, the President convened a task force to investigate and report on the issues associated with the Virginia Tech shootings (Chapman, 2008). The report noted,

confusion and differing interpretations about state and federal privacy laws and regulations impede appropriate information sharing.... fears and misunderstandings likely limit the transfer of information in more significant ways than is required by law. Particularly, although participants in each state meeting were aware of both HIPAA and FERPA, there was significant misunderstanding about the scope and application of these laws and their interrelation with state laws (Leavitt, Spellings & Gonazales, 2007, p. 7).

Four years later the impact of a college’s confusion on student privacy rights was seen once again. Pima Community College had been struggling over how to work with a student who had apparent mental health issues. The student, Jared Loughner, had exhibited bizarre behavior and outbursts in class and in the library. The college had maintained detailed reports on

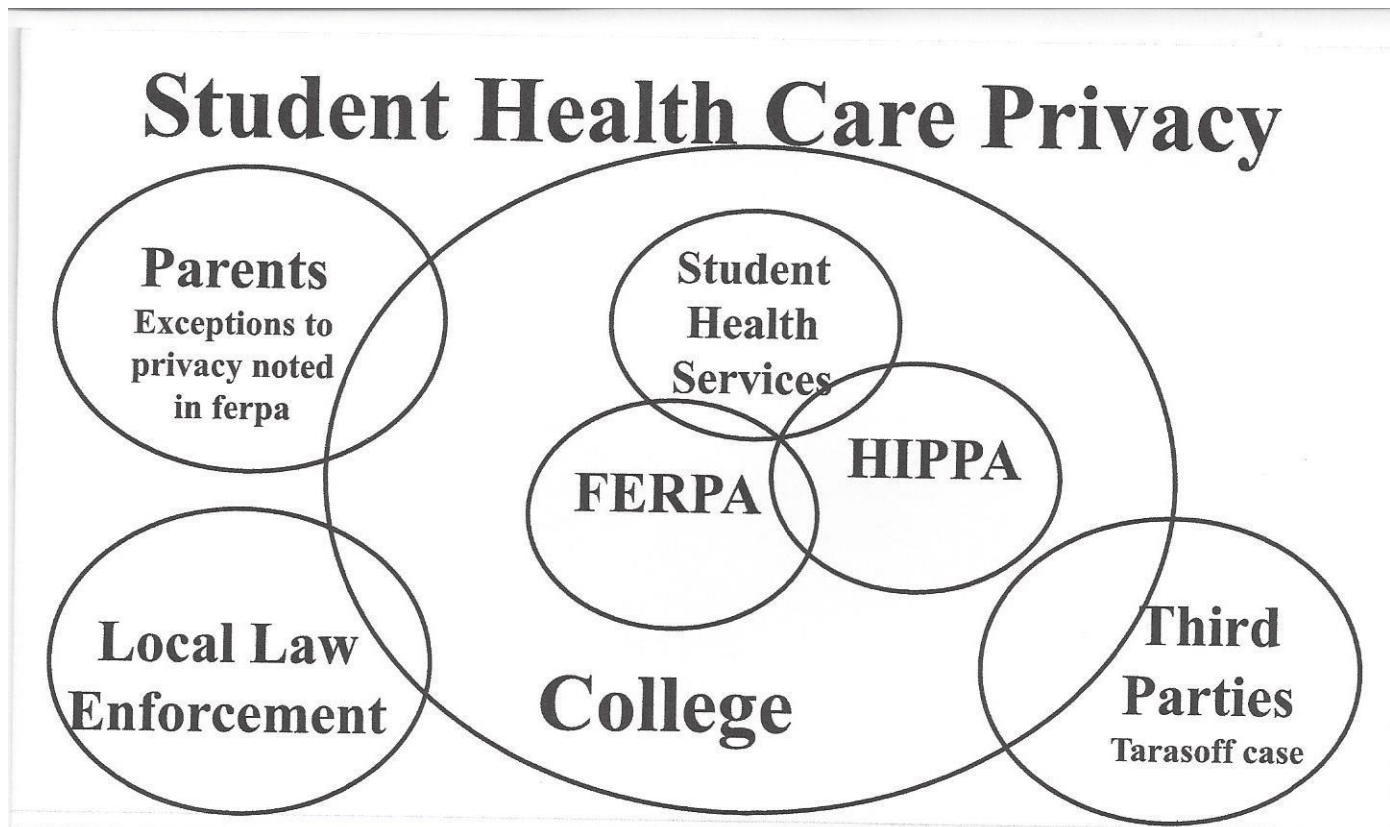


Loughner's behavior. Loughner was eventually suspended and informed that, in order to return to the college campus, he would have to provide a psychologist's letter certifying that he did not pose a danger to himself or others. College administrators were doing what they believed was necessary to maintain compliance with FERPA -they were confused. The college did not share information or concerns regarding Loughner with local law enforcement. After being suspended, Loughner shot and killed six people and injured 16 others. The United States Departments of Education, and Health and Human Services, have provided guidance on the applications of FERPA and HIPPA following the Virginia Tech Massacre (U.S Dept. of Health and Human Services and U.S. Dept. of Education, 2008). In the guidance provided it was stated:

An eligible student's education records and treatment records (which are considered education records if used or made available for any purpose other than the eligible student's treatment) may be disclosed, without consent, if the disclosure meets one of the exceptions to FERPA's general consent rule. See 34 CFR § 99.31. One of the permitted disclosures is to appropriate parties, which may include law enforcement or parents of a student, in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. See 34 CFR §§ 99.31(a)(10) and 99.36 (U.S. Dept. of Health & Human Services and U.S. Dept. of Education, 2008, p. 10).

Additionally, the college was not aware of a state law that allowed for the involuntary evaluation of individuals deemed dangerous (Anglen, 2011; Sulzberger & Gabriel, 2011).

The image "Student Healthcare Privacy" reflects the various stakeholders impacted by issues of student healthcare privacy, the overlapping relationships between the regulations, the confusing expectations of privacy, and the confusing understandings of regulations that apply to



The confusion that colleges experience when trying to balance campus safety concerns with students' privacy rights to healthcare information is understandable in light of confusing statutory requirements.

- ***The Family Education Rights and Privacy Act of 1974 (FERPA)***

The Family Education Rights and Privacy Act of 1974 (FERPA), is a federal law designed to protect the privacy of student educational records (FPCO, n.d.). FERPA prohibits colleges from disclosing "personally identifiable information in education records without prior, written, approval by the student" (FERPA, 1974). There are a number of exceptions to the written approval requirement. The college may release student records without the student's consent for a number of institution-wide purposes (e.g., accreditation reports, audits, etc. and certain purposes that serve the student's interests (e.g., applications to other schools, financial aid

processing needs, etc.). Although FERPA does not specifically note healthcare records, it does apply to all records created and maintained by a college. Student healthcare records created by a college are regulated by FERPA (Chang, 2013). Student healthcare records are regulated by both FERPA and the Health Insurance Portability and Accountability (HIPPA) Act.

- ***The Health Insurance Portability and Accountability (HIPPA) Act***

In 1996, the Health Insurance Portability and Accountability (HIPPA) Act was passed. HIPPA, which focuses on healthcare records, is another statute that pertains to the privacy of student healthcare records. HIPPA was designed to provide healthcare coverage for workers who may lose healthcare coverage as a result of changing jobs or losing jobs (HIPPA, 1996). In 2003, a “privacy rule” was added to the statute to prevent the transmission of individual healthcare information, without the individual’s prior written consent (HIPPA, 1996). A narrow exception, to the written consent requirement, was carved out for law enforcement to allow an organization to share an individual’s healthcare information without first obtaining written consent when the disclosure is required by law (e.g. court order, court-ordered warrant, or subpoenas) (HIPPA, 1996). Colleges reasonably attempting to meet HIPPA compliance requirements may believe that, without first obtaining a written consent from the student, they cannot share information concerning students’ healthcare with law enforcement officials.

- ***FERPA and HIPPA, the Overlap Problem***

FERPA and HIPPA regulations both pertain to student healthcare records. Yet, these regulations have different purposes, procedures, and results. In an effort to clarify and harmonize the handling of student healthcare records, the United States Department of Education (DOE) has published a number of guides. On October 30, 2007, six months after the Virginia Tech massacre, the DOE published a Law and Guidance paper entitle, “Balancing Student

Privacy and School Safety: A Guide to the Family Education Rights and Privacy Act for Colleges and Universities.” In that guide the DOE clarified situations in which a college could disclose student records without prior written consent from the student. Colleges may disclose student records’ without student consent in the event of a health or safety emergency, or when the records are regarding crimes of violence or non-violent sex offenses (DOE, 2007). It is unclear as to whether the guidance was not effectively communicated, was misunderstood, or was understood but not embraced. It is clear that colleges continue to have student information that would be appropriate to share with law enforcement, and that disclosure would not violate FERPA or HIPAA, yet they are not sharing that information with law enforcement (Anglen, 2011; Sulzberger & Gabriel, 2011).

More recently, in 2015 the Department of Education (DOE) issued a Dear Colleague letter that carved out a narrow exception to the privacy of student healthcare records (Mangan, 2015). The exception is for student-initiated litigation regarding the delivery of healthcare services. The DOE continued to advocate for strict compliance with FERPA, but also noted that a comment period on the proposed interpretation would occur to invite feedback, and ensure that the proposal did not present unintended consequences. The American Council on Education (ACE) commented on behalf of a number of parties that included the American Association of Community Colleges (AACC). ACE commented:

The draft DCL (Dear Colleague Letter)... instead attempts to address a nonexistent “loophole” in FERPA through the inclusion of standards from the Health Insurance Portability and Accountability Act (HIPAA)... [this] will result in significant confusion in the handling of education records, with negative consequences for students and campuses. Currently, FERPA provides a strong and clear framework to

govern nonconsensual disclosure of education records (including medical records)... incorporating HIPAA standards (as the DCL proposes), would disrupt this understanding and would lead to confusion over what constitutes compliance... the confusion resulting from the inclusion of HIPAA standards is likely to handicap the ability of campus officials to effectively serve their institutions...particularly in areas as sensitive as an individual's physical and mental health records... institutions must sometimes access medical and therapy records as part of their threat assessment and intervention processes. This is a critically important role for campus legal, health and safety professionals. We are seriously concerned that the approach identified in the draft DCL would result in a chilling effect on the disclosure of records in situations of public safety, for fear of falling out of compliance. ... Considering the sensitivity of the issue, the complexity of the existing legal landscape, and the importance of handling this correctly, it is imperative that any changes to regulation in this area be considered through the standard regulatory process. This approach is especially problematic as the Department lacks statutory authority to regulate HIPAA (which falls under the authority of the Department of Health and Human Services), or to nullify regulations lawfully promulgated by the agency of direct jurisdiction even through a formal rule. (Broad, 2015).

The ACE response clearly reflected the confusing legal landscape and the issues that are impacted by that landscape.

- ***Case Law: Privacy and Student Healthcare Records***

Statutes that address the privacy of healthcare and other records are established to create, clarify, and publicize the privacy rights that an individual enjoys over their private records. Case

law considers the rights of the community and the victim. The seminal case balancing the student's rights to privacy with the safety concerns of the college was the 1976 case of *Tarasoff v. Regents of the University of California* (1976).

In *Tarasoff*, a University of California student (Poddar) became obsessed with another student (*Tarasoff*). Poddar received psychiatric treatment at the University of California hospital. While in treatment he advised his doctor that he was going to kill a girl. The doctor was readily able to identify the girl as *Tarasoff*. The doctor contacted the campus police. Poddar was detained for a brief period of time and then released when he promised to stay away from *Tarasoff*. *Tarasoff* was never contacted by the doctor or the police. Poddar later returned to campus and killed *Tarasoff*. *Tarasoff's* parents bought a lawsuit for negligence against the doctor, the university, and the hospital. The Supreme Court of California found that the physician patient relationship imposed upon a physician an affirmative duty to warn identifiable third persons, and the patient's immediate family against foreseeable risks emanating from the patient's illness (*Tarasoff v. Regents of the University of California* 1976). The *Tarasoff* case did not name Poddar as a defendant and, as such, did not address FERPA or HIPPA. The case was focused on the rights of the victim to be apprised of a known dangerous situation. The *Tarasoff* case established a healthcare provider's duty to disclose (*Tarasoff v. Regents of the University of California* 1976; Ward, 2008).

At this time, colleges are struggling to balance the civil rights of students with campus safety concerns. The balance is complicated by the conflicting and contradictory regulations, statutes, and case laws that address the issue.

### **Colleges' Responsibilities and Liabilities**

Prior to the 1960s colleges enjoyed free rein in the regulation of their students. Under the

doctrine of *in loco parentis* colleges could approach the regulation of student behavior in a paternalistic manner and regulate students as the administration saw fit to advance the needs and desires of the college community. After a series of cases overturned *in loco parentis* college's had to adjust their approach to student regulations (Dixon v. Alabama, 1961; Knight v. State Board of Education, 1961). Colleges slowly adjusted their regulations to recognize students' civil rights, but continued to attempt to regulate student behavior to fit the desires of the college. Examples of this effort included attempts to regulate student behavior that may create distractions or problems (Healy v. James, 1972; Tinker v. Des Moines, 1969).

While colleges tested the constitutional limits of their regulations, highly publicized acts of violence on college campuses led to a push to make campuses safer (e.g. Jeanne Clery murder in 1986, the 2007 Virginia Tech Massacre, the 2008 Northern Illinois University shooting, the 2015 Umpqua Community College shooting, and others). The executive and legislative branches of government responded by advancing regulations and statutes designed to increase campus safety (The Campus Sexual Violence Elimination Act, 2014; The Clery Act, 1990; The Dear Colleague Letter of 2011). As colleges struggled to comply with new regulations and statutes they frequently violated students' civil rights.

- ***College Responsibilities for Recognizing Due Process Rights***

Colleges attempting to comply with Title IX enforcement guidance from the Office of Civil Rights find that they are depriving accused students of their due process rights (Lopez v. Candaele, 2010; UWAM Post, Inc. v. Board of Regents of the University of Wisconsin, 1991). The regulations that affect the relationship between the college and a student are not limited to that relationship. The regulations also apply to the relationship between a college and its faculty and administrators. Faculty and administrators are speaking out against Department of

Education regulations. A group of preeminent law professors published a public letter to lawmakers, colleges, and the Department of Education lambasting the regulations that surround Title IX in that those regulations violate due process rights (Alexander et al, 2016). Specifically, the law professors noted, among other issues, that,

- The 2010 OCR Dear Colleague Letter (DCL) on bullying stated “harassment does not have to . . . involve repeated incidents” to be actionable. This Letter had the effect of voiding the Supreme Court’s requirement that conduct must be “pervasive” in order to be considered as harassment.
- In 2011 OCR issued a Dear Colleague Letter on campus sexual assault, which the OCR considers to be a form of sexual harassment. This 2011 DCL curtailed a number of due process protections for students accused of sexual assault. Among other changes, the 2011 DCL mandated that college tribunals lower their standard of proof to *preponderance of the evidence*, even though the Supreme Court has recognized that a low standard of proof is inappropriate in situations involving damage to one’s reputation.
- A 2013 Letter of Findings to the University of Montana mandated that the University define sexual harassment broadly to include “any unwelcome conduct of a sexual nature.” “Any unwelcome conduct” can include verbal comments as well as physical actions. This broadened definition had the effect of requiring the university to disregard the Davis v. Monroe “objectively offensive” standard (Alexander et al, 2016)

The number of due process claims bought by students against colleges continues to grow. In a two-month period of 2016 more than 10 new complaints were filed (Harris, 2016).



- ***College Responsibilities for Recognizing Free Speech Rights***

Colleges attempting to balance student protest safety concerns with free speech rights, have been unsuccessful with speech code initiatives (DeJohn v. Temple University, 2008; Doe v. University of Michigan, 1989). Speech codes have historically attempted to, among other things, preserve campus safety and order by regulating speech content and/or the geographic location of student protests. Current proposed codes are attempting to preserve campus safety by focusing on the safety procedures attendant to student protests. Courts have repeatedly found that college speech codes violate students' civil rights by being insufficiently specific or prohibiting constitutionally protected speech. Speech codes that have recently been proposed are focusing on campus safety and order, rather than limiting, or addressing, speech content. Indeed, the speech codes most recently proposed acknowledge that speech may upset some individuals. The University of Minnesota's proposed speech code specifically notes that protected speech may include speech that some find "offensive, uncivil or even hateful" (Flaherty, 2016, p. 1).

The City University of New York is considering a new free speech policy that focuses on the procedures for protesting and demonstrating. Specifically, the proposed code addresses, among other things, camping on campus, and occupying buildings after receiving notice to depart (Joselow, 2016). The CUNY Board of Trustees, after receiving questions and concerns on the proposed policy, indefinitely postponed a decision on the proposal (Martinez, 2016). At the University of Minnesota, two statements on free speech are being considered. The statements support free speech without limitations on content or location, while also supporting occasional restrictions on specific protest procedures (Flaherty, 2016). As one statement notes:

Like any institution that must govern itself and operate effectively, the University may also limit the times and places that even protected speech is heard, as long as such

limitations leave open ample opportunity for expression and so long as no distinction is made based on the content of the expression. But such limitations on the freedom of speech are the rare exception, not the rule (Faculty Consultive Committee, 2016).

The proposed CUNY free speech policy notes, "It is not the proper role of the university to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable or even offensive" (Joselow, 2016). The proposed policies are now being balanced against criticisms from student groups, some of whom see the proposals as too restrictive and likely to limit free speech while others see the codes as insufficiently restrictive of content that could offend (Flaherty, 2016; Joselow, 2016; Martinez, 2016).

- ***College Responsibilities for Recognizing Gun Rights***

The statutory requirements that direct colleges to allow guns on campus were passed so recently that, at this time, there is no information on how these regulations will impact the balance between campus safety concerns and students' civil rights. Birnbaum has described the process of trying to predict the future of guns on campus as a "black swan," a term coined by Taleb (2007) to describe the erroneous approach of predicting the future on the basis of a highly unusual event in the past (2012). In August 2016, the Texas statute that required public colleges to allow permitted gun carriers to carry guns on campus went into effect. It will likely take two or more years for a civil rights complaint involving the new right to carry guns on campus, to work its way through the court system, and create case law.

- ***College Responsibilities for Recognizing Privacy Rights***

Student privacy rights are an evolving area of the law. The recent Dear Colleague letter has yet to be fully implemented. Colleges are struggling with how to implement the directives of the Dear Colleague Letter that conflict with civil rights, and the Trump administration is

expected to bring change to the Department of Education's approach to the enforcement of civil rights. Without a clear directive from the Department of Education, colleges will likely return to case law for guidance in how best to address the balance between students civil right to privacy and the safety concerns of the college. The lines between FERPA and HIPPA remain murky. College's labor under the conflicting regulations. Many states now require colleges to have Behavioral Intervention Teams (BITs) that rely strongly upon sharing private student information with select members of the college (Reese, 2016). Yet the Department of Education has strict guidelines regarding private student information that colleges are obligated to follow to remain qualified for receiving federal financial aid. There are no recognized standards for how a BIT may operate in compliance with FERPA and HIPPA. The process of utilizing BITs has been described as in "its infancy" (Weisenbach Keller, Hughes & Hertz, 2011). Colleges are developing their own policies and procedures without the benefit of a nationally recommended model or guide that addresses FERPA and HIPPA compliance.

### **The Tension between Students' Civil Rights and Campus Safety Concerns**

The past five years have created a confusing set of regulations and expectations for colleges. While it is not clear how colleges can best balance students' civil rights with campus safety concerns, it is clear that there are conflicting requirements that need to be considered before colleges can confidently move forward with policies and procedures that address campus safety concerns.

### **The Conceptual Model**

A conceptual model provides a framework for guiding research. A conceptual model is a

visual representation of the concepts and variables involved in the topic of research (Creswell, 1999). The concept model for this research is:



The conceptual model was developed following a review of relevant literature that distilled the concepts and variables that impact the balance between college safety concerns and students' civil rights into eight separate, but connected, concepts.

The scale that centers the conceptual model strives to balance students' civil rights with college safety concerns. The student civil rights that most frequently are in tension with campus safety concerns include: due process, gun rights, freedom of speech, and privacy rights.

**Due process** rights are those rights that an individual has in relation to a governmental entity when that governmental entity is infringing upon the individual's privileges of citizenship. Courts have held that a public college is a governmental entity for purposes of due process rights, that attending and completing college is a privilege that is protected, and that public colleges are required to provide due process before infringing on a student's ability to attend or

complete college (Goss. v Lopez, 1975; Gorman v. University of Rhode Island, 1988; Henrick, 2013).

**Gun rights** are recognized as protected by the 2<sup>nd</sup> Amendment of the Constitution and, as such, civil rights. Quite recently legislative bodies have expanded the interpretation of the 2<sup>nd</sup> Amendment, reading it to forbid public colleges from regulating guns on the college campus. The right to carry a gun on campus is now perceived to be a protected civil right.

**Freedom of speech** is a civil right that has been recognized to have limitations in that it cannot be a defense for fighting words, heckling, or violating narrowly drawn time, place, or manner restrictions (RAV v. City of St. Paul, 1992; Sydney v. Phelps, 2011; Ward v. Rock Against Racism, 1989; Hill v. Colorado, 2000). Colleges are working to balance students' freedom of speech with reasonable time, place, and manner restrictions that would support safety on the college campus.

**Privacy rights** have been recognized as unstated protections supported by the Constitution. Colleges are in a unique position in that healthcare is not their primary purpose, but healthcare is a major component of the supports that they offer students. When students access college-provided healthcare, the college creates a record that is both a health record, and a college record. Colleges need to balance the privacy interests that students may have in their healthcare records with the safety interests of the college.

**Consistency with case law** refers to the college's obligations to understand and apply prevailing legal standards. While certain legal questions are addressed by the constitution, or statutes, other areas of the law are defined by case law. Case law has become a de facto arbiter of federal regulations that may conflict with constitutional rights.

**Compliance with regulations** refers to the myriad, and sometimes conflicting,

regulations that colleges must observe. Colleges are tasked with recognizing and being compliant with state and federal administrative regulations. The regulations that connect most closely to campus safety interests are those that apply to student healthcare records: FERPA and HIPPA.

**Compliance with statutes** refers to the state and federal statutes that apply directly to colleges. Statutes that specifically address colleges are becoming more common as campus events lead legislatures to recognize the unique nature of the college campus and the potential safety issues presented by the college campus. Most recently, college-centric statutes have focused on the right to carry firearms.

**Students' civil rights** are now firmly recognized by courts and legislatures. Colleges must balance the recognition of students' civil rights with various regulatory requirements that may infringe upon those rights (e.g. Title IX), as well as the purposes and procedures of a college campus. The civil rights that interact with campus safety concerns present unique challenges.

College safety concerns are informed by current events and also by safety requirements set forth in statutes, regulations, case laws, and the obligation to respect the students' civil rights.

### **Summary**

This Chapter provides a conceptual model for understanding the interests and tensions to consider when balancing students' civil rights with campus safety concerns. The literature reviewed provides an historic overview of the legal recognition of students' civil rights, an understanding of how the concept of students' civil rights has evolved, and a basis for predicting how students' civil rights will continue to evolve. The literature also provides an understanding of the factors and tensions that led to the legal recognition of student's civil rights, as well as the diverse regulations that conflict with students' civil rights.

This chapter lays out the factors to be considered when advising colleges on the factors to consider when developing campus safety policies and procedures that may conflict with students' civil rights.

## **Chapter Four: Analysis and Findings**

### **Introduction**

This chapter discusses the feedback provided by the expert panel and how the feedback impacted the direction of the research. This chapter also provides a discussion of the findings of the research in relation to the research question presented in Chapter One. The research questions are:

1. What factors should be considered when determining how to balance college safety concerns with students' civil rights?
2. What recommendations may be offered to colleges on how best to balance campus safety concerns with students' civil rights?

### **Analysis of Feedback from Expert Panel**

All dissertations for the University of Maryland University College (UMUC) Doctorate of Management in Community College Policy and Administration (DMCCPA) program are required to include feedback from an expert panel. Three panelists reviewed a draft of the first chapter of this dissertation and utilized the Feedback on Dissertation from Expert Panel form to provide feedback and recommendations. The panelists included:

- (1) A senior vice president of legal and public advocacy from a nationally recognized think tank that studies the civil rights of college students,
- (2) An attorney who was appointed to serve as the first ever Title IX coordinator at University of Virginia in the immediate wake of the Rolling Stone article scandal, and most recently was elected to serve as Interim District Attorney for Philadelphia, and
- (3) An attorney who served as the director of an office of student conduct at a university, after having served as an assistant district attorney and having professional social work experience.

The form completed by expert panelists requested feedback on nine specific areas:



- Accuracy and completion of the problem description
- Significance of the problem to the community college environment
- Adequacy of the evidence supporting the problem statement
- Relevance of the management and learning theories to the research issue
- Completeness of the theoretical background
- Scope and focus of the research questions
- Organization
- Quality of writing
- Adequacy of the list of major references and scholarly works

Panelists were asked to score the nine areas on a Likert scale from one (poor) to five (excellent).

The Expert Panelists Feedback table documents the feedback received from each panelist on each of the nine areas.

Feedback from the panelists was uniform in three areas: the significance of the problem, the structure and logic of the chapter, and additional theories and concepts to consider for incorporation in the chapter. The panelists uniformly noted that the problem explored by the chapter is of significance to college leaders, administrators, faculty and students. Comments from the panelists included: "the problem is significant and correctly identified as complex" and "big issue- court involvement can be avoided."

Another area of panelist agreement was on structure and organization of the chapter. All panelists noted that the description of the problem was not clear and focused. Feedback on the problem to be researched included "the focus is too broad," "the problem is clear...however other issues are presented and create confusion." Panelists also agreed that the document was not sufficiently organized. Feedback on organization included "certain concepts were addressed

multiple times,” and “logic is disjointed so the chapter is confusing at times.”

Panelists were also in agreement on their recommendations regarding additional theories and concepts to consider for inclusion. Panelists recommended considering, among other things, “recent federal cases involving Title IX,” “mental health issues with privacy rights,” and “DOE directions on Title IX.”

The table titled “Results and Use of Expert Panel Review” includes all questions presented to the panelists, a score that is the average of the score provided by each individual panelist, sampling of feedback to provide a brief representation of all feedback, and information on how the feedback was utilized to improve the paper.

Results and Use of Expert Panel Review			
Question	Score	Selected Comment	Use of Comments
How accurate and complete is the description of the problem/issue to be researched?	3.3	"The tension between campus safety and civil liberties is real, and particularly so for community colleges." "I wonder if the focus is too broad." "Confusion in the logical development of the analysis." "Focusing more specifically on one case for each area."	The chapter, and paper, were recast to focus on the civil rights of the students in relation to the college, as opposed to the original focus which was the recognition of civil rights in the context of the campus safety office.
How significant it the problem/issue to community college managers, leaders, faculty or students?	4.6	"The problem Ms. Ingersoll identifies are very timely and pressing to community colleges." "Big issue- court involvement can be avoided." "The problem is significant... but there is need for a deeper dive and clearer development of the various analysis."	An analysis of the various legal resources was added to the paper to provide a greater depth of understanding for the reader.
How well does the student support the statement of the issue's/problem's existence and importance with evidence, scholarly citations and expert opinions?	4	"The supporting evidence is well-marshaled, and the existence of the problems Ms. Ingersoll has identified is beyond question." "Well done"	No changes warranted.
Do the theories described seem relevant to the problem or issue being researched?	3.5	"Not yet clear to me how stare decisis will provide a useful grounding for thinking about the intersection between civil liberties and campus safety, particularly as the law is rapidly evolving in this area. But that will be a question for the final paper." "Current theories...the 2011 Dear Colleague letter."	Provided a more detailed discussion on stare decisis. The 2011 Dear Colleague letter is cited numerous times in following chapters.
Is the theoretical background described by the student expansive or complete enough to provide perspective on the problem?	4	"If anything, I wonder if the theoretical background currently provided is too expansive to allow for thorough consideration of the specific problems contemplated." "The intersection between gun rights and campus safety would be more than enough for paper - adding sexual assault and free speech may prove to be a tall order."	Recasting the focus of the paper from Campus Safety Office procedures to civil rights as recognized by the college allowed for a greater ability to present the connections, and consistencies, between the individual civil rights.
Are the research questions of sufficient scope and focus to lead to valuable research that will improve practice in the field?	4.6	"Yes", "Yes" and "yes"	No changes necessary.
How well organized is the document?	3	"Certain concepts were addressed multiple times." "Some discussions of issues (for example, due process protections, or gun rights) could be further buttressed by a more in-depth explanation." "Logic is a bit disjointed."	Chapter One was revised to eliminate repetitions and reorganized to create a more logical framework.
How closely does the quality of the writing match doctoral standards?	3.5	"It may be a function of the fact that this is a preliminary proposal, but I did think that certain topics could have been more thoroughly explained and explored."	A more in-depth analysis was presented throughout the revised Chapter One.
How adequate is the list of major references and scholarly works the student has found up to this point to define and support the significance of the problem?	4	"The references and scholarship cited seemed well-rounded." "Solid references used and incorporated." "Would like to see more reference... to recent court challenges."	Additional recent court challenges are cited throughout the paper and have been added to Chapter One.
What other theories or concepts would you suggest the student consult to better frame or understand the problem?	n/a	"More focus paid to the specifics of the rulings cited and their practical implications." "Recent federal cases" "DOE directions of Title IX"	This feedback was utilized in subsequent chapters where more in-depth discussion on recent cases occurred.
What additional authors, studies or literature do you suggest that the student find and read?	n/a	"Department of Ed- Office of Civil Rights"	Additional recent court challenges are Additional information on the Office of Civil Rights was incorporated in the
What other scholars, community college leaders, community college stakeholders and business/non-profit professionals would be helpful for the student to contact for more information and new perspectives?	n/a	"John Wesley Lowery, Neal Hutchens, and Jill Dunlap" "VP Maureen Rush, U. Penn Chief of Public Safety"	The paper evolved away from the original focus on Campus Safety Offices. The individuals recommended worked within campus safety offices.
Additional Comments and Suggestions	n/a	"Thank you so much for allowing me to provide feedback on this exciting and timely scholarship, and best of luck moving forward!"	This expert has continued to serve as a sounding board and receive a copy of the complete dissertation.

## Findings

This paper proposes to identify factors for college administrators to consider when determining how best to balance campus safety concerns with students' civil rights. It also recommends sound analysis to apply when attempting to balance campus safety concerns with students' civil rights.

### **Students' Due Process Rights: Considerations for Balancing with Campus Safety**

The theme of uncertainty emerged from research on the balance of campus safety concerns with students' due process civil rights. Colleges are uncertain on how to balance the directives of the 2011 Dear Colleague Letter concerning Title IX processes with court-recognized civil rights of students accused of sexual assault.

Until quite recently, due process in a student disciplinary setting was satisfied by providing "some kind of notice" and "some kind of hearing" (Goss v. Lopez, 1975, p. 579). What constituted adequate notice and hearing in a student disciplinary hearing was not clearly defined. Rather, case law provided examples of what was not required for proper notice and hearing. Cases noted the value and importance of notice and hearing, without directly defining the requirements of notice and hearing.

In *Murkowski v. University of Delaware*, a federal district court held that "due process is satisfied by way of adequate notice, definite charge, and a hearing with opportunity to present one's own side of the case and with all necessary protective measures" (2008, p. 585). Two years later, the federal appellate court in *Swindle v. Livingstone Parish* noted that "students are entitled to a due process hearing before being suspended from school for nonacademic reasons because effective notice and an informal hearing... will provide a meaningful hedge against erroneous action" (2011, p. 402). The *Swindle* case went on to quote with approval the *Freeman v. City of*

Dallas case. In Freeman the court noted that “non-disclosure by the government poses the risk of an erroneous deprivation because it forecloses the individual from testing the accuracy of the government's evidence” (1999, p. 607). The abstract and undefined right to “some kind of notice” and “some kind of hearing” allowed courts to tailor their definitions of notice and hearing to the individual facts of the particular case.

In 2011, the Dear Colleague Letter (DCL) provided a detailed account of what colleges must do to satisfy Title IX requirements. The letter clearly noted that colleges that did not meet the requirements of the DCL risked losing access to federal funds. In response, colleges focused on publicizing sexual assault services, procedures, and support systems, while also creating and requiring students to attend detailed educational programs focused on sexual assault. The number of sexual assault claims on college campuses increased dramatically. Between 2011 and 2017 the government opened 403 investigations surrounding sexual assaults on college campuses (Chronicle of Higher Ed., 2017).

# CASES AGAINST CAMPUSES

*The number of complaints against colleges for their handling of sexual violence cases has increased dramatically and this increase has seen the federal government suffer a major backlog.*



THE BACKLOG  
OF CASES

50 RESOLVED  
INVESTIGATIONS

260 UNRESOLVED  
INVESTIGATIONS

SOURCE: CHRONICLE OF HIGHER EDUCATION

GOLDIA KITECK/SENIOR STAFF

Goldberg, 2016).

While allegations of sexual assault increased, colleges scrambled to develop policies and procedures that would insure compliance with the 2011 DCL. The letter expanded the Office of Civil Rights focus on sexual assault to also include sexual violence- a term that includes sexual harassment. Likewise, Title IX responsibilities of the college expanded to also include (amongst other things) the designation of at least one employee to serve as the Title IX Coordinator, providing the Title IX Coordinator with appropriate training, and publicizing to the Coordinator's role and responsibilities to members of the college community. The role of Title IX Coordinator has evolved to address the requirements set forth in the DCL of 2011. As described by June in 2014, "its scope has expanded, especially recently, calling for greater professionalization of the role. On a growing number of campuses, what used to be a part-time job or an add-on for a faculty or staff member is now full time." Title IX Coordinators were

tasked not only with investigating complaints but also with educating the community on the substance of sexual assault (e.g., how it occurs, why it occurs, and by-stander responsibilities).

The increase in student allegations of sexual violence violations led to an increase in Title IX investigations and resolutions. In turn this increase has led to an increase in cases brought by students accused of acts of sexual violence who claim that their civil rights were violated by Title IX grievance process. After a sustained focus on the student victims of sexual assault, the public's attention turned to the students accused of Title IX violations. In 2013 an organization was founded to advocate for students accused of violating Title IX (FACE- Families Advocating for Campus Equality). In 2017 stories involving the actual suicide and the suicide-attempt of students accused of Title IX violations received coverage in newspapers and higher education publications (Bauer- Wolf, 2017).

Courts have not uniformly supported the dictates of the 2011 DCL. Recent case law reflects the willingness of courts to discard the guidance of the 2011 DCL and apply due process standards that apply to criminal law matters (Doe v. George Mason University, 2016; Doe v. University of Southern California). At this time there are differing, and inconsistent, standards being applied by courts determining cases that involve allegations of due process violations occurring in Title IX proceedings.

Following the 2011 DCL, the question of how best to balance students' civil right to due process with campus safety concerns has evolved to a question of how best to balance students' civil right to due process with the requirements of the 2011 DCL. The 2011 DCL requires that a standard of *preponderance of the evidence* be applied to sexual assault adjudication procedures that occur on campus. *Preponderance of the evidence* is the standard that is applicable to civil matters. *Preponderance of the evidence* means that, after considering all information presented,

it is “more likely than not” that the allegations asserted are correct (Orloff & Stedinger, 1983).

The evidentiary standard applied in criminal cases is *beyond a reasonable doubt* which is a more demanding standard due to the greater weight of the outcome (i.e., the outcome of a criminal case could deprive an accused of freedom or even life, whereas a civil case could not deprive an accused of freedom or life) (McBaine, 1944). The 2011 DCL does not require constitutionally recognized evidentiary standards that apply in criminal court matters. A Title IX adjudicatory process does not occur in a criminal matters courtroom. However adjudicatory processes may involve accusations that do constitute criminal behavior. The appropriate burden of proof for adjudicatory matters that involve determinations of criminal behavior was determined by the United States Supreme Court in the 1970 case of *In Re Winship*. The *Winship* matter involved a juvenile who was accused of behavior that if committed by an adult would have resulted in a charge of larceny. The prosecutor argued that the mater did not require the evidentiary standard of *beyond a reasonable doubt*, because the accused was not in a criminal court proceeding, but rather an adjudicatory proceeding and that the accused would not be incarcerated. The accused, however, was placed in a special school for 18 months, with the potential for annual extensions of up to 6 years (at which time the juvenile would be 18 and thus an adult no longer within the jurisdiction of juvenile court). The court in *Winship* recognized that:

The requirement of proof *beyond a reasonable doubt* has this vital role in our criminal procedure for cogent reasons. The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction (1970, p. 364).

In considering whether proof *beyond a reasonable doubt* was required in a proceeding



that was not a criminal proceeding, the court concluded that the *beyond a reasonable doubt* standard was appropriated and required when the outcome of the adjudication, similar to an outcome of a criminal case, could deprive the accused of his “good name and freedom” (p. 364).

The court noted that:

In a proceeding in which there is a dispute about the facts of some earlier event, the factfinder cannot acquire unassailably accurate knowledge of what happened. Instead, all the factfinder can acquire is a belief of what *probably* happened. The intensity of this belief—the degree to which a factfinder is convinced that a given act actually occurred—can, of course, vary. In this regard, a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication (1970. p. 370).

The issue considered by the Winship court is strikingly similar to the issue being considered by many colleges today: what standard of proof should be applied to adjudicatory procedures that are not criminal court proceedings but that do impact the accused in a manner similar to a criminal court proceeding? The analysis applied by the Winship court remains valid. The Winship court’s connection between the standard of proof required and the impact an adjudicatory process may have on an accused’s good name has been cited with approval in 62 subsequent court opinions. In 1994 the United States Supreme Court reiterated the Winship court’s reference to good name and continued to require the *beyond a reasonable doubt* standard (Victor v. Nebraska, 1994). The most recent reference to Winship occurred in the 2017 case of Harden v. Bowersox.

Despite Winship’s well-recognized continuing authority on the matter of which standard of proof to apply, courts struggle in deciding whether to continue to recognize Winship or to

defer to the Department of Education DCL of 2011. As a result, there is inconsistency between courts and occasional incoherence within courts. Examples of the inconsistencies include:

- Two University of Cincinnati students, accused of unconnected Title IX violations sued the college claiming that there were a number of due process violations in the Title IX adjudication process. The 6<sup>th</sup> Circuit court found that there were no appreciable due process errors and quoted a 1976 United States Supreme court case, *Mathews v. Eldridge*. That decision had quoted *Armstrong v. Manzo*'s description of due process as an "opportunity to be heard 'at a meaningful time and in a meaningful manner'" (p. 333). However, the *Mathews* opinion specifically differentiated itself (a social security hearing matter) from a criminal law matter (*Doe 1 et al v. Cummins et al*, 2016).
- A Brandeis student sued the college for violation of his due process rights in a Title IX process. Judge Saylor of the United States District Court stated "I don't know how a university, much less named after Louis Brandeis, could possibly think that that was a fair procedure to not allow the accused to see the accusation" (Johnson & Taylor, 2017, p. 6).
- An accused student at James Madison University sued the college for violation of his due process rights when, after he was found not guilty, his accuser appealed and presented new information that the accused was not afforded an opportunity to review or respond to (Johnson & Taylor, 2017, p. 7).

### **Students' Freedom of Speech Rights: Considerations for Balancing with Campus Safety**

In the research of legal resources and current events concerning the balance of campus safety concerns with students' free speech rights, two themes emerged: students' exercising their free speech rights to contravene the free speech rights of others, and colleges attempting to

define the limits of free speech with codes and zones (zones being geographically defined areas where students could exercise their free speech rights).

The center of balance between campus safety concerns and students' civil right to free speech has shifted dramatically over the past fifty years. Until 1969, courts held that colleges had a valid interest in the maintenance of order and propriety and that this interest allowed the college to limit students' right to free speech. The case of *Tinker v. Des Moines* shifted the focus from order and propriety, to a consideration of whether an actual likelihood of disturbance existed justifying limits on the free speech rights of students (1969). In *Tinker v. Des Moines* the court noted that schools have "special characteristics" that differentiate them from public spaces (1969, p. 506). As such, the court recognized a school's right to limit the free speech rights of students, but also recognized that the right of the school to limit free speech should be restricted to situations where an actual likelihood of disturbance exists. The court noted that, "undifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of expression" (*Tinker v. Des Moines*, 1969, p. 508).

Following *Tinker v. Des Moines*, subsequent cases added detail and direction on how to distinguish a reasonable likelihood of disturbance from a generalized fear of disturbance, which would not justify abridging students' right to free speech (*Hudson v. Craven*, 2005; *James v. Healy*, 1972; *Saxe v. State Area School District*, 2001).

- **Whose Free Speech Rights?**

A theme that emerged from the research on the balance of campus safety concerns with students' free speech rights concerns the question of how to think about the rights of non-student speakers, and how to create shared understandings of the role, value, and process of providing a platform for non-student speakers.

Recent incidents involving students' free speech rights have shifted the focus from the rights of students to speak to the rights of students to disrupt speakers. Students' right to free speech has been recognized by various courts since the 1960s (*Goldberg v. Regents of the University of California*, 1967). A student's right to free speech on a college campus is not unlimited. Courts have recognized that speech can justly be limited if it creates "interference, actual or nascent, with the schools' work or of collision with the rights of other students" (*Tinker v. Des Moines*, 1969, p. 508). Courts have also pointed out that although speech may be limited on the basis of its form (e.g. interfering with college activities), students' free speech rights could not be limited on the basis of the content of the speech (*Gay Lib. v. University of Missouri*, 1977; *Gay Student Services v. Texas A & M University*, 1984; *Healy v. James*, 1972; *Student Services for Lesbians/Gays v. Texas Tech University*, 1986). The judge in *Healy v. James* stated, "the critical line for first amendment purposes must be drawn between advocacy, which is entitled to full protection, and action, which is not" (1972, p. 192).

Until quite recently, questions of free speech on college campuses considered whether the college itself had the right to bar or limit students' speech. Current events have led to a shift on the question of free speech. Today the question is not whether a college can limit students' free speech rights, but rather whether students' can limit the free speech rights of invited speakers. Further if students cannot limit the speech of invitees, is that a just limitation of the students' civil rights? Multiple recent examples exist of student protests that are centered on action (disruption, destruction, etc.), rather than advocacy (e.g. Charles Murray's speech at Middlebury College, Milo Yiannopoulos' scheduled speech at Berkeley, etc.).

- **Speech Codes and Zones**

A theme that emerged from the research on the balance of campus safety concerns with students' free speech rights, is the importance of having the impact of the limitation (be it a codes or zones) limited to addressing specific time, place or manner concerns, while ensuring that the limitation does not impact the content of the speech.

Colleges have attempted to communicate standards of speech in campus speech codes. Speech codes gained popularity in the 1980s and 1990s as colleges attempted to define acceptable speech in an apparent effort to limit hate speech and bullying (Hudson, 2002). During that time, more than 350 public colleges attempted to address hate speech through speech codes (Hudson, 2002).

Colleges have attempted to address the potential for disruption and damage, by defining appropriate speech with speech codes and defining specific areas where speech may occur with the establishment of "free speech zones." Free speech codes that have been contested in court have been found to be a violation of free speech rights (*DeJohn v. Temple University*, 2008; *Doe v. University of Michigan*, 1989; *Lopez v. Candaele*, 2010; *UWM Post, Inc. v. Board of Regents of University of Wisconsin*, 1991). The speech codes litigated all shared a common characteristic: vague and sweeping language that was ineffective in the purpose of notifying individuals of what speech was not permitted. As Grey noted, "freedom of expression is better served by narrow and clear definition of any speech that is to be prohibited" (1995, p. 897).

Free speech zones have been equally unsuccessful. Students, faculty, civil liberty groups, and others, have successfully opposed and protested the establishment of free speech zones, causing a number of public colleges and universities (Florida State University, New Mexico State University, Pennsylvania State University, West Virginia University, among others) to

review, revise, retract, or suspend the implementation of free speech zones (Davis, 2004). To successfully limit free speech (which is what a free speech zone does- it limits free speech to a specific area), the purpose of the zone must be limited to creating appropriate time, place, or manner restrictions (RAV v. City of St. Paul, 1992; Ward v. Rock Against Racism, 1989; Hill v. Colorado, 2000). A zone may not be created to limit the content of the free speech (RAV v. City of St. Paul, 1992). A zone may not be of such a small geographic region, or distant location that it conflicts with the individual's right to free speech (Hill v. Colorado, 2000). An effective free speech zone is one that is designed to recognize reasonable, content-neutral, time, place or manner restrictions that are necessary for the orderly operation of the college campus.

Recent student protests that have culminated in acts of violence (e.g., Charles Murray at Middlebury, Milo Yiannopoulos at Berkeley, Ann Coulter's scheduled appearance at Berkeley), and court decisions on speech codes and free speech zones indicate that colleges would benefit from the development of policies and procedures that address student protests.

### **Students' Gun Rights: Considerations for Balancing with Campus Safety**

Research on the balance of campus safety concerns with students' rights to bear arms on campus shows significant levels of uncertainty about future policies and practices. As of this writing, an insufficient amount of time has passed to predict whether other states will follow Texas' approach of requiring public colleges to permit students to carry concealed weapons, whether students will claim that their civil rights are being violated if they are not permitted to carry concealed weapons on college campuses, and whether campus carry could be limited to public spaces other than buildings.

The Second Amendment of the United States Constitution had long been recognized as the people's right to bear arms against the government. Until quite recently, the Second

Amendment was interpreted as being limited to preserving the ability of the people to overthrow the government (Dorf, 2000). Less than ten years ago, a divided United States Supreme Court held that the Second Amendment also preserved the rights of individuals to have guns for personal protection (*District of Columbia v. Heller*, 2008). The *Heller* decision created a pathway to oppose and overturn statutes that limited gun rights. *Heller* not only reversed certain limitations on gun rights, but also inspired some states to pass statutes to extend current, and create new, gun rights. Less than a year ago, Texas passed a statute that requires public colleges to allow permitted gun carriers to carry guns on campus (Martinez, 2016).

Every state has regulations that allow citizens to carry concealed weapons. However, 16 states do not permit concealed weapons to be carried on college campuses, and 23 other states defer to the college on the decision of whether individuals may be permitted to carry concealed weapons on campus (Hultin, 2016).

At this time, the only court document concerning the right to carry arms on campus, is a federal court dismissal of a case brought by faculty members of the University of Texas who asserted that the law which allowed persons to carry concealed weapons on campus violated free speech rights in that it created a chilling effect (e.g. people would be fearful to speak out due to the knowledge that there may be armed individuals with opposing viewpoints) (Harris, 2017). The case was dismissed when a judge ruled that the plaintiffs lacked standing in that they could not “provide concrete evidence to substantiate their fears” (Harris, 2017, p. 1).

An alternative legal theory that has not yet been presented in court, but which is likely to be tested in the near future, is the theory that public college buildings are governmental buildings. The governmental building theory holds that campus buildings are analogous to other government buildings (e.g. courthouses or airports) where individuals are restricted from

carrying weapons (Pratt, 2014). If this theory were accepted by the courts it is imaginable that public college campuses that must allow licensed individuals to carry concealed weapons due to state statute, would be able to ban concealed carry within campus buildings.

It will take time for greater clarity to emerge on the impact that the relatively recent interpretation of the 2<sup>nd</sup> Amendment will have on college campuses.

### **Students' Privacy Rights: Considerations for Balancing with Campus Safety**

A theme that emerged from the research on the balance of campus safety concerns with students' privacy rights, was a focus on restrictions created by federal regulations concerning education records and healthcare records, and apparent conflicts and contradictions that arise when attempting to interpret, and act upon, the guidance offered by the various and disparate regulations.

The balance between campus safety concerns and students' privacy rights has slowly shifted as more studies and papers have explored the impact of student privacy on campus safety in the wake of the 2007 Virginia Tech shootings. Colleges have attempted to create policy and procedures that address the balance between students' privacy rights and campus safety concerns. The difficulty of balancing those rights lies in the conflicting requirements of FERPA and HIPPA.

FERPA, the Family Education Rights and Privacy Act, codified students' rights to privacy by requiring schools to obtain written authorization from students before sharing "educational records" that pertain to a student with individuals outside of the school. FERPA does allow for the release of very limited objective information without prior written approval (e.g. student directory information- name, address, telephone number, etc.). The specific list of what may be disclosed without written authorization has reasonably led colleges to deduce that



information not specifically noted by the Department of Education cannot be released without written approval provided by the student. As such, FERPA has been interpreted by many colleges as a wall that separates communications, regarding a student of concern, between members within a college community, from persons outside the college community (parents, doctors, therapists, etc.).

HIPPA, the Health Insurance Portability and Accountability Act, adds an additional layer of privacy rights to consider in regard to student records associated with student health clinics, therapists, and other health related providers who are members of the college community. In situations where the school is considered a "health care provider," and records of student treatment would meet the definition of "treatment records" (which are protected by HIPPA), and specifically not be included in the "education records" protected by FERPA, colleges are reasonably confused about how to determine the privacy rights that attach to the record.

As of yet, there is no case law that has considered an allegation that a college violated a student's privacy rights by sharing information on the mental health of the student with individuals outside of the college community, without adequate releases from the student. An area of case law that may influence the analysis of how or when to share information regarding the mental health of a student, without a written release from the student, is the case law surrounding college liability for student suicides. A few cases have been brought against colleges by parents of students who have committed suicide. Although those cases have focused (unsuccessfully) on the argument that a college has a responsibility to keep students safe (essentially arguing for a return to *in loco parentis*), in dicta those cases have discussed student privacy (*Shin v. Massachusetts Institute of Technology*, 2005). Cases that have centered on the responsibilities of a college for a student suicide, have recounted factual situations where

individuals who were not healthcare providers (ex: roommates, deans, professors) voiced concern regarding the student's behavior. Lake and Tribbensee noted that the focus on student healthcare records may be artificially narrow the analysis applicable for when non-healthcare workers have observed and reported concerning behaviors of suicidal students (2002).

### **Conclusion**

The research question was: Given the increased pressure on community colleges to provide a safe campus while also recognizing students' civil rights, what factors should be considered when determining how to balance college safety concerns with students' civil rights? An analysis and synthesis of the literature reviewed provided useful guidance on the identification of factors to consider. The analysis and synthesis indicated that the following factors should be considered when attempting to balance students' civil rights with campus safety concerns:

- When considering students' due process rights, the discrepancy between the standard of proof applied to criminal law matters and the standard of proof recommended by the United States Department of Education, Office of Civil Rights should be considered. Courts have applied diverse interpretations of the two standards of proof (e.g. *beyond a reasonable doubt* and *preponderance of the evidence*). Students accused of criminal behavior have argued that the standard of proof applicable in a criminal court matter is appropriate, the Dear Colleague Letter of 2011 that the standard of *preponderance of the evidence* is appropriate.
- When considering students' free speech rights, factors to consider include whether the student is exercising his/her rights to communicate a direct message, or to communicate indirectly by infringing upon the speech of others. Other factors to consider include whether the campus in question has a speech code that has been violated by the student's speech and,

if so, if the speech code is written narrowly to address time, place, and manner, without limiting content. Additionally, if the campus has a “free speech zone: the policies and procedure surrounding the zone should be considered to determine if the zone is compliant with constitutional requirements.

- When considering students' rights to bear arms, factors to consider include current state statutes, and the analysis of whether public school could be considered as analogous to a public building (ex: court house, airport, etc.) which could restrict an individual's right to carry a weapon.
- When considering students' rights to privacy, factors to consider include the application of FERPA, and HIPPA with a focus on the manner and/or the relationship the student has with the individual who now has the student's “private information” to determine whether the communication of the information occurred within the confines of a confidential relationship with a healthcare provider, or was communicated to a non-healthcare worker.

The literature identified factors to consider when attempting to balance students' civil rights with campus safety concern, and provided a framework for the application and analysis of the factors. Chapter five presents the identified factors, and a template for the application and analysis of the identified factors.

## **Chapter Five: Implications for Practice and Suggestions for Future Research**

### **Introduction**

This chapter reviews research presented in previous chapters and, from that research, it identifies factors to employ when balancing campus safety concerns with students' civil rights. The factors provide a basis for recommendations on the development of policies and procedures designed to address campus safety concerns that affect students' civil rights. The most effective campus safety policies and procedures strike a balance between being broad enough to cover a multitude of situations and specific enough to provide useful guidance. The recommendations offered are designed to strike that balance. By focusing on the development of policies and procedures, this paper guides college administrators in the development of policies and procedures that will diminish the need to make quick decisions to address urgent situations, provide clear advance communications to students and other members of the college community, and ensure that policies and procedures are applied in a consistent, coherent, and non-discriminatory manner. The recommendations offered are designed to strike that balance. One of the concerns about giving specific recommendations is that each situation on a college campus may have nuances that demand a tailored legal analysis. Therefore, it is critical for a campus leader to be aware that a legal review of policies and procedures should be performed on a regular basis to ensure that the policies and procedures remain compliant with current case law, statutes, and regulations.

In addition to factors for consideration and recommendations for the development of policies and procedures, there are suggestions for future research. This dissertation addresses the balance of campus safety concerns with students' civil rights, focusing on four particular civil rights: due process, free speech, gun rights and privacy rights. Future research could expand on

these four civil rights to an analysis of the interplay between the civil rights of students and the contractual rights and duties of faculty and administrators.

**Factors and Recommendations to Consider when Developing Policies and Procedures  
Designed to Address Campus Safety Concerns**

**Due Process Rights**

Education is a right, not a privilege. As such, any process that may interfere with a student's right to attend college must provide *due process* procedures sufficient to afford the student with notice of the allegation that may result in a suspension or dismissal from college, and with a reasonable process by which the student may address the allegation. When considering the balance of campus safety with students' due process rights, campus leaders are advised to answer the following question to determine the factors and recommendations to consider:

Does the College provide adequate notice and process?

Notice and process are required of any disciplinary process that may interfere with a student's right to attend college courses or other educational activities organized or supported by the college. The notice and process elements should be provided in writing that is clear, easily available, and widely promoted. Notice must provide the accused with a detailed account of the accusation that has been made against him/her and a description of the evidence that supports the allegation. Process must provide the accused student with a reasonable opportunity to respond to the allegation and to defend him/herself.

Are the *due process* rights connected to Title IX processes?

The Title IX processes determined by the United States Department of Education, Office of Civil Rights (OCR) 2011 Dear Colleague Letter (DCL), have created a dilemma for colleges. The DCL requires that Title IX processes apply the *preponderance* of evidence standard to hearings in which there is an allegation of sexual assault or of sexual harassment. However, students accused of sexual assault have argued that *beyond a reasonable doubt* is the correct standard of evidence to apply to comply with their due process rights. Courts have agreed with students and found that colleges have not provided sufficient *due process* in Title IX proceedings. The implications for colleges is that they must balance, on one hand, the risk of violating students' civil rights by complying with the 2011 DCL against, on the other hand, the risk of OCR investigations, fines, and potential institutional disqualification of ability to receive federal financial aid.

### **Recommendations for Practitioners**

Conduct a review of due process procedures on a regular basis. The review should address the following questions:

- Are policies and procedures readily available to students? Policies and procedures should be accessible through the college website and noted in both the college catalog and the student handbook.
- Are the policies and procedures consistently described in all publications? Errors occur when policies and procedures are updated but the update is not uniformly made to all publications.
- Are there program specific student handbooks (e.g. academic program specific student handbooks)? Program specific handbooks require specific student conduct that is not required of all students at the college. Program specific handbooks must

clearly note that the program specific handbook supersedes the general student handbook. A program that has a specific handbook must refer to the program specific handbook in any disciplinary proceeding that emanates from conduct required in the program specific handbook. The program-specific handbook must be easily available through the college website. Students who attend programs that have specific handbooks must complete signature page forms verifying that they have received, reviewed, and agree to follow the program-specific handbook.

- Title IX procedures (e.g. accusations of sexual assault and/or harassment) must be frequently reviewed for compliance with the Department of Education, Office of Civil Rights' (OCR) interpretation and application of the 2011 Dear Colleague Letter, and court opinions on the application of the preponderance of evidence standards mandated by the OCR.

### **Free Speech**

Free speech rights are integral to the educational mission and purpose of a college campus. As such, any policy or procedure that limits students' free speech rights must be narrowly drawn to meet the specific purpose of safety. When developing campus policies and procedures that present a potential limitation on students' free speech rights, the college will need to determine how best to balance campus safety concerns with students' free speech rights. When drafting policies and procedures, some of the critical questions to answer include:

Are there policies and procedures that address the content of student speech?

Policies and procedures that address the content of student speech (e.g.: hate speech, racist or sexist speech prohibitions) are typically organized and communicated as part of a speech code. When drafting college policies for speech codes, the policies may not regulate the

content of the communication. Policies that regulate viewpoints or ideas are not content neutral and, as such, will likely be found to be unconstitutional. A policy that focuses on “fighting words” or “hate speech” may survive constitutional scrutiny, if the policy is viewpoint neutral. A recent example of a college’s limited ability to regulate the content of student speech is the 2015 expulsion of students from the University of Oklahoma. The students were expelled based on well-publicized racist chants. However, the college quickly clarified that the expulsion was not based on the speech of the students but rather the students’ leadership in guiding other students in inappropriate conduct. Legal authorities have found the college’s explanation to be not credible and have noted that the students would have an “excellent chance” of winning an appeal of their expulsion in court (McCoy, 2015). A regulation of speech content must be viewpoint neutral (i.e., cursing). A regulation of racist or sexist speech will not survive a legal appeal.

Are there policies and procedures that address the process of student speech (e.g. time, place, and/or manner)?

Policies or procedures that limit the time, place or manner of speech may withstand judicial scrutiny but must be narrowly tailored to limit the impact on free speech rights and must be based on a reasonable likelihood that substantial disruption will occur if the regulation is not recognized. Time, place, or manner regulations may not be based on an abstract potential for disruption, or a desire for orderliness.

Are the policies and procedures addressing student behavior related to the speech of a campus visitor?

A policy or procedure designed to address behavior that interferes with the speech of another must clearly define behavior that is disruptive, as well as behavior that is acceptable.



When developing policies and procedures that address student behavior in relation to the speech rights of others, it is useful to review the policies and procedures that determine the process by which visitors are invited to speak publicly at the campus.

- The roles and responsibilities of all parties (speaker, students, safety officers and campus leadership) must be clearly communicated.
- Establishing and enforcing behavioral expectations for student protesters may diminish the incidents of violent student protest. Regulations that are clear and content neutral provide an opportunity for students to exercise their free speech rights while also recognizing the free speech rights of the speaker.

The process by which guest speakers are invited to campus may strengthen and support both students' civil rights and campus safety practices. The college must clearly communicate who has the authority to invite a public speaker to campus and the process by which the invitation receives college approval before being issued. Factors to consider include:

- Who invites the speaker? Invitations issued by faculty members may be perceived as a college endorsement of the speaker and the speaker's message. If invitations are coming from a student group that has a faculty advisor, the group not the faculty advisor would issue the invitation and introduce the speaker to the campus audience (as opposed to introduction to a particular classroom audience, a case addressed below).
- It is important to distinguish faculty invitations to public speakers (e.g. events open to the campus) from faculty invitations to guest lecturers (e.g. individuals who will speak to a specific course with the audience being limited to students in that course or

- program). Classrooms visitors are invited to speak on a specific topic that connects to the subject matter of the course and, as such, are not engaging in political speech.
- It is important to clearly publicize the organization that is hosting the speaker. This practice avoids the perception that the speaker was invited by the college or that the college otherwise endorses the speaker's viewpoint. A recent example of what may occur when the speech of a provocative guest speaker appears to have the endorsement of the college involved the March, 2017 student riot that occurred at Middlebury College in reaction to Charles Murray's public speaking engagement on campus. Charles Murray, a controversial speaker was invited, by a student organization, to speak at Middlebury. Immediately prior to Murray taking the stage, the student organization noted that the speaking engagement was sponsored by the political science department. The President addressed the audience. During her address, the President explained that she did not endorse Mr. Murray's views (Digravio, 2017). The President's attendance and participation may have heightened the perceived importance of the engagement. Her personal disavowal of Mr. Murray's theories may have comforted students who intended to protest and led those students to feel secure in their protest. Her announcements and attendance did not stop the protest that resulted in personal injury and harm to property.
  - Invitations issued by student organizations may be permitted and scheduled in a manner that supports diverse viewpoints (i.e. each student organization may be provided with an equal budget and opportunity to host one or more guest speakers).
  - Colleges that permit outside individuals or organizations to rent space on campus for public speaking events must clearly communicate who is inviting the speaker and the

inviter's relationship to the college. College policy must be content neutral and focus on campus safety. It is appropriate for a space rental application or space use permit to include questions that would help determine the security needs for the event. Once the college has defined the required security services the college must determine whether those can be satisfied and, if not, decline to host the speaker or event. The "Unite the Right" rally in Charlottesville, Virginia began with a march on the University of Virginia campus. The protesters had requested and received approval to protest on campus. University of Virginia had not conducted research on the group that would be protesting or the size of the group. There was no agreed upon map of the walk that the protesters planned. As such, the university was not prepared for the demonstration and the safety issues it presented (Stripling, 2017).

- The process for approving and planning a guest speaker event must embed a timeline that allows for consideration of the nature of the anticipated crowd, including the venue's ability to safely host the anticipated crowd (e.g. space needs, security needs, accessibility). Incorporation of an appropriate timeline into standard procedures to ensure provision of an appropriate venue and safety precautions before inviting a speaker may have prevented the issues that led to the University of California, Berkeley's retraction of an invitation to host Ann Coulter.

### **Recommendations for Practitioners**

A review of policies and procedures that impact students' free speech rights should be conducted on a regular basis. The review would address the following questions:

- Is the policy and procedure addressing the content of students' speech? If so, the policy and procedure must be viewpoint neutral (i.e., policies against swearing and shouting are viewpoint neutral; policies against racist or sexist speech are not viewpoint neutral).
- Is the policy and procedure addressing time, place, and manner? If so, the policy must be narrowly tailored so that the limitation is based on a reasonable, current, and specific safety concern, not a desire for orderliness or a generalized safety concern.
- Is the policy and procedure addressing student behavior that disrupts the free speech of a campus visitor? If so, does the policy clearly define expected student behavior and allow for behavior that is a non-disruptive exercise of free speech (e.g. silent marches, clothing that communicates viewpoint, signs that do not block the view of the speaker, and protests that do not block access to the venue).
- Is there a policy and procedure that addresses protests by campus visitors?

### **Gun Rights**

When considering the balance of campus safety with students' gun rights, it is important to recognize that the concept that students have a right to carry guns on campus is very new and, as such, there is an absence of history upon which to build an understanding of the factors to consider when developing policies and procedures that would address students' rights to carry guns on campus. When developing campus policies and procedures that present a potential limitation on students' gun rights, the college will need to determine how best to balance campus safety concerns with students' gun rights. When drafting policies and procedures, some of the critical questions to answer include:

Are the rights in question addressed by case law, statutes or regulations?

The right to bear arms is established in the Second Amendment of the United States Constitution, but the specifics on how that right is regulated is established at the state level. At this time, Texas is the only state that has passed a statute specifically addressing students' rights to carry guns on campus. United States Supreme Court decisions have established a concept that there are "special places" that are recognized to have special uses that justify additional regulations on guns (e.g., airports, courthouses, governmental buildings, hospitals and school buildings). It is anticipated that a future case may argue that the "special places" doctrine effectively nullifies the Texas statute (Keller, 2011).

#### Are campus policies and procedures compliant with case law, statutes and regulations?

The Texas statute specifies that handguns may not be banned from classrooms, or from storage in dormitory rooms. The statute did not address other rooms on campus (e.g., faculty offices). In Texas, some faculty who wish to avoid meetings with armed students are moving their office hours to bars. Handguns are prohibited at Texas bars (Marcus, 2017). Additionally, several University of Texas campuses have permitted faculty members who have single (i.e., unshared) offices to declare their office space a gun free zone (Flaherty, 2016). In response, a student has filed a complaint with the Texas Attorney General alleging that the policy of gun-free offices violates the Texas statute (Flaherty, 2016). Various limitations on areas where students may carry guns have been enacted and appealed. At this time, there is not a clear, statewide interpretation of the limitations that may be applied to students' rights to carry guns on campus.

#### **Recommendations for Practitioners**

A review of policies and procedures that impact students' gun rights should be conducted on a regular basis. The review would address the following questions:

- Are there new statutes or regulations that impact students' rights to carry guns on campus? Some states prohibit guns on campus, while other either defer to colleges on the question of whether to allow or disallow guns on campus or explicitly mandate that students be permitted to carry guns on campus. The recent passage of a statute in Texas that mandated campuses to permit students to carry guns indicates that gun rights enthusiasts will work to have similar statutes passed in other states.
- Is there new case law that discusses the application of the "special places" concept? The "special places" concept may dictate the direction of gun rights on college campuses.

### **Privacy Rights**

When considering the balance of campus safety concerns with students' privacy rights, it is important to consider the application, and limitation, of federal regulations, and the college's ability to address student behavioral concerns while maintaining compliance with federal and state regulations. The development of campus policies and procedures that present a potential limitation on students' privacy rights should include consideration of the following questions:

Are the rights in question concerning educational records protected by FERPA?

FERPA protects student educational records and requires the consent of the student before the record may be shared with third parties. FERPA does not ban the sharing of student information between officials within the college. FERPA recognizes a general consent exception which does not require student authorization if there an emergency in which sharing the record is necessary to protect the health or safety of the student or of another individual. In those situations, a student record may be shared with appropriate parties (e.g., parents, law enforcement) without student authorization.

Do the rights in question concern healthcare educational records protected by HIPPA?

HIPPA protects the privacy of medical information obtained during the course of treatment. HIPPA regulations may apply to student medical information obtained in the course of treatment offered by the college. HIPPA applies to records created for a particular health service offered to a student when the healthcare provider performs electronic transmission of insurance bills and claims.

Does the college provide healthcare services? If so, how are those services described to students?

It is advisable to encourage students to seek support while also acknowledging that the college may refer certain matters to local healthcare providers. When communicating the services provided, language should be carefully calibrated both effectively to communicate policies and procedures and also to minimize the likelihood that the policies and procedures will unintentionally influence vulnerable students to avoid counseling services.

**Recommendations for Practitioners**

A review of policies and procedures that impact students' privacy rights should be conducted on a regular basis. The review should address the following questions:

- Do the rights in question concern observations or information that is protected by both FERPA and HIPPA?
- Do the policies and procedures address private or public student behavior? Policies must focus on behaviors and avoid profiling. Privacy rights do not apply to public behavior. Policies addressing student behavior must be clear as regards both the substantive definitions of behavior and the procedures that will be followed when concerning behavior is observed. A college may respond to concerning student behavior that is publicly displayed, without performing an analysis of student privacy

rights. The utilization of Behavioral Intervention Teams, mandatory counseling, and mandatory assessment may effectively address concerning student behaviors that are observed in a public forum.

- Do policies and procedures define the relationship between college-provided healthcare services and a student-patient? College-provided healthcare services are not direct treatment relationships that provide continuing care by healthcare professionals for patients, but rather indirect relationships that provide temporary care by college agents for students of the college (McBain, 2008; Woods-Johnson & Jasonik, 2013).
- Do the policies and procedures clearly define the scope of care provided through student counseling services? Colleges must define the matters that the counseling center is equipped to address, the process of assessing a student's needs, and the procedures for referring students to local healthcare providers for services that the college does not offer (McBain, 2008; Woods-Johnson & Jasonik, 2013).
- Have state laws been reviewed to ensure that college policies do not conflict with state laws? Policies should be communicated frequently to all members of the campus community.

### **Areas for Future Research**

This area of study is evolving quickly as political and cultural influences affect the expectations for behavior (including that of students, faculty, staff and visitors) on a public college campus. These influences are also influencing the expectations and responsibilities within the relationship between the student and the college.



This dissertation focused on scholarly, legal, and grey literature research, in the areas of campus safety concerns and students' civil rights. Although some of today's issues are similar to the issues faced by campuses during the 1960s, the laws that guide campus leaders have evolved and changed dramatically since the 1960s. This dissertation does not offer legal advice or opinion on specific cases. Rather it uses a legal lens, scholarly work, and grey literature to analyze and synthesize complex issues regarding students' civil rights.

Future research could expand to consider the implications of the balance of campus safety concerns with students' civil rights on other members of the college community. Research on the implications of campus safety and student's civil rights could expand to consider the impact on faculty, faculty work conditions, faculty employment contracts, and faculty and institutional governance. Research on the implications of campus safety and student's civil rights could expand to consider the impact on minors on campuses, institutions on campus that work with minors (e.g., dual enrollment programs, high schools, upward bound programs), and the adults that are responsible for the minors. Future research may also address recommended responses to events at other colleges that impact students' civil rights. Case studies on specific events could be the basis of future research and useful guidance to college administrators.

### **Conclusions**

Community colleges are challenged to develop policies and procedures that promote and support campus safety, while simultaneously recognizing the civil rights of students. The process of developing policies and procedures is important not only for the clear communications of policies, procedures, expectations, and values, but also for establishing a framework for continuous assessment of compliance with constitutional requirements. Effective

and thoughtful policies and procedures may also serve as guidance in the professional development and training needs of the campus.

The constitutional rights of students may conflict with not only campus safety concerns, but also with other federal or state laws or regulations. College administrators must navigate a complex landscape of multiple, sometimes conflicting, regulations and laws. Before developing policies and procedures that may touch upon students' civil rights, college administrators are encouraged to review not only regulations and statutes, but also case law on the application of those regulations and statutes. Community colleges must also consider the rules and regulations that apply to governmental organizations. The successful drafting of policies and procedures requires starting with an understanding of the legal implications of potential policies and procedures.

## References

About OCR. (2015). Retrieved from <http://www2.ed.gov/about/offices/list/ocr/aboutocr.html>

ACLU. (2013, Jan 10). Baker v. Katehi (UC Davis pepper spray cop). Retrieved from <https://www.aclunc.org/our-work/legal-docket/baker-v-katehi-uc-davis-pepper-spray-cop>

Adams, S.Y. (2014). The importance of institutional culture at a technical college” (Doctoral dissertation). Retrieved from <http://epublications.marquette.edu/cgi/viewcontent.cgi?article=1336&context=dissertationsmu>

Administrative Procedure Act. (1946). Public Law 404. Retrieved from <https://www.justice.gov/sites/default/files/jmd/legacy/2014/05/01/act-pl79-404.pdf>

Alexander, L, Barnhizer, D, Bartholet, E., Bibas, S, Candeub, D.A., Cottrol, R.J, . . . Wilmarth, A.E., Jr. (2016, May 16). Law professors’ open letter regarding campus free speech and sexual assault. Retrieved from <https://www.lankford.senate.gov/imo/media/doc/Law-Professor-Open-Letter-May-16-2016.pdf>

Anderson, M. (2015, Sept. 28). The rise of law enforcement on college campuses. *The Atlantic*. Retrieved from <http://www.theatlantic.com>

Andrews, T. (2017, April 19). Federal judge stops Auburn from canceling white nationalist Richard Spencer speech. Protests and a scuffle greet him. *The Washington Post*. Retrieved from [https://www.washingtonpost.com/news/morning-mix/wp/2017/04/19/federal-judge-stops-auburn-from-canceling-white-nationalists-speech-violence-erupts/?utm\\_term=.aad9ecb74312](https://www.washingtonpost.com/news/morning-mix/wp/2017/04/19/federal-judge-stops-auburn-from-canceling-white-nationalists-speech-violence-erupts/?utm_term=.aad9ecb74312)

Anglen, R. (2011, Jan 9). Pima Community College was on alert for Jared Loughner. *The Arizona Republic*. Retrieved from [www.azcentral.com](http://www.azcentral.com)

- Archer, J. (2015, Oct. 1). The top four reasons to carry concealed on campus. *American Concealed Handgun Safety and Tactical Training*. Retrieved from <https://americanconcealed.com/articles/the-top-four-reasons-to-carry-concealed-on-campus/>
- Armed Campuses (n.d.). Guns on campus' laws for public colleges and universities. Retrieved from <http://www.armedcampuses.org/>
- Bartholet, E., Brewer, S., Clark, R., Dershowitz, A., Desan, C., Donahue, C. . . . Wilkins, D. (2014, Oct. 14). Harvard law school faculty letter. Retrieved from <http://www.bostonglobe.com/opinion/2014/10/14/rethink-harvard-sexual-harassment-policy/HFDDiZN7nU2UwuUuWMnqbM/story.html>
- Bauer-Wolf, J. (2017, May 2). Suicide and Title IX. Retrieved from <https://www.insidehighered.com/news/2017/05/02/title-ix-cases-resulted-suicide-suicide-attempt-two-colleges-prompt-fresh-debate>
- Bell v. Wolfish, 441 U.S. 520 (1979)
- Bill of Rights Institute. (n.d). BILL OF RIGHTS OF THE UNITED STATES OF AMERICA (1791). Retrieved from <https://www.billofrightsinstitute.org/founding-documents/bill-of-rights/>
- Bintliff, B. (2001). Mandatory v. Persuasive Cases. *Perspectives: Teaching Legal Research and Writing*.
- Birnbaum, R. (2012). Ready, fire, aim: The college campus gun fight. *Change: The Magazine of Higher Learning*, 45(5), 6-14
- Blackstone, W. (1765). *Commentaries on the laws of England, book 1*. Oxford, UK: Clarendon Press.

Bradshaw v. Rawlings, 612 F. 2<sup>nd</sup> 135 (3d Cir. 1979)

Brenner, S., & Spaeth, H. J. (1995). *Stare Indecisis: The Alteration of Precedent on the Supreme Court, 1946-1992*. Cambridge University Press.

Broad, M.C. (2015, August 18). Dear Colleague Letter Regarding Student Medical Records. Retrieved from <http://www.acenet.edu/news-room/Documents/Comments-ED-Medical-Records-DCL.pdf>

Brown, S. (2017, July, 13). After meeting with DeVos, Title IX activists say they still have many questions. Retrieved from <http://www.chronicle.com/article/After-Meeting-With-DeVos/240651>

Buttny v. Smiley, 281 F. Supp. 280 (D. Colo. 1968)

Campbell, J., & Longo, P. (2010). Stalking on campus: Ensuring security with rights and liberties. *College Student Journal*, 44 (2), 309-324.

Campus Sexual Violence Elimination Act. (2013). Retrieved from <https://www.govtrack.us/congress/bills/113/s128/text>.

Candler, B. (n.d.) Mandatory v. Persuasive. Retrieved from [https://www.univ-trier.de/fileadmin/fb5/FFA/KURSUNTERLAGEN/Anglo-Amerikanisches\\_Recht/Legal\\_Writing/Candler\\_SS\\_2015/Sources\\_of\\_Law.pdf](https://www.univ-trier.de/fileadmin/fb5/FFA/KURSUNTERLAGEN/Anglo-Amerikanisches_Recht/Legal_Writing/Candler_SS_2015/Sources_of_Law.pdf)

Carlson, S. (2015). Campus cops' contested role. *The Chronicle of Higher Education*. Retrieved from [www.chronicle.com](http://www.chronicle.com)

Chang, I. Y. (2013). Health governance and mental health privacy laws: Restoring the balance between individual privacy and public safety following the 2007 Virginia Tech shooting. Retrieved from [http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1334&context=student\\_scholarshi](http://scholarship.shu.edu/cgi/viewcontent.cgi?article=1334&context=student_scholarshi)

p

Chapman, K. (2008). A preventable tragedy at Virginia Tech: Why confusion over FERPA's

provisions prevents schools from addressing student violence. *BU Pub. Int. LJ*, 18, 349.

Chen, G. (2017, Feb. 22). How free is free speech on community college campuses? Retrieved from <https://www.communitycollegereview.com/blog/how-free-is-free-speech-on-community-college-campuses>

Chronicle of Higher Ed. (2017). Title IX tracking sexual assault investigations. Retrieved from <https://projects.chronicle.com/titleix/?cid=T9WIDGET#overview>

“Clery Act.” (1990). 20 U.S.C. sec. 1092 (f). Retrieved from <http://clerycenter.org/jeanne-clery-act>

Creeley, W. (2012, Jan. 3). Why the Office of Civil Rights' April 'Dear Colleague Letter' was 2011's Biggest FIRE Fight. Retrieved from <https://www.thefire.org/why-the-office-for-civil-rights-april-dear-colleague-letter-was-2011s-biggest-fire-fight>

Creswell, J. W. (1999). Mixed-method research: Introduction and application. *Handbook of educational policy*, 455-472.

Dariano v. Morgan Hill Unified School Dist., 767 F.3d 764 (9th Cir. 2014)

Davis, T. J. (2004). Assessing constitutional challenges to university free speech zones under public forum doctrine. *Ind. LJ*, 79, 267.

Dear colleague letter. (2011). Washington, DC: United States Department of Education's Office of Civil Rights. Retrieved from <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-01104.html>

DeJohn v. Temple University, 537 F.3d 301 (3d Cir. 2008)

Digravio, W. (2017, March 2). Students protest lecture by Dr. Charles Murray at Middlebury College. Retrieved from <https://www.youtube.com/watch?v=a6EASuhefEI>

District of Columbia v. Heller, 128 S. Ct. 2783 (2008)

Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir. 1961)

Dixon-Woods, M., Cavers, D., Agarwal, S., Annandale, E., Arthur, A., Harvey, J....Sutton, A.

(2006). Conducting a critical interpretive synthesis of the literature on access to healthcare by vulnerable groups. *BMC medical research methodology*, 6(1), 35.

Doe v. George Mason University, Civ. No. 1:15-cv-00209 (E.D. Va. Feb. 25, 2016) retrieved from <https://www.thefire.org/doe-v-george-mason-university-civ-no-115-cv-00209-e-d-va-feb-25-2016/>

Doe v. THE OHIO STATE UNIVERSITY, No. 2: 15-cv-2830 (S.D. Ohio Feb. 11, 2016)

Retrieved from

[https://scholar.google.com/scholar\\_case?case=6741413125118950226&q=doe+v.+the+ohio+state+university+&hl=en&as\\_sdt=6,39](https://scholar.google.com/scholar_case?case=6741413125118950226&q=doe+v.+the+ohio+state+university+&hl=en&as_sdt=6,39)

Doe v. University of Michigan, 721 F. Supp. 852 (E.D. Mich. 1989)

Doe v. University of Southern California, 246 Cal. App. 4th 221 (Ct. App. 2016)

Doe 1 et al v. Cummins et al. . Retrieved from

<https://kcjohnson.files.wordpress.com/2013/08/6th-circuit-cincinnati-opinion.pdf> (6th Cir., 2016).

Dorf, M. C. (2000). What does the second amendment mean today? Retrieved from

<http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1092&context=facpub>

Eakin, J. M., & Mykhalovskiy, E. (2003). Reframing the evaluation of qualitative health research: reflections on a review of appraisal guidelines in the health sciences. *Journal of evaluation in clinical practice*, 9(2), 187-194.

Engler, S. (2015). Constructive dissent: UC Irvine as a case study for the American student movement against the Vietnam War. Retrieved from

<https://escholarship.org/uc/item/3nt095w4>

Everytown for Gun Safety. (2016). Analysis of school shootings - appendix: School shootings in America 2013-2015. 2016 Retrieved from <https://everytownresearch.org/fact-sheet-guns-on-campus/>

FACE. (n.d.) About us. Retrieved from <https://www.facecampusequality.org/about.html>

Family Educational Rights and Privacy Act (FERPA). (1974). Retrieved from <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Family Policy Compliance Office. (n.d.). Retrieved from <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Flaherty, C. (2016, Aug. 5). Even in faculty offices. *Inside Higher Education*. Retrieved from <https://www.insidehighered.com/news/2016/08/05/group-seeks-block-u-texas-letting-professors-keep-guns-out-offices>

Foundation for Individual Rights in Education. (2008, Jan. 8). St. Louis Community College: Student punished for emailing classmates. Retrieved from <https://www.thefire.org/cases/saint-louis-community-college-student-punished-for-emailing-classmates/>

Foundation for Individual Rights in Education. (2014, Jan. 13). Letter from FIRE to Asnuntuck CC Interim President James P. Lombella. Retrieved from <https://www.thefire.org/letter-from-fire-to-asnuntuck-cc-interim-president-james-p-lombella/>

Foundation for Individual Rights in Education. (2016, May 4). Victory: Texas college settles free speech lawsuit after telling student that gun rights sign needs 'special permission.' Retrieved from <https://www.thefire.org/victory-texas-college-settles-free-speech-lawsuit->



after-telling-student-that-gun-rights-sign-needs-special-permission/

Foundation for Individual Rights in Education. (2017, March 28). Student sues Los Angeles Community College District to free over 150,000 students from unconstitutional 'free speech zones. Retrieved from

<https://www.thefire.org/student-sues-los-angeles-community-college-district-to-free-over-150000-students-from-unconstitutional-free-speech-zones/017>

Franklin v. Leland Stanford Junior University, 172 Cal. App. 3d 322 (Ct. App., 1985)

Freeman v. City of Dallas, 186 F.3d 601, 607 (5th Cir. 1999)

Freeman, R. E. (2005). The development of stakeholder theory: An idiosyncratic approach.

*Great minds in management: The process of theory development*, 417-435.

Gardner, A., Wilgoren, D. & Schneider, H. (2007, August 30). Panel: Va. Tech failed to respond to Cho warning signs. Retrieved from [http://www.washingtonpost.com/wp-](http://www.washingtonpost.com/wp-dyn/content/article/2007/08/30/AR2007083000759.html)

[dyn/content/article/2007/08/30/AR2007083000759.html](http://www.washingtonpost.com/wp-dyn/content/article/2007/08/30/AR2007083000759.html)

Garner, B. A., & Black, H. C. (2004). *Black's law dictionary*. St. Paul, MN: Thomson/West.

Gay Lib v. University of Missouri, 558 F.2d 848 (8th Cir. 1977)

Gay Student Services v. TEXAS A & M UNIVERSITY, 737 F.2d 1317 (5th Cir. 1984)

Gelpi, A. (2011). Quick study campus safety. *Campus Legal Advisor*. 11 (9) 16.

Goldberg v. REGENTS OF THE UNIVERSITY OF CALIF., 248 Cal. App. 2d 867 (Ct. App., 1967)

Goldberg, L. (2016, Aug. 9). Judge dismisses 2 cases against UC Berkeley regarding sex assault handling. Retrieved from <http://www.dailycal.org/2016/08/05/judge-dismisses-two-cases-against-uc-berkeley-regarding-sexual-assault-handling/>

Gorman v. University of Rhode Island, 837 F.2d 7 (1st Cir. 1988)

Goss v. Lopez, 419 U.S. 565 (1975)

Gott v. Berea College, 161 S.W. 204 (1913)

Gould, J. (1999). Triumph of hate speech regulation: Why gender wins but race loses in America, *The Mich. J. Gender & L.*, 6, 153

Greer, D. G., & Klein, M. W. (2010). A new model for financing public colleges and universities. *On the Horizon*, 18(4), 320-336.

Grey, T. C. (1995). How to write a speech code without really trying: Reflections on the Stanford Experience. *UC Davis L. Rev.*, 29, 891.

Griffin, O.R. (2006). Confronting the evolving safety and security challenge at colleges and universities. *Pierce Law Review*, 5, 413-432.

Griswold v. Connecticut, 381 U.S. 479 (1965)

GunFree UT. (2016, Aug. 2). Media Advisory: UT Austin Professors Fight SB-11 in Federal Court. *GunFree UT*. Retrieved from <http://gunfreeut.org/category/press-release/>

Hamilton v. Regents of Univ. of Cal., 293 U.S. 245 (1934)

Hannes, K., & Macaitis, K. (2012). A move to more systematic and transparent approaches in qualitative evidence synthesis: update on a review of published papers. *Qualitative Research*, 12 (4), 402-442.

Harden v. Bowersox, No. 4: 14-CV-383 NAB (E.D. Mo. Apr. 12, 2017)

Harris, A. (2017, July 7). Federal judge dismisses suit against Texas campus-carry law. Retrieved from <http://www.chronicle.com/blogs/ticker/federal-judge-dismisses-suit-against-texas-campus-carry-law/119257>

Harris, S. (2016, April 11). Due process legal update: More students' lawsuits move forward. Retrieved from [www.thefire.org/due-process-legal-update-more-students-lawsuits-move-forward/](http://www.thefire.org/due-process-legal-update-more-students-lawsuits-move-forward/)

Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988)

Healy v. James 408 U.S. 169 (1972)

Health Insurance Portability and Accountability Act of 1996 (HIPPA). (1996). Retrieved from

<https://www.govtrack.us/congress/bills/104/hr3103>

Henrick, S. (2013). A hostile environment for student defendants: Title IX and sexual assault on college campuses. *Northern Kentucky Law Review*.

Hill v. Colorado, 530 U.S. 703 (2000)

Hopkins, J.P. & Neff, K. (2014). Jurisdictional confusion that rivals Erie: The jurisdictional limits of campus police. *Montana Law Review*, 75 (I), 123-147.

How to do legal research. (n.d.). Retrieved from:

<http://www.lexisnexis.com/images/lawschool/legal-research-pyramid.png>

Hudson v. Craven, 403 F.3d 691 (9th Cir. 2005)

Hudson, D.L. (2002, Sept., 13). Hate speech and campus speech codes. Retrieved from

<http://www.firstamendmentcenter.org/hate-speech-campus-speech-codes/>

Hultin, S. (2016, May 31). Guns on campus: Overview. Retrieved from

<http://www.ncsl.org/research/education/guns-on-campus-overview.aspx>

In re Winship, 397 U.S. 358 (1970)

Introduction to Legal Authorities. (2016). Introduction to Legal Authorities and Legal Research.

Retrieved from

<https://www.law.umaryland.edu/marshall/researchguides/tmllguide/chapter1.pdf>

Jaros, D. M. (2014). Preempting the police. *Boston College Law Review*, 55 (4), 1149-1195.

Jeanne Clery Disclosure of Campus Security and Campus Crime Statistics Act. (1998). Retrieved

from <http://clerycenter.org/jeanne-clery-act>

Jefferson, T. (1824). Meeting Minutes of University of Virginia Board of Visitors, 4-5 Oct. 1824, 4 October 1824. Retrieved from [http://rotunda.upress.virginia.edu/founders/default.xqy?](http://rotunda.upress.virginia.edu/founders/default.xqy?Keys=FOEA-print-04-03-4598)

Keys=FOEA-print-04-03-4598

Johnson, K.C. & Taylor, S. (2017, Feb. 1). Campus due process in the courts. Retrieved from [https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/02/01/campus-due-process-in-the-courts/?utm\\_term=.9d8723489071](https://www.washingtonpost.com/news/volokh-conspiracy/wp/2017/02/01/campus-due-process-in-the-courts/?utm_term=.9d8723489071)

Joselow, M. (2016, June 20). Safeguarding free speech. Retrieved from <https://www.insidehighered.com/news/2016/06/20/cuny-considers-free-speech-policy>

June, A.W. (2014, Oct. 31). Overseeing sex-assaults is now a full-time job. *The Chronicle of Higher Education*. Retrieved from <http://www.chronicle.com/article/Overseeing-Sex-Assault-Cases/149739>

Kaplin, W. A. (1983). Accrediting agencies' legal responsibilities: In pursuit of the public interest. *JL & Educ.*, 12, 87.

Katz v. United States, 389 U.S. 347 (1967)

KatzJameson, J. (1998). Diffusion of a campus innovation: Integration of a new student dispute resolution center into the university culture. *Mediation Quarterly*, 16, 129-146.

Keefe v. Adams, 44 F. Supp. 3d 874 (D. Minn. 2014)

Keller, J. (2011, June 6). Colleges get advice on crafting weapons policies that will hold up in court. Retrieved from <http://www.chronicle.com/article/Colleges-Get-Advice-on/128058>

Kennedy, M. (2017, April 26). After back-and-forth Ann Coulter speech is off at UC Berkeley. Retrieved from [http://www.npr.org/sections/thetwo-way/2017/04/26/525745159/after-back-and-forth-ann-\(coulter-speech-is-off-at-uc-berkeley](http://www.npr.org/sections/thetwo-way/2017/04/26/525745159/after-back-and-forth-ann-(coulter-speech-is-off-at-uc-berkeley)

Kirwan, W. E., & Zeppos, N. S. (2015). Recalibrating regulation of colleges and universities:

- Report of the Task Force on Federal Regulation of Higher Education.
- Keir, P. (2014). Evaluating and incorporating "grey literature" into your DMCCPA dissertation. Retrieved from [www.umuc.edu](http://www.umuc.edu) class resources fall 2015
- Knight v. State Board of Education, 200 F. Supp. 174 (M.D. Tenn. 1961)
- Lake, P. F. (1999). Rise of duty and the fall of in loco parentis and other protective tort doctrines in higher education law. *The Mo. L. Rev.*, 64, 1.
- Lake, P., & Tribbensee, N. (2002). The emerging crisis of college student suicide: Law and policy responses to serious forms of self-inflicted injury. *Stetson L. Rev.*, 32, 125.
- LaPoint, L. A. (2009-2010). The up and down battle for concealed carry at public universities. *Journal of Student Affairs*, 19, 16.
- Layton, L. (2015, March 18). Civil rights complaints to U.S. Department of Education reach a record high. *The Washington Post*, Retrieved from [https://www.washingtonpost.com/news/local/wp/2015/03/18/civil-rights-complaints-to-u-s-department-of-education-reach-a-record-high/?utm\\_term=.60e835167952](https://www.washingtonpost.com/news/local/wp/2015/03/18/civil-rights-complaints-to-u-s-department-of-education-reach-a-record-high/?utm_term=.60e835167952)
- Leavitt, M., Spellings, M., & Gonzales, A. (2007, June 13). Report to the President on issues raised by the Virginia Tech tragedy. Retrieved from [https://www.justice.gov/archive/opa/pr/2007/June/vt\\_report\\_061307.pdf](https://www.justice.gov/archive/opa/pr/2007/June/vt_report_061307.pdf)
- Lee, P. (2011). The curious life of in loco parentis at American universities. *Higher Education in Review*, 8, 65-90.
- Lee, T (2016, Aug. 1). New Texas law allows college students to carry guns on campus. Retrieved from <http://www.nbcnews.com/news/us-news/new-texas-law-allows-college-students-carry-guns-campus-n620911>
- Li, O. (2016, May 6). When Jefferson and Madison Banned Guns on Campus. *The Atlantic*. Retrieved from <https://www.theatlantic.com/politics/archive/2016/05/when-jefferson->

and-madison-banned-guns-on-campus/481461

Lighty, T. & Dizikes, C. (2015, May 22). Illinois bill aims for local police to investigate college campus sexual assaults. *The Chronicle of Higher Education*. Retrieved from: [www.chronicle.com](http://www.chronicle.com)

Lopez v. Candaele, 630 F.3d 775 (9th Cir. 2010)

Majeed, A. (2009, Nov.18). Defying the constitution: The rise, persistence, and prevalence of campus speech codes. Retrieved from: <https://www.thefire.org/defying-the-constitution-the-rise-persistence-and-prevalence-of-campus-speech-codes/>

Mangan, K. (2015, Feb., 2). Should colleges be forced to swiftly report rapes to the police? *The Chronicle of Higher Education*. Retrieved from [www.chronicle.com](http://www.chronicle.com).

Marcus, J. (2017, March 19). Pints not pistols: Office hours in bars dodge campus carry laws. Retrieved from [www.timeshighereducation.com/news/pints-not-pistols-office-hours-in-bars-dodge-campus-carry-laws](http://www.timeshighereducation.com/news/pints-not-pistols-office-hours-in-bars-dodge-campus-carry-laws)

Martinez, A. (2016, Aug., 1). Texas begins allowing guns on campuses on Monday. Here's what public colleges are saying. *The Chronicle of Higher Education*. Retrieved from [www.chronicle.com](http://www.chronicle.com)

Martinson v. Regents of University of Michigan, No. 12-2230. (6th Cir. 2014). Retrieved from [https://scholar.google.com/scholar\\_case?case=6343620545634627169&q=martinson+v.+regents+of+university+of+michigan&hl=en&as\\_sdt=6,39](https://scholar.google.com/scholar_case?case=6343620545634627169&q=martinson+v.+regents+of+university+of+michigan&hl=en&as_sdt=6,39)

Mathews v. Eldridge, 424 U.S. 319 (1976)

McBain, L. (2008). *Balancing student privacy, campus security, and public safety: Issues for campus leaders*. American Association of State Colleges and Universities.

McBaine, J. P. (1944). Burden of for proof: Degrees of belief. *Cal. L. Rev.*, 32, 242.

McCoy, T. (2015, March 11). Why expelled Oklahoma frat boys would have an 'excellent chance' in court. Retrieved from [https://www.washingtonpost.com/news/morning-mix/wp/2015/03/11/expelled-oklahoma-students-have-an-excellent-chance-of-succeeding-if-they-sue/?utm\\_term=.7c6dd9c53ec8](https://www.washingtonpost.com/news/morning-mix/wp/2015/03/11/expelled-oklahoma-students-have-an-excellent-chance-of-succeeding-if-they-sue/?utm_term=.7c6dd9c53ec8)

McDonald v. City of Chicago, Ill., 130 S. Ct. 3020 (2010)

Medcalf, L., & McFerran, K. S. (2016). A critical interpretive synthesis of music therapy case studies: Examining therapeutic boundary themes in the context of contemporary practice. *British Journal of Music Therapy*, 30 (1), 22-35.

Melear, K. B. (2003). From in loco parentis to consumerism: A legal analysis of the contractual relationship between institution and student. *NASPA Journal*, 40 (4), 124-148.

Mitchell, D. (1995). The end of public space? People's Park, definitions of the public, and democracy. *Annals of the association of American geographers*, 85 (1), 108-133.

Mount, S. (2010). Constitutional topic: Rights and responsibilities. Retrieved from [https://www.usconstitution.net/consttop\\_resp.html](https://www.usconstitution.net/consttop_resp.html)

New, J. (2015, June 30). Colleges turning to judges in campus sexual assault cases. *Inside Higher Ed*. Retrieved from [www.insidehighered.com](http://www.insidehighered.com)

New, J. (2015, July 23). The right to confront. *Inside Higher Ed*. Retrieved from <https://www.insidehighered.com/news/2015/07/23/suit-against-u-california-san-diego-could-provide-framework-other-students-accused>

New, J. (2016, May 17). Due process and sex assaults. *Inside Higher Ed*. Retrieved from

<https://www.insidehighered.com/news/2016/05/17/professors-urge-department-education-revise-sexual-assault-guidance>

Newsweek. (2015, May 4). 'MY GOD! THEY'RE KILLING US': NEWSWEEK'S 1970 COVERAGE OF THE KENT STATE SHOOTING. Retrieved from

<http://www.newsweek.com/my-god-theyre-killing-us-our-1970-coverage-kent-state-328108>

OCR, Office of Civil Rights (2016, July 20). Retrieved

from <http://www2.ed.gov/about/offices/list/ocr/index.html>

Olson, W. (2015, April, 10). Rule by dear colleague letter: The Department of Education's stealth regulation. Retrieved from <https://www.cato.org/blog/rule-dear-colleague-letter-time-end-stealth-regulation-department-education>

Opelka, M. (2017, May 11). New student advocacy group fights back against Title IX abuse on college campuses. Retrieved from <http://www.theblaze.com/podcasts/new-student-advocacy-group-fights-back-against-title-ix-abuse-on-college-campuses/>

Orloff, N., & Stedinger, J. (1983). A Framework for Evaluating the Preponderance-of-the-Evidence Standard. *University of Pennsylvania Law Review*, 131(5), 1159-1174.

Osborne, D., & Gaebler, T. (1992). Reinventing government: How the entrepreneurial spirit is transforming government. *Reading Mass. Adison Wesley Public Comp.*

Oyer, T. (2017, March). Stare decisis. *Legal information*. Retrieved from

[https://www.law.cornell.edu/wex/stare\\_decisis](https://www.law.cornell.edu/wex/stare_decisis)

Park, M., & Kyung, L. (2017, Feb. 2). Berkeley protests of Yiannopoulos caused \$100,000 in damage. Retrieved from <http://www.cnn.com/2017/02/01/us/milo-yiannopoulos-berkeley/index.html>

Patterson, D. A. (2016). African and American: West Africans in Post-Civil Rights



America. *Journal of American History*, 103(3), 850-851.

Penrose, M. M. M. (2011). In the name of Watergate: Returning FERPA to its original design.

Retrieved from

<http://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1194&context=facscholar>

Peters, J.W. & Fuller, T. (2017, April 26). Ann Coulter says she will pull out of speech at

Berkeley. *New York Times*. Retrieved from [https://www.nytimes.com/2017/04/26/us/ann-](https://www.nytimes.com/2017/04/26/us/ann-coulter-berkeley-speech.html?_r=0)

[coulter-berkeley-speech.html?\\_r=0](https://www.nytimes.com/2017/04/26/us/ann-coulter-berkeley-speech.html?_r=0)

Petticrew, M., & Roberts, H. (2006). *Systematic reviews in the social sciences: A practical guide*. Malden, MA: Blackwell Publishing.

Posner, R. A. (1986). The decline of law as an autonomous discipline: 1962-1987. *Harv. L. Rev.*, 100, 761.

Posner, R. A. (2001). Legal scholarship today. *Harv. L. Rev.*, 115, 1314.

RAV v. City of St. Paul, 505 U.S. 377 (1992)

Read, B. (2017, March 5). A scuffle and a professor's injury make Middlebury a free-speech flashpoint. *The Chronicle of Higher Education*. Retrieved from

<http://www.chronicle.com/article/A-Scuffle-a-Professors/239412>

Reaves, B. (2008). Campus law enforcement, 2004-05. Bureau of Justice Statistics Special Report. U.S. Department of Justice, Office of Justice Programs. Retrieved from [www.bjs.gov](http://www.bjs.gov).

Reaves, B. (2015). Campus law enforcement, 2011-12. Bureau of Justice Statistics Special Report. U.S. Department of Justice, Office of Justice Programs. Retrieved from [www.bjs.gov](http://www.bjs.gov).

Reed, M. & Brennan, C. (2015, Oct.1). Recent campus shootings raise safety concerns. *USA Today*. Retrieved from <http://college.usatoday.com/2015/10/01/recent-campus-shootings->

raise-safety-concerns/

Reese, C. (2016). Message from the NaBITA President. Retrieved from <https://nabita.org/>

Sanburn, J. (2015, Oct. 1). These are all of the college campus shootings in 2015. *Time*.

Retrieved from [www.time.com](http://www.time.com).

Saunders, D. B. (2014). Exploring a customer orientation: Free-market logic and college

students. *The Review of Higher Education*, 37(2), 197-219.

Saxe v. State College Area School District, 240 F.3d 200 (3d Cir. 2001)

S.B. 11. (2015). Carrying of firearms by license holders on certain campuses. Retrieved from

<http://www.legis.state.tx.us/tlodocs/84R/billtext/pdf/SB00011F.pdf>

Scalora, M., Simons, A., & Vanslyke, S. (2010). Campus safety: Assessing and managing

threats. *FBI Law Enforcement Bulletin*, 79 (2), 1-10.

Schallhorn, K. (2017, Feb. 9). Michigan republican resigns after suggesting 'another Kent State' could end recent campus protests. Retrieved from

<http://www.theblaze.com/news/2017/02/09/michigan-republican-resigns-after-suggesting-another-kent-state-could-end-recent-campus-protests/>

Schow, A. (2015, Oct. 7). Education department officials' candid acknowledgement. Retrieved

from <http://www.washingtonexaminer.com/education-department-officials-candid-acknowledgement/article/2573581>

Shibley, R. (2012, June 29). FIRE on the Supreme Court's landmark decision. Retrieved from

<https://www.thefire.org/fire-on-the-supreme-courts-landmark-decision/>

Shin v. Massachusetts Institute of Technology, 19 Mass. L. Rep. 570 (2005)

Shuttlesworth v. Birmingham, 394 U.S. 147 (1969)

Siblerud v. Colorado State Bd. of Agriculture, 896 F. Supp. 1506 (D. Colo. 1995)

Sidner, S. & Lah, K. (2015, Oct. 2). Oregon shooting: Gunman was student in class where he killed 9. Retrieved from <http://www.cnn.com/2015/10/02/us/oregon-umpqua-community-college-shooting/>

Sloan, J.J., & Fisher, B.S. (2014). Campus crime. *The encyclopedia of criminology and criminal justice*. 255-267. Retrieved from [http://s3.amazonaws.com/academia.edu.documents/44172062/Sloan\\_and\\_Fisher\\_2014\\_Campus\\_Crime.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1486841758&Signature=HBeHChgYqG0cL4dedtuvaCjrY58%3D&response-content-disposition=inline%3B%20filename%3DCampus\\_Crime.pdf](http://s3.amazonaws.com/academia.edu.documents/44172062/Sloan_and_Fisher_2014_Campus_Crime.pdf?AWSAccessKeyId=AKIAIWOWYYGZ2Y53UL3A&Expires=1486841758&Signature=HBeHChgYqG0cL4dedtuvaCjrY58%3D&response-content-disposition=inline%3B%20filename%3DCampus_Crime.pdf)

Smith, W. A., Allen, W. R., & Danley, L. L. (2007). "Assume the position... you fit the description" psychosocial experiences and racial battle fatigue among african american male college students. *American Behavioral Scientist*, 51(4), 551-578

Soderstrom, E. (2012, 2 April). *Students take aim at college gun bans*. Retrieved from Students for Concealed Carry: <http://concealedcampus.org/>.

Stamatakos, T.C. (1990). The doctrine of in loco parentis, tort liability and the student-college relationship. *Indiana Law Journal*, 65 (2), 471-490.

State & federal court systems. (n.d.). Retrieved from [https://saylordotorg.github.io/text\\_the-legal-and-ethical-environment-of-business/s05-03-trial-and-appellate-courts.html](https://saylordotorg.github.io/text_the-legal-and-ethical-environment-of-business/s05-03-trial-and-appellate-courts.html)

State v. Houvener, 86 P. 3d 370 (Ct. App. 2008)

Stripling, J. (2017, August, 13). Beyond a president's worst fears, a mob with torches arrives. Retrieved from <http://www.chronicle.com/article/Beyond-a-President-s->

Worst/240914?cid=wsinglestory\_hp\_1a

Student Services for Lesbians/Gays v. Texas Tech University, 635 F. Supp. 776 (N.D. Tex. 1986).

Sulzberger, A. G., & Gabriel, T. (2011, Jan. 14). College's policy on troubled students raises questions. *New York Times*. Retrieved from [www.nytimes.com](http://www.nytimes.com)

Swindle v. Livingston Parish School Bd., 655 F.3d 386 (5th Cir. 2011)

Taleb, N. N. (2007). *The black swan: The impact of the highly improbable* (Vol. 2). New York, NY: Random House.

Tarasoff v. Regents of University of California, 551 P. 2d 334 (1976)

Thomas, P.A. (2016, Jan. 5). Campus safety up for debate after active shooter cases. Retrieved from <http://www.asmag.com/showpost/19652.aspx>

Thomas, J., & Harden, A. (2008). Methods for the thematic synthesis of qualitative research in systematic reviews. *BMC medical research methodology*, 8(1), 1.

Thorne, S., Jensen, L., Kearney, M. H., Noblit, G., & Sandelowski, M. (2004). Qualitative metasynthesis: reflections on methodological orientation and ideological agenda. *Qualitative health research*, 14(10), 1342-1365.

Thornhill v. Alabama, 310 U.S. 88 (1940)

Tinker v. Des Moines Independent Community School Dist., 393 U.S. 503 (1969)

University of California Regents v. Bakke, 438 U.S. 265 (1978)

U.S. Const.

U.S. Const. amend I

U.S. Const. amend XIV

U.S. Const. Amend XXVI

- U.S. Department of Education. (n.d.). Overview and Mission statement. Retrieved from <http://www2.ed.gov/about/landing.jhtml>
- U.S. Department of Education. (1997). Sexual harassment guidance. Retrieved from <https://www2.ed.gov/about/offices/list/ocr/docs/sexhar01.html>
- U.S. Department of Education. (2007). Law and guidance. Retrieved from <https://www2.ed.gov/policy/gen/guid/fpco/ferpa/index.html>
- U.S. Department of Education. (2010). An overview of the U.S. Department of Education. Retrieved from [https://www2.ed.gov/about/overview/focus/what\\_pg2.html](https://www2.ed.gov/about/overview/focus/what_pg2.html)
- UWM Post v. Board of Regents of U. of Wis., 774 F. Supp. 1163 (E.D. Wis. 1991)
- Victor v. Nebraska, 511 U.S. 1 (1994)
- Violence Against Women Act (1994) 42 U.S.C. sec. 13925 et seq. Retrieved from [www.whitehouse.gov](http://www.whitehouse.gov)
- VOA News. (2017, Feb. 2). California University protesters stop speech by controversial alt-right speaker. Retrieved from <http://www.voanews.com/>
- Wagenaar, A. C., & Toomey, T. L. (2002). Effects of minimum drinking age laws: review and analyses of the literature from 1960 to 2000. *Journal of Studies on Alcohol, Supplement*, (14), 206-225.
- Ward v. Rock Against Racism, 491 U.S. 781 (1989)
- Ward, M. A. (2008). Reexamining student privacy laws in response to the Virginia Tech tragedy. *J. Health Care L. & Pol'y*, 11, 407.
- Watanabe, T. (2017, March 28). Pierce College student files 'free speech zone lawsuit'. *Los Angeles Times*. Retrieved from <http://www.latimes.com/local/education/la-essential-education-updates-southern-pierce-college-student-files-lawsuit-1490737382-htmllstory.html>

Weisenbach Keller, E., Hughes, S., & Hertz, G. (2011). A model for assessment and mitigation of threats on the college campus. *Journal of Educational Administration*, 49(1), 76-94.

Weizel, L. (2012). The process that is due: Preponderance of the evidence as the standard of proof for university adjudications of student-on-student sexual assault complaints.

Retrieved from

<http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=3259&context=bclr>

White, B. (2007). Student Rights: From in loco parentis to sine parentibus and back again- Understanding the Family Educational Rights and Privacy Act in higher education. *BYU Educ. & LJ*, 321.

Willson, C. F. (1995). But Daddy, Why Can't I Go to College--The Frightening De-Kline of Support for Children's Post-Secondary Education. *BCL Rev.*, 37, 1099.

Wilson, C.P. & Wilson, S.A. (2011). Perceived roles of campus law enforcement: A cognitive review of attitudes and beliefs of campus constituents. *Professional Issues in Criminal Justice*, 6, 29-40.

Wilson, M. G., Ellen, M. E., Lavis, J. N., Grimshaw, J. M., Moat, K. A., Shemer, J., ... Peffer, J. (2014). Processes, contexts, and rationale for disinvestment: a protocol for a critical interpretive synthesis. *Systematic reviews*, 3(1), 1.

Wilson, R. (2015, August 11). Colleges under investigation for sexual assault wonder what getting it right looks like. *The Chronicle of Higher Education*. Retrieved from [www.chronicle.com](http://www.chronicle.com).

Winerip, M. (2014). Stepping up to stop sexual assault. *New York Times Education Life*, 9.

Wisconsin v. Yoder, 406 U.S. 205 (1972)

Women's Sports Foundation. (n.d.). History of Title IX. Retrieved from <https://www.womenssportsfoundation>.

Woods, K., & Janosik, S. M. (2013). College administrators as case managers: Challenges of managing risk of violence related to college student mental illness. *URMIA Journal*, 2013, 77-86.

Zamudio-Suarez, F. (2017, March 7). What could Middlebury have done to avoid a free-speech fracas? *The Chronicle of Higher Education*. Retrieved from [www.chronicle.com](http://www.chronicle.com)