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Duty of Care and Risk Management for Institutions of Higher Education

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Duty of Care and Risk Management for Institutions of Higher Education

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Concordia University–Portland

College of Education

Dissertation submitted to the Faculty of the College of Education

in partial fulfillment of the requirements for the degree of

Doctor of Education in

Administrative Leadership

Bill Boozang, Ph.D., Faculty Chair Dissertation Committee

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Concordia University–Portland

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Abstract

Institutions of Higher Education (IHE) authority has evolved from nearly absolute power in the hands of colleges and universities to an approach more focused on individual students and their rights. Yet, while college authority over campus life and student conduct has diminished, the duty of care required in the form of additional student affairs services has increased. The history of the complicated relationship between students and IHE starts with the concept "in loco parentis," which is Latin for "in place of parents." A lack of proper and continued risk assessment and a lack of effective and manageable policies and procedures assessment in relation to duty of care can lead to lawsuits, court-mandated change, and worse—student harm. Given the complexities and the challenges of managing today's higher education institutions, leaders must be willing to adopt new leadership practices to be able to respond to a quick-changing environment to preserve internal decision-making and avoiding the dictation of policy by external entities. The study will utilize a qualitative research method to examine the experiences of nine community college leaders in the state of Washington. A main theme that emerged was shifting campus cultures and demographics that necessitates thorough evaluation of IHR policies and procedures. The participants provided insight and recommendations for institutional alignment with current law, trends, and best practices.

 Keywords: higher education, in loco parentis, student affairs, duty of care, risk, conduct, campus events, assessment

Dedication

I dedicate this thesis to my children: Rachel, Desi, and Julia (Juju). Dad spent too much time on

his computer instead of interacting with you. I hope that the years spent working on papers and

doing research pays dividends for the family. I also hope that you are proud of your dad.

Acknowledgments

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Chapter 1: Introduction

Introduction to the Problem

Institutions of higher education (IHE) range from enormous public universities to small, private liberal arts colleges to 2-year community and technical colleges. They are home to hundreds, thousands, and even tens of thousands of people. IHE are responsible for dozens of services, from mental health counselors to coffee stands, and they put on hundreds of events annually, from dances and visiting lectures. Colleges and universities are also a traditional area of protest and activism. IHE "operate utilities, provide police protection, maintain housing ranging from faculty houses to high-rise student dormitories and apartments, care for miles of streets and walkways, offer media communications, and run dining facilities" (Klinksiek, 2016, para. 1). All of these services and amenities are essential to the core mission of educating the next generation.

Higher education activities are now subject to an increasing level of examination and review (Brewer & Walker, 2010). With many components to manage, a reactive risk assessment approach can lead to negative outcomes (Deck, 2015). Aligned with this need for preventative risk assessment, the focus in the study is on understanding IHE leaders' best practices for institutional duty of care and the application of the law for risk management. Following an extensive literature review, which addresses institutional responsibility and ensuring compliance with current law across the country, the study includes interviews with administrators in the Washington State community and technical college system, as well as risk management professionals familiar with the local college system who have demonstrated expertise of IHE policies in developing practical risk management strategies at IHE. There is a need to investigate student affairs professionals' best practices further to preserve internal decision-making and to

ensure that external entities, such as the courts, do not dictate policy (Reid, 2016). Although the interview sample is from the state of Washington, the significance of this research may be relevant nationwide and in any higher education setting as it will identify IHE responsibilities and provide a framework to transform institutional culture.

Background, Context, and History of the Problem

IHE authority has evolved from almost absolute power in the hands of colleges and universities to an approach more focused on individual students and their rights. Yet, while college authority over campus life and student conduct has diminished, the level, or duty of care required in the form of additional student affairs services has increased. The history of the complicated relationship between students and IHE starts with the concept "in loco parentis," which is Latin for "in place of parents." This ideal was and still is, interpreted as the guardianship qualities of a parent, including being supportive, protective, and executing discipline (Stuart, 2010).

In Loco Parentis and Student Affairs

In loco parentis stems from British and American common law. In 1765, William Blackstone, a British legal scholar, wrote that a parent "may delegate part of his parental authority . . . to the tutor or schoolmaster of his child; who is then in loco parentis" (Hogan & Schwartz, 2007, p. 260) Colonial colleges were often poorly staffed; faculty, therefore, not only taught in the classroom but also lived on campus and supervised students in the dormitories and dining halls. Faculty also developed early student affairs rules and regulations that governed students' behavior, conduct, and dress, and they enforced college rules and expectations even when students were not on the college premises (Long, D., 2012). By the mid-1800s, extracurricular activities such as athletic teams, campus publications, and clubs were founded by

students, radically transforming campus life. Another change came from the influence of European universities where faculty was exclusively responsible for the "training of the intellect" (Long, D., 2012, p. 3). The faculty's focus eventually moved away from campus life to research and in developing specific disciplines (Long, D., 2012). To manage conduct and to resolve other student issues, college presidents started appointing deans of men and deans of women, the first primarily student affairs professionals (Green, 2018). A prominent early administrator was LeBaron Russell Briggs, who served as first dean "for students" at all-male Harvard from 1890 to 1930; though Marianne Dascombe, who became principal of Oberlin College's Female Department in 1834, could be considered the first student affairs professional (Hevel, 2015).

Deans of men and women became common shortly after the turn of the century. Eighty percent of institutions surveyed in 1911 employed a dean of women (Hevel, 2015). The position of the dean of men also became more frequent, primarily because of the success of the deans of women (Schmit, 2016). These early student affairs specialists often lived in dorms and served as a surrogate parental figure, taking responsibility for the actions of students in their care (Love, 2003). Over time, dean responsibilities grew to include housing, dining, fraternities and sororities, support services, event programming, health care, counseling, and campus jobs for students (Green, 2018). Student affairs staffing grew to meet increasing duties and expectations.

The establishment of women's colleges and historically Black institutions in the late 19th century expanded higher education to groups other than White males. Legislation, including the Morrill Land Grant Acts of 1862 and 1890 (states with racially segregated public higher education systems were to provide access for Black students) and Servicemen's Readjustment Act of 1944 (G.I. Bill), allowed new populations access to higher education. Student affairs programs and services expanded accordingly, notably in the 20th century (U.S. Department of

Education, 1991). An increased need for student affairs professionals prompted a discipline of study. In 1914, Columbia University's Teachers College awarded the first master's degree for "Adviser of Women" with the first doctorate in the field awarded in 1929 (Wilson, Robinson-Wright, & Smith, 2019).

Theories regarding student development and experience progressed to embrace a holistic approach. The *Student Personnel Point of View,* a report issued by the American Council on Education in 1937 and revised in 1949, served as a foundational document for student affairs (Wilson, Robinson-Wright, & Smith, 2019). This report emphasized the importance of educating the "whole student" and the need to coordinate student personnel functions with other programs and services on campus (Wilson et al., 2019). Along with the emergence of professional theories came a greater need for professional organizations. Six deans of men founded the leading student affairs professional organization back in October of 1918, now called the National Association of Student Personnel Administrators (NASPA). NASPA currently boasts a membership of 13,000, representing over 2100 institutions (Green, 2018).

Significant theorists of the 1960s, 70s, and 80s who continue to influence student affairs include Lawrence Kohlberg (*Moral Development*, 1958), Arthur Chickering (*Identity Development*, 1969), William G. Perry's *Intellectual and Ethical Development*, 1970s), and Alexander Astin (*Theory of Student Involvement*, 1985) (Green, 2018). Student development theories encouraged the expansion of services offered at IHE. Today's student affairs customarily offer academic support services, academic advising, admissions, alcohol and drug education programs, career services, campus ministries, community service and service-learning, counseling, financial aid, food services, fraternities and sororities, health centers, housing and

residence life, multicultural programs, orientation, recreational sports, student activities, student discipline, and wellness programs (Wilson et al., 2019).

Services provided through student affairs are perhaps more critical at the 2-year college level due to a larger historically underrepresented student population. Community colleges have been in existence since 1901. However, in 1947, the Truman Commission Report called for the widespread establishment of affordable public colleges that would serve community needs and offer wide-ranging educational programs (Cooper, 2015). These open-admissions colleges are an essential part of the American educational landscape, providing access to higher education opportunities for millions of students who often are facing additional obstacles than their 4-year counterparts.

Erica K. Yamamura, the Program Coordinator and Associate Professor in Student Development Administration in the College of Education at Seattle University, wrote:

> As an institutional type, community colleges are often overlooked or undervalued by entry-level students in the field of student affairs. Yet, for social justice-centered professionals who are committed to working with and for diverse and underrepresented students to advance educational equity, community colleges are a key context to do this work. The programs and services offered to a diverse student population are innovative-- most community colleges have home-grown programs tailored to their unique student population and community. And if the community changes, the community college willingly adapts—unlike most 4-year institutions whose services and institutional structures remain the same no matter if their local community changes. (2016, para. 1, 5)

In Loco Parentis and Duty of Care

From the mid-1800s to the 1960s, courts allowed American universities to "regulate the students' personal lives—including speech, association, and movement—and take disciplinary action against students without concern for the students' right to due process" (Lee, 2011, p. 66). The university–student relationship changed in the1960s when courts began awarding constitutional protections to university students. Suddenly, universities could no longer regulate all aspects of their students' lives without considering their constitutional rights (Lee, 2011). This shift confused duty of care responsibilities and led to institutions having to defend their policies and procedures in the courts.

The in loco parentis concept is continuously evolving as colleges and universities attempt to provide the care and compassion expected of families while simultaneously offering resources and services to meet a comprehensive range of needs. In part due to all of the services offered by academic institutions and in part due to the evolving legal landscape, risks to colleges and universities are enormous and risk mitigation paramount. As Thomas (1991) noted, "Following litigious societal trends . . . students appear to be more willing to pursue lawsuits against institutions for failing to protect them from the conduct of others and even their own conduct" (p. 37). The courts are holding colleges and universities to a higher standard of care, which opens up significant legal challenges and consequences for colleges and universities that have "increasingly come under fire for their handling of issues related to the safeguarding of students on campus from incidents of hazing, sexual assault, gun violence, binge drinking and bullying" (Merrick, 2016, p. 1).

Conceptual Framework of the Problem

This study's framework identifies the owners of risks and what their responsibilities are to manage those risks, determines the resources, capacity, and funds that are needed, and recognizes the necessity for categories and definitions of risk probability and risk impact (Rahim, 2016). Risk review includes clearly defined deliverables, the cycle of evaluation, and the frequency of communication (Rahim, 2016). Furthermore, the conceptual framework indicates that a risk assessment plan that is influenced and supported by current law, along with the application of best practices, lead to better institutional and stakeholder stability. This conceptual framework is based on the relationship between issues relating to risk management and institutional duty of care, especially concerning in loco parentis in IHE. The researcher based this assumption on case law, an intensive literature review, and communication with higher education professionals, which, in combination, suggest that risk review will promote safety, streamline processes, and reduce litigation. The foremost presumption is that risk assessment averts adverse outcomes by providing a thorough understanding of institutional responsibility and by creating policies that are guided by current law an IHE, as these policies would then be far less likely to be challenged in court and incur penalties. Additionally, if IHE are challenged, they would be more likely to win in court if risks were assessed. When administrators have clear and enforceable policies to inform their decisions, all participants, particularly students, benefit from a safer environment.

Statement of the Problem

The problem that this study will address is the need to understand student affairs professionals' best practices for institutional duty of care and the application of the law for risk management. Such an understanding may aid in improving internal decision-making and

avoiding the dictation of policy by external entities, such as the courts (Reid, 2016). Current

understandings of the demands of IHE risk assessment and management are broad and require

further specificity. Klinksiek (2016) categorizes IHE areas of risk into 23 groups. In total, the

risk inventory lists 290 areas. Student travel, housing, athletic events, campus events, privacy

laws, such as Family Educational Rights and Privacy Act (FERPA) and Health Insurance

Portability and Accountability Act (HIPAA), and free speech are traditional areas of risk

management concerns. Emerging college and university risk and responsibility include underage

students, the Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) community,

accommodations for students with disabilities (including those with mental health issues), and

adherence to new laws. In addition, campus safety is another area that is getting more attention

nationwide in this era of mass shootings. Despite the expectations for increased safety, the

legality of searches, and whether colleges and universities can mandate emergency training are

constant questions. Even creating an environment that encourages risk reporting is a difficult task

due to its complexity and the perception that reporting leads to punishment (Hewitt & Chreim,

2015)

Further, close to 50% of faculty members at 4-year universities and up to 83% of faculty

at community colleges are not on a tenure track (Jaschik, 2017). These faculty members often do

not have the time, nor or they contractually required to follow reporting guidelines when

compared to full-time employees. Understanding student affairs professionals' best practices for

institutional duty of care and risk management will help administrators develop best practices

related to policy creation and procedures, recognize gaps, and determine the needed levels of risk

management preparation.

Purpose of the Study

The purpose of this qualitative descriptive study is to explore IHE leaders' perceptions of best practices for institutional duty of care and the application of the law for risk management in the State of Washington. Specifically, the focus is on institutional duty of care and the application of the law for risk management regarding campus events and student conduct. Developing a culture of reporting with knowledge of best practices is a challenge at contemporary IHE. Duty of care and the specific rules, policies, and procedures IHE need to implement are difficult to administer and enforce in most campus climates. Without proper risk management, however, IHE and all stakeholders are susceptible to court challenges as well as campus policy dictated by outside groups. As Reid (2016) wrote, "Local, state, and federal courts have a long history of involvement in educational policy issues, and more recently courts have played an increasingly prominent role interpreting federal and state constitutions" (para. 9). Challenges in court often result when a college or university has been accused of violating U.S. constitutional rights. Brewer and Walker (2010) claim that inaction to put procedures in place to minimize or prevent the event is widespread in higher education. To avoid accidents and their negative consequences for both the student and IHE, understanding student affairs professionals' best practices for institutional duty of care and risk management will help provide for research that may affect improved practice among IHE.

Research Questions

This research aims to explore IHE leaders' perceptions of best practices for institutional duty of care and the application of the law for risk management in the State of Washington. Specifically, the focus is on institutional duty of care and the application of the law for risk

management for campus events and student conduct. In alignment with the research problem, purpose, design, and a review of literature, the following research questions will guide the study:

RQ1. How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?

RQ2. How do IHE leaders describe the application of the law for risk management with respect to campus events and student conduct?

Rationale, Relevance, and Significance of the Study

Student affairs professionals struggle with duty of care, partly due to the lack of cohesive literature on the subject and partly due to a lack of best practices. The study will examine why IHE waiver between providing too much and too little regulation and protection. Knowledge of current law and of risk management best practices and the ability to apply these best practices to institutional policies and procedures is crucial. It is far more economical to foresee potentially costly events and avoid damage control, which can lead to mounting lawyer and consultant fees (Daninhirsch, 2015). According to a recent survey by the *University Risk Management and Insurance Association* (URMIA), IHE risk management approaches vary widely, as do administrative structures. One explanation is that campus risk management is rarely the only responsibility of the individual or group (Klinksiek, 2016). This management style differs from the private sector, which typically dedicates full-time personnel to risk management issues and operates under traditional strategies, such as enterprise risk management (ERM), COSO, and ISO 31000. Fortunately, unlike a corporate environment, IHE tend to share what they know if it will help a colleague (Klinksiek, 2016). Just as in the corporate world, though, higher education administrators need the same understanding of risk management issues. Some goals of this research, through investigation of relevant literature and from data collected by interviews with

administrators and risk management, are to identify gaps and inconsistencies, evaluate best practices, and to provide IHE with guidelines for establishing policies that protect both students and institutions.

<div align="center">**Definition of Terms**</div>

Behavior Intervention Team (BIT). This term is:

A multi-disciplinary group whose purpose is meeting regularly to support its target audience (students, employees, faculty, staff, community, workplace) via an established protocol designed to help detect early indicators of the potential for disruptive conduct, self-harm, and the risk of violence to others. The team tracks 'red flags' over time, detecting patterns, trends, and disturbances in individual or group behavior. When a BIT receives reports of disruptive, problematic, or concerning behavior or misconduct (from co-workers, community members, friends, colleagues, etc.), the team conducts an investigation, performs a threat assessment, and determines the best mechanisms for support, intervention, warning/notification, and response. The team then deploys its resources, and the resources of the community, and coordinates follow-up (National Behavioral Intervention Team Association, 2019, para. 1)

Case law. This term is "the law as established by the outcome of former cases" (Merriam-Webster, 2019, para. 1).

CARE Team. This is the new BIT with behavior intentionally removed from the team name to demonstrate better a more holistic and restorative justice approach to student discipline. The Care Team is a team of administrators from student services, instruction, and safety and security that receive incident reports of students that may be experiencing difficult situations or displaying concerning behavior. The goal of the Care Team is to coordinate support, resources,

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and advocacy for our students to promote student success and retention. Additionally, the Care Team supports staff and faculty by mediating conflict involving students that occurs on campus, in connection with college sponsored activities or in the classroom (Edmonds Community College, 2019, paras. 1–2)

In Loco Parentis. This term in relation to higher education is, Latin for "in the place of a parent." Also, the regulation or supervision by an administrative body (as at an IHE) acting in loco parentis (Merriam-Webster, 2019, parass. 1–2).

Risk. This term is the "possibility of loss or injury; someone or something that creates or suggests a hazard; the chance of loss or the perils to the subject matter of an insurance contract, also: the degree of probability of such loss; a person or thing that is a specified hazard to an insurer; an insurance hazard from a specified cause or source; the chance that an investment (such as a stock or commodity) will lose value" (Merriam-Webster, 2019, para. 1–4)

Risk management (RM). This term as it relates to higher education, "is the continuous process to identify, assess and prioritize risks in an effort to control, avoid, minimize or eliminate the effects of risks on an organizations assets" (University Risk Management and Insurance Association, 2019, para. 1).

Student conduct. This term in relation to higher education is, "professionals who ensure that policies and procedures comply with legal and due process requirements. They also go beyond that to ensure that every student is treated fairly and respectfully, while keeping education at the heart of the student conduct process" (Association for Student Conduct Administration, 2019, para. 1).

Assumptions, Limitations, and Delimitations

When conducting qualitative research, the researcher is usually the data collector and data analyst, which increases the potential for researcher bias (Birt, Scott, Cavers, Campbell, & Walter, 2016). "Qualitative researchers might impose their personal beliefs and interests on all stages of the research process leading to the researcher's voice dominating that of the participant" (Birt et al., 2016, p. 1104). As the researcher, the paper's narrative must be reflective of the perspectives provided by participants and information acquired through literature review and with discussions with participants. Although the researcher is responsible for examining data and formulating an opinion, personal experiences regarding risk management and duty of care is omitted to ensure the reliability of the research. Conclusions and recommendations are supported through the extensive literature review.

Assumptions drive research. The assumptions of this study include the truthfulness of the participants, that the participant sample size is sufficient for the student, that the participants have sufficient experience in the field of duty of care, and that participant insights are worthy for inclusion in this research. Other assumptions are the value of this topic for higher education purpose and that this research will result in any new or notable recommendations,

Limitations of the design include the low number of risk assessment professionals and administrators with expertise in the area of risk management currently serving in Western Washington. The researcher has no control over the responses or lack of responses from participants. Additionally, the argument can be made that the group is not representative of a broader administrative base, and therefore sufficient viewpoints on risk management or duty of care will not be collected, which can skew the tone of the paper and its recommendations. However, the selection of interview participants is through purposeful sampling. The researcher

will send invitations to participate to approximately 20 to 25 potential participants in the Western

Washington region, seeking a final sample of between 10 to 15 participants. The participants

were selected based on their willingness and their availability to participate in a face-to-face

interview. If face-to-face interviews cannot be conducted due to time or other constraints, phone

interviews were offered as an alternative. Individuals who agree to participate will sign an

informed consent form. To guarantee confidentiality, participants will not be identified by name,

nor will a campus be identified, nor does this study identifies any specific court and student

conduct cases. Participants are identified as Administrator A, Administrator B, and so forth.

Institutions that employ participants will also not be identified, but instead noted as

Administrator A's college or Administrator A's IHE, and so forth.

Other limitations are the small size of the research cohort, their ability and willingness to

be forthcoming, and the accuracy of their recollections. Qualitative data is highly subjective

based on the participant's experience. There may not be any emerging common themes and

trends at the conclusion of the study. Qualitative data collection can be very time consuming as

well. Face-to-face interviews, for example, require coordination of scheduling as well as time to

conduct the interview. Collected data may be subject to bias due to participants' unwillingness to

be honest because of a perceived lack of confidentiality.

Delimitation starts with the decision to limit the study to the risk management spheres of

student conduct and campus events. This starts with the researcher's interest in the subject, as

well as the professional development and networking opportunities that can result from

interviews and idea exchange with other professionals in the Washington State and Technical

College System. Another delimitation is the decision to narrow the study and research objectives

to utilize qualitative data in the form of narrative inquiry, specifically gathered from interviews

focusing on the aforementioned administrative group. The study is purposefully focused on this cohort for ease of access and because of the cohort's unique background and experiences of risk management in the local community college system.

Summary

The general problem that the study will address is the need to understand student affairs professionals' best practices for institutional duty of care and risk management to preserve internal decision-making and avoid the dictation of policy by external entities. The purpose of this qualitative descriptive study is to explore IHE leaders' perception of best practices for institutional duty of care and the application of the law for risk management in Washington, United States. Specifically, the focus is on IHE leaders' responsibility for the actions of their students and the application of the law for risk management. This research is based on data gathered from administrators in the Washington State Community and Technical College System. Understanding student affairs professionals' best practices for institutional duty of care and risk management will help administrators identify gaps in the areas of policies and procedures and may shed light on future policy considerations, thus providing for improved safety and lessened risk.

Chapter 2: Literature Review

Introduction

The primary body of literature and theory that informs this study is competency-related literature that seeks to understand the various opinions and perspectives related to risk management in student affairs, specifically in the areas of student conduct and campus events. As a functional area within student affairs, literature related to competencies for higher education administrators is also explored. Much of the literature review concentrates on the history and emerging themes regarding IHE risk management, according to the body of recent research. The information gathered for this study consists of multiple sources with diverse views to best answer the questions this study asks.

The general problem to be studied is the need to understand student affairs professionals' best practices for institutional duty of care and the application of the law for risk management in preserving internal decision-making and avoiding the dictation of policy by external entities (Reid, 2016). Therefore, central themes explored in this chapter are the duty of care between IHE and students, which are captured in the educationally specific doctrine of in loco parentis, and how institutions manage risk management issues relating to student life that is often outside of the classroom. This literature review examines some of the present literature regarding risks in the areas of campus events and student conduct, and how a lack of policy and procedure assessment has led to lawsuits and court-mandated change. Given the complexities and the challenges of managing today's higher education institutions, leaders must be willing to adopt new leadership practices to be able to respond to a quick-changing environment. Themes from the literature review will make up the majority of questions the researcher will ask participants to ensure alignment and provide context.

How institutions can legally institute policies, adjudicate conduct issues, and implement discipline continues to evolve without an industry standard as a guide. The nearly 90 sources reviewed and cataloged in this researcher's literature matrix form a cohesive background of the problem, coming from mainly peer-reviewed articles and accessed generally from the Concordia University ProQuest library, as well as other online sources and databases. The sources currently cataloged include experts in their field, relevant court cases, other doctoral theses, and news articles. The sources investigate and examine the subjects of in loco parentis, risk management, and college leadership.

The literature review identifies the leaders' risks and what their responsibilities are to manage those risks, as well as the necessity for definitions of risk probability and impact. An effective risk review includes clearly defined deliverables, the cycle of evaluation, and the frequency of communication (Rahim, 2016). Furthermore, this research focuses on the idea that a risk assessment plan (which includes evaluation of college policies and procedures), whether the plan is supported by current law, and the application of best practices, are critical factors for institutional safety. Literature review research on these key concepts form the foundation for this study, but the goal is to go beyond current research to better inform IHE risk management practitioners. The expected outcome, derived from case law, literature review, and communication with higher education professionals, is that risk review will provide a better understanding of institutional responsibility, streamline processes, and reduce the chance of litigation. When IHE create policies guided by current law, those policies are less likely to be challenged, but perhaps the best benefit when administrators have clear and enforceable policies to inform their decisions is a safer campus environment.

In general, findings from the literature support the idea of IHE in transition. Aside from case law, which is discussed later, a reason for the transition is the lack of uniformity in colleges. "Academic institutions can be public or private, religious or secular, big or small, urban or rural, residential or commuter" (Zwara, 2012, p. 419). It is nearly impossible to develop legal doctrines to accommodate all these different types of institutions (Zwara, 2012). Another reason for non-uniformity is that college campuses are viewing students as consumers and are attempting to provide a surplus of options to improve each student's experience (Couture, Schwehm, & Couture, 2017). To create more satisfaction, "institutions are creating an amenities 'arms race,' which has grown tremendously in the last decade, including the proliferation of modern and private residence hall rooms and state-of-the-art recreation centers" (Couture, Schwehm & Couture, 2017, para. 11). All these numerous services and amenities add a new level of responsibility that requires risk assessment.

Conceptual Framework

The conceptual framework of this literature review is based on the relationship between issues relating to risk management and institutional duty of care, especially with respect to in loco parentis in IHE. The gap in the literature is based on the need to understand student affairs professionals' best practices for institutional duty of care and risk management (Reid, 2016). The qualitative analysis is intended to discover themes within risk management and institutional duty of care, including student conduct, risk management practices, application of the law, and legal issues. The broader concept within which this inquiry is that of in loco parentis, which is Latin for "in the place of a parent" and refers to the responsibility, especially legally, that a college assumes for its students. Concepts such as risk management and institutional duty of care in general, and student conduct, risk management practices, application of the law, and legal issues

in particular, are qualitative in nature. Given the lack of research in which the perceptions of leaders are explored in this realm, the question of interpretation presents a challenge for the researcher (Pecora, 2018). To ensure that the subjectivity in the descriptions of the participants is maintained, the researcher will rely on a naturalistic paradigm (Sutton & Austin, 2015). The crafting of a naturalistic inquiry, as noted by Lincoln and Guba (1985), can seem paradoxical, as the focus is on open-ended subjective experiences of the participants, and the research design focuses on emergent themes. Although the study is based on a research design and research questions developed before beginning the data collection process, it is recognized that the focus is on the subjective, open-ended descriptions to be obtained from the participants, which cannot be predicted (Chandra & Shang, 2017). Further, the goal of this study will not be to find a right or wrong answer but to explore subjectively experienced views.

The use of interviews in this qualitative research study will help attain the goal, as mentioned earlier, of focusing on emergent themes. The focus in this study is on describing in detail self-reported views, experiences, beliefs, and attitudes of leaders to construct, as well as to de-construct, themes that emerge regarding the best practices for institutional duty of care and the application of the law for risk management (Chandra & Shang, 2017). The descriptive research design is rich in data and subjective experience and will help the researcher explore the multidimensional, sociocultural fabric that the experiences of the participants are situated within.

In the context of IHE, researchers have described in loco parentis to be a legal relationship in which a temporary caretaker takes over some or all of the responsibilities that are generally associated with parents (Mampane, 2018). Broadly, such a relationship can include both nongovernment and government entities taking over the place of a parent (Joseph & Dinah, 2017). Universities in the United States, until the 1960s, were considered by the legal system to

be as in loco parentis for the enrolled students. Universities could regulate the personal lives of students, which included movement, association, and speech, and were free to undertake disciplinary actions without considering due process rights of the students (Johnson, Flynn, & Monroe, 2016). However, this relationship later changed, and the legal system provided constitutional rights to students at the universities (Mampane, 2018). The enactment of new protections resulted in decreasing the role of in loco parentis, as the universities did not have the right to regulate the various parts of the lives of students.

The relationship between in loco parentis in IHE and risk management was explored by Johnson, Flynn, and Monroe (2016). The researchers examined the residence life plan developed to provide psychological and academic developmental support to at-risk students on campus in which support and oversight were supplied each week, and intrusive, proactive counseling was provided. Based on data collected from 74 students, the majority of which were African Americans, the researchers found that participation of at-risk students in an in loco parentis environment at IHE resulted in better academic achievements and mental health outcomes. Thus, the practice of in loco parentis was found to be associated with positive outcomes for at-risk students in the study by Johnson et al. (2016).

Risk management is a significant issue in the context of schools with intellectual disabilities (special schools). In this regard, Joseph and Dinah (2017) examined students in special schools regarding in loco parentis. The researchers sought to examine how learners were cared for and supervised, especially given their intellectual disabilities. The study conducted by Joseph and Dinah (2017) was longitudinal and took place as embedded within a project for community engagement at a special school. The researchers examined the ways in which teachers at school, along with other personnel, practiced in loco parentis, especially as relevant to

the development of the psychological and physical well-being of the students. After collecting their data through observations, interviews, and questionnaires, Joseph and Dinah (2017) found that it was especially important to ensure there was safety for at-risk students. Findings also suggested that teachers did not have training in providing adequate care. Teachers followed the roster that was assigned to them for the safety of the students. An important mention was made of security personnel at school available at all times, as well as the presence of a fence at school borders. The researchers found that, despite safety policy, threats remained to the safety of students, due to the lack of protective equipment. Some consequences of improper safety practices suggested by the findings of the study that are relevant in general included unsafe environment at school, risk for physical injuries, harassment, arson, teen pregnancies, bullying, and kidnapping.

Mampane (2018) also examined the relationship between risk management and duty of care in the educational environment, exploring risk and care in public school about in loco parentis. The researchers sought to explore the challenges experienced by educators while practicing in loco parentis in public schools. They noted an increase in the responsibilities of educators as the responsibilities of individuals in other social institutions, like community, church, and home, decreased. The concept of in loco parentis, they noted, included the need to take responsibility for the physical, psychological, and emotional well-being of students. The unique nature of the in loco parentis relationship included the researcher noted, the need to protect students from injury and harm. Despite the laws in place for both educators and learners, psychological violence was still a threat to campuses. The researchers suggested that the parent-teacher system of cooperation must be reorganized to manage best the work associated with in loco parentis. In general, studies such as those of Mampane (2018), Joseph and Dinah (2017),

and Johnson et al. (2016) suggested that the concept of in loco parentis is multi-dimensional, and researchers approach it through various lenses. In this study, the concept of in loco parentis is explored through leaders' perceptions of best practices for institutional duty of care and the application of the law for risk management.

Review of Research Literature and Methodological Literature

In this section, a review of research literature on the identified research phenomenon and its attributes is presented. Specifically, the main topics of concern are duty of care and risk management. The purpose of this section is to provide a review of existing literature that is synthesized to highlight the gaps in the existing literature that justify the research problem and the need for the present study.

History of Duty of Care

Most IHE operate similar to small cities. Along with classrooms, tutoring centers, libraries, and computer labs, many colleges and universities have medical clinics, campus security and other emergency services, counseling centers, recreation facilities, sports complexes, housing, dining, and much more. Responsibilities concerning the duty of care are vast for student affairs professionals. Duty of care as defined by in loco parentis was, and still is, an ideal interpreted by IHE and courts as the guardianship qualities of a parent, including being supportive, protective, and disciplinary (Stuart, 2010). From the late 1800s until the early 1960s, the relationship between a college and its students indeed resembled that between a parent and child. During this era, students had little chance of pursuing grievances against a college.

Simply put, "constitutional rights stopped at the college gates—at both private and public institutions" (Merrick, 2016, p. 7). For years, colleges and universities were able to circumvent the First, Fourth, and 14th Amendments because of their implied role as the parent through in

loco parentis. Legal and government oversight of higher education, particularly at the federal level, would change significantly from the beginning to the end of the 20th century. From 1913 to 1961, universities were protected from much of the oversight and accountability measures that exist today. This level of protection was afforded primarily by the landmark case *Gott v. Berea College* (1913), which created legal protection for universities to establish the rules they deemed appropriate—including prohibiting its students from dining off-campus. In the case, Gott, a local tavern owner, sued when Berea College created a rule barring students from going to certain off-campus locations. In its decision, the courts ruled that colleges "could stand in loco parentis concerning student physical and moral welfare" (Lee, 2011, p. 69). As a result, universities could make any rule or regulation that they felt contributed to the education and betterment of their students.

The college–student relationship changed with the challenge of the in loco parentis doctrine in *Dixon v. Alabama Board of Education* (1961). In this case, six African American students at Alabama State College were refused service at the Montgomery County Courthouse. All six were expelled from the college on the grounds of unlawfully seeking service in a publicly owned lunchroom. Some students demonstrated against the decision. The Alabama State Board of Education eventually expelled nine students and also placed 20 students on probation. The students were not given any explanation for their expulsion. The students filed a lawsuit and won their case. The court decided that notice should contain a statement of the charges of why a student is being expelled.

Moreover, a student has the right to defend themselves, the court said. When these guidelines are followed, due process requirements are fulfilled (*Dixon v. Alabama State Board of Education,* 1961). In reviewing the case, the Fifth Circuit Court of Appeals held that "students in

public colleges and universities have a constitutional right to due process and equal protection, when the state action by the college threatens to injure the student with expulsion or suspension" (Carlise, 2017, para. 5).

The United States Constitutional Amendments rights that have conflicted with IHE authority include the First, Fourth, and 14th Amendments. The First Amendment guarantees freedoms concerning religion, expression, assembly, and the right to petition (The Constitution of the United States). This right assures freedom of expression by prohibiting the restriction of the press or the rights of individuals to speak freely. The First Amendment also guarantees the right of citizens to assemble peaceably and to petition their government (The Constitution of the United States). The Fourth Amendment provides

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. (The Constitution of the United States)

The 14th Amendment addresses many aspects of citizenship and the rights of citizens regarding due process. The most commonly used—and frequently litigated—phrase in the amendment is "equal protection of the laws" (The Constitution of the United States, section 1).

Alabama State College was found at fault for failing to provide due process, guarantees of which are listed under both the Fifth and 14th Amendments. The seminal court case reduced the power of in loco parentis, but while the concept's influence faded, its power did not completely go away. One advocate of preserving in loco parentis in the 1960s and 1970s was Assistant to the Dean of Students at California State College at Long Beach, Clarence J. Bakken

(Stuart, 2010). Bakken outlined three primary areas of college life where in loco parentis was most applicable: student activities, housing, and student discipline (areas of this paper's focus). Despite advocates, such as Bakken, who wished to carry on with amended versions of in loco parentis, for the next 20 years or so after *Dixon v. Alabama Board of Education* (1961), new models of higher institutional governance were put forth as replacements for in loco parentis (Merrick, 2016). However, starting in the 1980s, the increase of liability cases against colleges for student injuries began the revival of in loco parentis as a way for IHE to protect itself.

Student Conduct and Risk Management

The liabilities of social host laws, especially in loco parentis, are difficult to understand for IHE administration, much less the public. Though it seems that parents and students are insisting that colleges and universities be held accountable for just about every possible scenario: for student conduct, for monitoring fraternities, for providing secure premises, for preventing crime on campus, and for eliminating alcohol and drug uses (Bowden, 2007). Higher education is similar to other industries with the duty and responsibility to provide a safe environment for their employees, vendors, and consumers and to be aware that its customers are mainly young adults (Bowden, 2007). IHE must also be aware of its limitations and liabilities by establishing correct and defendable procedures, or they will open themselves up to challenges in the courts.

The two main areas this paper will explore, in relation to duty of care and risk management, are campus events and student conduct and how a lack of policy and procedure assessment has led to lawsuits and court-mandated change. A review of the literature proves that what might seem like a reasonable response to student conduct can come up in court. In one housing example, *Commonwealth v. Eric W. Neilson* (1996), a student living on campus consented to a housing staff check to see if a cat remained in the dorm (pets are against the

rules). During the search, marijuana was found growing in Nielson's bedroom closet. Campus police were called, entered the room, and later arrested Nielson (Kaplin & Lee, 2013). Though the student signed a housing contract allowing reasonable searches to enforce health and safety regulations, he contended that at no time was a search warrant issued, and therefore his rights were violated by the appearance of campus police (Kaplin & Lee, 2013). The college believed that since "officials were in the room by consent and observed the drugs in plain view while pursuing legitimate objectives, the police officers' warrantless entry was proper" (Kaplin & Lee, 2013, p. 454). Nevertheless, Nielson sued the college and won the appeals case.

According to the Court's decision, "There was no consent to the police entry and search of the room. The [defendant's] consent [was] given, not to police officials, but to the University and the latter cannot fragmentize, share or delegate it" (Kaplin & Lee, 2013, p. 454). Furthermore, "The plain view doctrine does not apply to the police seizure, where the officers were not lawfully present in the dormitory room when they made their plain view observations" (Kaplin & Lee, 2013, p. 454). As Graham (2011) pointed out, "unless consent is given, police cannot enter dorm rooms, nor can they take evidence." The fact is that the courts see it both ways.

Three similar cases cited in *Commonwealth v. Eric W. Neilson* (1996) were *Morale v. Grigel* (1976), *Commonwealth v. McCloskey* (1975), and *Piazzola v. Watkins* (1970). In *Morale v. Grigel* (1976), a student at New Hampshire Technical Institute contended that his suspension due to marijuana possession was based upon evidence illegally seized from his dormitory room (in violation of his Fourth and 14th amendments). The marijuana was found in his room after a search for a stolen stereo. The student claimed that the evidence should not have been included in the disciplinary hearing and he alleged that his disciplinary hearing and appeal hearing were

so partial and lacking in procedural safeguards as to violate his rights under the Due Process Clause of the Fourteenth Amendment (*Morale v. Grigel*, 1996). However, the student lost the case. In *Commonwealth v. McCloskey* (1975), the defendant, McCloskey, took steps toward escaping from prison, but before following through, he changed his mind and returned to his work assignment. The court determined that abandonment of the attempted crime before completion is a valid defense to the crime (*Commonwealth v. McCloskey*, 1975). This decision has ramifications on student conduct and what constitutes—or does not constitute—a threat. From the McClosky standpoint, it was argued that despite a large amount of marijuana growing in Nielson's room, and even if he intended to distribute the illegal substance, no crime was yet committed.

Finally, in *Piazzola v. Watkins* (1970), the Dean of Men of Troy State University took the advice of informers to provide police officers with names of students whose dorm rooms should be searched. Law enforcement officers, accompanied by university officials, searched a few dormitory rooms, including Piazzola's room. The student's room was entered and searched without a warrant, without his consent, and the only probable cause came from informants. Two searches were conducted. The second search disclosed incriminating narcotics. The student went through the conduct process but sued. The courts eventually decided that the search "was in violation of the petitioners' rights as guaranteed by the Fourth Amendment to the Constitution of the United States. It follows that the convictions . . . are likewise illegal and cannot stand" (*Piazzola v. Watkins*, 1970, para. 21). Though the outcomes vary, these cases are of note because the courts ruled (and thereby made policy) regarding dormitory searches and student's rights.

Campus Events and Risk Management

Colleges and universities host numerous, sometimes hundreds of events per year, both internal and external. A few examples of college-sponsored events are political debates, service learning projects, plays, music, films, lectures, resource fairs, job fairs, clubs, and much more. Outside groups also rent college facilities to host their events, from Sunday church services to Women's Roller Derby. Some groups and individuals use college campuses for staging demonstrations in an attempt to shape laws and change policies. Protests and civil disobedience have been essential components of social and political movements throughout the history of this country (Edley & Robinson, 2012). Protests are especially prevalent at the university level. According to the American Civil Liberties Union (ACLU), "[students] have the right to speak out, hand out flyers and petitions, and wear expressive clothing in school — as long as you don't disrupt the functioning of the school or violate the school's content-neutral policies" (2018, para. 3). The IHE has a responsibility to ensure that members of the community feel free to express their views—as well as to protect the right to express that view, regardless of how unpopular that view may be. However, the First Amendment does not guarantee the right to engage in civil disobedience, even to communicate a political message. The First Amendment protects the right to express one's views, but it also allows the government to place reasonable time, place, and manner restrictions on that expression (Edley & Robinson, 2012).

The past shows that administrators at IHE were often caught off guard by the protests. Well-known examples took place in the 1960s and 1970s when students began to use their voices to oppose the Vietnam War and support the Civil Rights movement. A few notable demonstrations that have occurred at various institutions over the years include:

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- The 1960s Greensboro sit-ins, where four black students at North Carolina Agricultural and Technical State University walked up to a Woolworth's lunch counter in Greensboro, N.C., knowing they would not be served, and refused to leave. Within three days, they were joined by some 300 others. By summer, the sit-ins had spread to more than 50 cities, and lunch counters were rapidly desegregating (Astor, 2018).

- The general university uprisings of 1968, when student protests exploded against perceived discriminating policies, and the Vietnam War (Astor, 2018).

- In 1970, students at Kent State University demonstrated the U.S. invasion of Cambodia. Over 2,000 people gathered on campus and refused to disperse. The National Guard was called in and eventually opened fire, killing four students and wounding nine others. The protest became known as the Kent State Massacre (Seraphin, 2012).

- In June of 1976, several thousand students near Johannesburg, South Africa, began a peaceful march against mandated Afrikaans-language education. The march turned deadly when the police attacked with guns and tear gas—images from the demonstration set in motion a global movement against apartheid. College students in the United States demonstrated in solidarity. They built shantytowns on campus quads, blockaded buildings, and disrupted speeches by South African politicians. The protests compelled administrators to withdraw billions of dollars in investments from companies tied to South Africa. The resulting economic stress contributed, along with other factors, to the dismantling of apartheid (Astor, 2018).

- In 2005, at Gallaudet University, a private university for the deaf and hard-of-hearing, students protested the appointment of Dr. Jane Fernandez as president for "the lack of racial diversity among finalists, her less-than-appealing personality, and her lack of fluency in American Sign language" (Seraphin, 2012, para. 3). Students blocked entrances, hosted rallies, and set up tents near the main entrance. Sometime later, faculty members blocked Dr. Fernandez from becoming president.

- In 2009, the University of California Board of Regents approved a 32% tuition increase to prevent offset potential budget cuts. This announcement initiated student protests at various UC campus locations. Forty-one students at UC Berkeley were arrested for trespassing after they locked themselves inside a building. Over 100 students protested over three days at the Santa Cruz location, and several students at the Davis campus were arrested as well (Seraphin, 2012).

- In 2012, at the University of Virginia faculty and staff protested the firing of University President Teresa Sullivan. The termination was criticized for lack of transparency. The backlash worked as Sullivan was reinstated after the board admitted to wrongful dismissal (Seraphin, 2012).

- The Black Lives Matter movement exploded into public view in 2014 after the police killing of Michel Brown in Ferguson, Missouri. Students across the country protested this, and other police shootings, with campus demonstrations and walkouts. "Black Lives Matter has had a fundamental impact on the national conversation about racial bias and the use of excessive force by the police" (Astor, 2018, para. 28)

- In 2018, the fatal mass shootings at Marjory Stoneman Douglas High School in Parkland, Florida, resulted in nationwide protests against gun violence (Pedris, 2018).

On March 14, 2018, tens of thousands of students across the country walked out of their classrooms in protest. Supporters say the walkouts and demonstrations represent a realization of power and influence by young people raised on social media who have come of age in an era of never-ending wars, highly publicized mass shootings, and dangerous national politics (Heim & Svrluga, 2018).

Campus-related activism dissipated somewhat for a few decades. IHE are experiencing an increase in student activism in recent years, though, sparked by the presidential election, rising college costs, and what is viewed as hostile racial campus climates. In a 2016 study by UCLA's Higher Education Research Institute, the highest percentages ever of incoming students said they are likely to participate in protests.

Protests arise for a wide variety of reasons. *Forbes* even listed "The seven most ridiculous college protests in 2017," citing the "work in" at the University of Pennsylvania, where participants who were protesting a Republican tax bill in Congress were asked to sit outside the Offices of the President and Provost and "read, or grade, or do any kind of work to demonstrate how vital our work is the Penn community" (Lips, 2017, para. 2). Other demonstrations listed in the *Forbes* article included a protest against the "State of the Union" at the University of Cincinnati, where students did not demonstrate against a specific policy but still "decided to just showcase their general unhappiness" with a silent protest; a "mid-term exam protest" at Berkeley as four students demanded a take-home essay; a sit-in at Reed College with students calling for divestment from Wells Fargo "because of the company's ties to private prisons, 'police militarization' and the controversial Dakota Access Pipeline"; a protest at Brown University due to the honorary degree bestowed to PepsiCo CEO Indra Nooyi because she "is not only an advisor to Donald J. Trump, she makes $29.8 million a year selling junk food

produced with links to child labor, human rights abuses, and deforestation;" a "Cocks Not Glocks" student group at the University of Wisconsin-Madison where students were asked to make "crappy dick art, write dumb dick poems, and give bad anatomy lessons" to protest the Young Americans for Freedom hosting Katie Pavlich to speak on the Second Amendment rights; and a "Protest for Credit" at the University of Arizona where students enrolled in a "Global Politics of Human Rights" class were instead given credit by organizing a protest (instead of taking a final exam) against President Trump's polices (Lips, 2017).

Challenges in the Application of Law for Risk Management

Campus activism has been met with disapproval from politicians and commentators who say students have a double standard when it comes to free speech. Some critics believe students are only willing to hear opinions that support their own and will shut down those who disagree (Pedris, 2018). Whether this is true or not is up for debate, though it is clear that college and university employees, when acting in their positions as state and federal employees, must remain politically neutral. Washington State has definite rules which "prohibit the use or authorization for use, of state resources . . . for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition" (RCW 42.52.180(1), 2017).

Additionally, Washington state laws contain strict guidelines on campaigning and lobbying. Displaying any political material, such as a campaign button, is problematic as it can leave the impression that the institution supports a campaign. Supervisors have a duty to halt employee use of state resources for political activities, which can include political messaging through state equipment and network or on a private account on a state computer. One email, call, or text is enough for a violation (University Affairs, 2017).

A significant challenge to the application of the law for risk management is racial bias and discrimination. For instance, Gregory and Fergus (2017) noted that gender and race become intertwined in American schools since as early as preschool. Further, male and Black students are more likely to be victims of severe discipline, which affects their academic development. Similarly, Gregory et al. (2016) noted that Black students are more likely to receive sanctions compared to those from other ethnic and racial groups, suggesting the need for addressing this issue within the practices for risk management. An empirical study conducted across 86 secondary school classrooms to measure the impact of a coaching program found that through changes in the risk management programs, it was possible to train teachers to obtain equality in the application of risk management practices.

On the topic of bias, recent literature confirms that political favoritism—even the perception of favoritism—can have very negative results for the IHE. A few examples will come to light in this research. In 2018, College Republicans at the University of Washington (UW) argued that a security fee unconstitutionally infringed upon their First Amendment freedom of speech rights by making it unaffordable for them to host events (Long, K., 2018). The College Republicans sued the university, citing unfair practices, alleging that they and other politically conservative campus groups were discriminated against when the UW charged "exorbitant event fees to provide increased security needed to thwart violent protests from leftwing political activists" (Long, K., 2018, para. 9). Though the university countered that some events could lead to violent protests, therefore the security fee was necessary, the Republican group won the case. The UW had to pay $122,500 in legal fees to the College Republican attorneys, and the courts forced the university to rescind its policy around security for student group events. Since the ruling, the university can no longer charge any groups a security fee for speakers, unless the

group specifically asks for security to be present. The settlement, however, does not prevent the university from "creating a constitutionally permissible security fee for student events" (Long, K., 2018, para. 3). The university, essentially, has to remain neutral in policy and actions or face possible consequences.

Besides lawsuits and embarrassing media attention, other costs and inconveniences can result without a thorough literature review of campus protest and First Amendment policies. In 2011, a group called Occupy Seattle was forced by police to move out of Westlake Park, where the group had been trying to occupy Seattle's central shopping district. The group, of more than 100 campers, moved to Seattle Central Community College (SCCC), setting up an impromptu tent city. Since SCCC did not have a limit on overnight camping or policies addressing protests, the college was forced to deal with health-department concerns, human waste, lawlessness, drug use and a sense that students are unsafe (Heffter, 2011). While trying to negotiate the departure of the group for nearly a month, a report about an attempted sexual assault prompted the College Board to approve an emergency rule against camping or protesting overnight.

On May 12, 2012, SCCC approved a permanent policy that defined time, place, and manner that individuals and groups can conduct activities. One newly added provision stated that college and non-college groups could only use the campus for first amendment activities between the hours of 6:00 a.m. and 10:00 p.m. (Archive Comment, 2012). Just about every other community college in the Washington State system followed suit to prevent a repeat of the events at SCCC. In 2018, Edmonds Community College (EdCC) finalized policy in the form of Washington Administrative Code (WAC) 132Y-136-010, which addressed time, place, and manner to establish procedures and reasonable controls for the use of college facilities for both college and non-college groups. The WAC is intended to balance the college's responsibility to

fulfill its mission as a state educational institution of Washington with the interests of college groups and non-college groups who are interested in using the campus for purposes of constitutionally protected speech, assembly, or expression (EdCC, 2017).

Practicing Institutional Duty of Care at IHE

Student discipline and a college's code of conduct policies are other vast gray areas that need review and updating to serve students best and protect institutions. For instance, in a study on student discipline through a critical race theory perspective, Anyon, Lechuga, Ortega, Downing, Greer, and Simmons (2017) found that the practice of exclusionary discipline at campuses had a significant impact on students of color. Based on a review of data involving 20,166 incidents of discipline across 185 schools, Anyon et al. (2017) found a significant relationship between the location of discipline and race of student, suggesting the need to consider the role of systematic bias when developing colorblind practices and policies for disciplines at universities.

There are a few avenues that colleges and universities use for discipline and conduct issues. Athletic and housing departments have their own set of rules and guidelines; however, the two primary avenues IHE utilize regarding student conduct are the Conduct Office or appointed officer, which typically addresses issues of academic and social misconduct, and the Title IX office, which deals with sexual violence, or discrimination based on sex. The background of Title IX regulations began in 1975. Though it is famous for ensuring a balance of male and female sports, the law also requires school districts, colleges, and universities receiving federal financial assistance from the Department of Education to designate at least one employee to coordinate the recipient's compliance with Title IX (U.S. Department of Education, 2015).

The Title IX Coordinator is responsible for coordinating responses to all complaints involving possible sex discrimination.

In 2015, the U.S. Department of Education's Office for Civil Rights (OCR) emphasized the obligation to designate a Title IX coordinator (U.S. Department of Education, 2015) with the primary responsibility of coordinating campus compliance with Title IX, including grievance procedures for resolving Title IX complaints (Jacquelyn & DiLoreto, 2018). These duties include monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate (Jacquelyn & DiLoreto, 2018). Each institution is also required to report instances of sexual violence. The Office of Civil Rights will look into cases if it determines a college might have mishandled an investigation. These requirements have not always been followed, with nearly 100 colleges currently under investigation for noncompliance (Jacquelyn & DiLoreto, 2018). Additionally, as of December 28, 2018, 310 cases remained open, with 192 cases resolved since April 4, 2011 (The Chronicle of Higher Education, 2018). IHE policies and procedures must align with what is transpiring at the local, state, and federal levels. Politics at the state and federal levels dictate trends and deserves closer scrutiny in this research to avoid alignment with a particular political leaning. Recent examples that require attention include proposals made by Education Secretary Betsy DeVos, which will overhaul the way Title IX complaints are conducted. DeVos' plan would scale back Obama administration rules by adding protections for students accused of harassment and assault.

A significant change would allow for cross-examination by the defendant's representative (Department of Education, 2018). DeVos was quoted:

> It is our goal with this proposed rule to ensure that Title IX grievance proceedings become more transparent, consistent, and reliable in their processes and outcomes. Far

too many students have been forced to go to court to ensure their rights are protected

because the Department has not set out legally binding rules that hold schools

accountable for responding to allegations of sexual harassment in a supportive, fair

manner. By following proper legal procedures and receiving input on our proposed rule,

we will ultimately have a final regulation that ensures that Title IX protects all students.

(Department of Education, 2018, para. 5).

The literature shows the IHE must not only align their policies with current law but also

make sure to follow their procedures, regardless of circumstances or perception. In late 2018, a

panel of Pinellas County judges released a court order Friday that gave a former student body

vice president, Samuel Goetz, at the University of South Florida, St. Petersburg a second chance

at clearing his name in a sexual assault allegation that led to his expulsion (Dawson, 2018).

Goetz filed a lawsuit against the university, claiming the Title IX inquiry denied him rights to

due process, including not providing him or the panel that found him guilty with interviews from

the accuser. The interviews included statements made by the accuser that admitted a consensual

sexual encounter that she later felt uncomfortable having taken place. Mark O'Brien, Goetz's

attorney, "compared the university procedures to a law enforcement officer withholding evidence

that could prove an accused person innocent" (Dawson, 2018, para. 4)

Risk Management and Student Behavior

Clouding the conduct process is the intersections of student behavior and mental health.

As Henriques (2014) wrote, "It is neither an exaggeration nor is it alarmist, to claim that there is

a mental health crisis today facing America's college students. Evidence suggests that this group

has greater levels of stress and psychopathology than any time in the nation's history" (paras. 1–

2). Many mental health conditions are undiagnosed, and the management of these conditions is

strained due to new surroundings and behavioral concerns that arise (ACPA, 2012). Student

conduct officers have to develop strategies to respond to student behavior in ways that best meet

the students' needs.

Additionally, they need to do this by balancing protecting the community and upholding

college/university policy. In a study reviewing the condition of mental health service and

counseling delivery in American colleges, Prince (2015) found that national conversation on the

topic of student behavior, especially concerning mental health, has increased. It was also found

that other issues regarding mental health, such as alcohol consumption, anxiety, and depression,

disrupt the learning ability of students and present a challenge to university risk management

approaches (Prince, 2015). In this regard, the review found that the work done by university and

college counseling centers was critical to the overall goal of higher educational institutions and

essential for solving the problems associated with student behavior (Prince, 2015). Changes in

student behavior, especially the unprecedented number of students who seek counseling for

mental health in colleges and universities, present significant challenges to risk management in

the United States (Prince, 2015).

A recent example of mental health issues and duty of care the case of Katherine Rosen, a

former University of California, Los Angeles (UCLA) student who was stabbed by a classmate

while on campus. Rosen initially filed a negligence action against several UCLA employees and

the Regents of the University of California, alleging they fell short of obligations to protect their

students from "foreseeable acts of violence" (Lopez, 2018, para. 3). The stabber, Damon

Thompson, received care at UCLA, was diagnosed with schizophrenia, and exhibited erratic

behavior toward fellow students before the incident.

UCLA took the case up to the Second District after losing a summary judgment motion. The university fought the initial finding, believing it was not obliged to protect students from criminal acts carried out by classmates and that it reasonably addressed the threat posed by Thompson. UCLA won the initial case. That decision, however, was reversed by the California Supreme Court because "universities have a special relationship with students that renders them responsible for protecting students in curricular activities" (Lopez, 2018, para. 3).

Colleges across the country are trying to proactively address mental health issues. One way to support student behavior is the development of Behavioral Intervention Teams (BIT). At many IHE, this acronym has been changed to the CARE team (this term is sometimes an acronym, but sometimes not). CARE is becoming the preferred term, as BIT, with behavior in the title, appeared punitive. At Lake Washington Institute of Technology, "the Campus Assessment, Response, and Evaluation (CARE) team use collaboration, information collection, risk assessment, and intervention to create a safe campus community" (CARE, 2019, para. 1). CARE teams are generally comprised of members from security, counseling, instruction, disability centers, and other departments, with the committee run by the appointed student conduct officer.

The CARE team receives notices of student behavior and then plan preventive strategies and interventions to assist students, faculty, and staff in supporting students who may be at risk (CARE, 2019). The purpose of these groups is to identify students who may be harmful to themselves or others and create an intervention to help them be successful at an institution (ACPA, 2012). Still, even with professionals from different fields, there are many implications and potential liability concerns for these teams, so the development and implementation of these teams are very complex (ACPA, 2012). As Lake Washington Institute

of Technology emphasizes: "Detecting state of mind or intention or for predicting future action" (CARE, 2019, para. 4).

As stated earlier in this research, the student conduct process is traditionally punitive and resembles a courtroom. "Sanctions tend to feature retribution, deterrence, and incapacitation and are often a model of progressive restriction and exclusion" (Karp & Casey, 2014, p. 156). Punishment tends to start with restrictions, such as losing access to the gym or participation in a club, to fines and removal from campus housing or suspension from classes, and finally to expulsion from the institution (Karp & Casey, 2014). A second approach to student conduct is a restorative approach—a learning experience that moves from extrinsic moral motivation to intrinsic moral motivation (Karp & Casey, 2014). This process facilitates students to understand norms, share in community values, and understand the wrongfulness of their behavior. Instead of being passive recipients of a decision-making process, students become part of the decision-making process by taking an active role in resolving the situation (Karp & Casey, 2014).

Additionally, as with any document, code of conduct handbooks require regular review to determine if there are any outdated codes or outdated language.

These handbooks are a focus in this study to determine consistency and general relatability and to check for outdated or weak policies. For example, the University of Montana Western (UMW) had a policy in its student code of conduct handbook that permitted punishing of students for "mean" words or "facial expressions" (Timpf, 2018, para 1). Since its Student Code of Conduct states, "committing any act prohibited by this Code of Conduct may result in expulsion or suspension from the University unless specific and mitigating factors are present," a "mean face" could have led to expulsion (Timpf. 2018, para. 2). A *National Review* article pointed out this odd statute, with a pro-free-speech group called the "Foundation for Individual

Rights in Education" (FIRE), expressing concern over the policy. FIRE noted the University is a taxpayer-funded public college (and therefore under more public scrutiny) and contended that what might or might not be considered "mean" in terms of speech is entirely subjective—the same applies to facial expressions (Timpf, 2018, para. 5). Within a few days, UMW deleted the "mean face" section from its Student Code of Conduct, but the edit was too late to avoid an embarrassing public article.

Adapting to Change

IHE have historically struggled with societal and changes in the law. An excellent example of a new venture that adds additional layers of responsibility are residence halls. Though they can be a source of income and help boost student enrollment numbers, residence halls necessitate diligence and transparency in regards to reporting. One of these reporting requirements is the Clery Act, which is part of the Crime Awareness and Campus Security Act of 1990. It requires colleges and universities that receive federal funding to distribute a public annual security report to employees and students every October 1st. This report must include statistics of campus crime for the preceding three calendar years, plus details about efforts taken to improve campus safety (Jeanne Clery Act, 1990). The Crime Awareness and Campus Security Act stemmed from a tragic incident when Lehigh University student Jeanne Clery, who was raped and murdered at her residence hall in 1986. The attack on Clery was one of 38 violent crimes recorded, but not made public, at the university in three years. Clery's parents argued that, had the crime record been known, their daughter would not have attended Lehigh, and she would have taken more safety precautions (Clery Center). The Clery family sued and won a two million dollar award.

Clery is an extreme and tragic case, but it does demonstrate the importance of transparency and the importance for administrators to mitigate potential issues-particularly legal concerns—before harms occur. While possible reparation and legal costs are significant reasons, the primary motivation for transparency should be the protection of individuals on campus.

Predicting issues of concern is not an exact science, but it starts with a review of IHE responsibilities. Today's college students and their parents have explicit expectations of what role the university should play, which underscores the fluid nature of in loco parentis (Stuart, 2010). It might seem that student accountability for their own actions wanes, while courts are holding colleges and universities to a higher standard of care. As Thomas (1991) stated, "following litigious societal trends, students appear to be more willing to pursue lawsuits against institutions for failing to protect them from the conduct of others and even their own conduct" (p. 37). This combination opens up significant legal challenges and consequences for colleges and universities, which have, "increasingly come under fire for their handling of issues related to the safeguarding of students on campus from incidents of hazing, sexual assault, gun violence, binge drinking and bullying" (Merrick, 2016, p. iii). With so many services offered, there is almost an unattainable expectation of IHE. Still, colleges and universities have to be prepared to serve students and to address their needs. These needs are ever-changing, and so is the level of expected care.

Another issue on campus that hampers predictability is changing demographics, especially at the community college level. The U.S. student body has undergone substantial changes over the last few decades. Students are no longer primarily white, middle-class males. They are increasingly coming from traditionally underserved and lower-income communities and families. As stated in the 2018 *National Center of Education Statistics*, more and more students

are first-generation; more students are women, people of color, nonresidents, and international. Students are also older, most hold jobs, and almost 5 million college students are raising dependent children, with more than half of those, mostly women, being single parents (Romo, 2018).

Many colleges are operating programs like Washington's Running Start program that allows 11th and 12th-grade students to take college courses at Washington's 34 community and technical colleges (SBCTC, 2018). Running Start students earn both high school and college credits for these courses without having to pay tuition (though colleges are compensated through state funding). Students receive both high school and college credit for these classes, which accelerates their progress through the education system (SBCTC, 2018). This program opens doors for many families but creates concerns for college administrators who now have to manage risk for potentially hundreds of underage students on campus. Making the community college environment even more diverse includes students who are English Learners or those enrolled in Continuing Education (education for adults over 25), High School Certificate, and Career Advancement (workplace skills) programs.

Aside from the demographics shift, today's college students face more challenges than ever before. Nearly 43,000 students were surveyed in an April 2018 report from Temple University and the Wisconsin HOPE Lab. Among the findings: in the past 30 days, 36% of university students and 42% of community college students felt food insecure, which means that students had trouble getting enough to eat daily. Another 36% said they were housing insecure, which can mean a student is at risk of eviction, behind on utility payments, or actually homeless. More than 9% of college students reported being homeless, meaning they are living in a shelter, "couch surfing," or sleeping on campus (Romo, 2018).

Mental health is another area of growing concern on campus. In a study conducted on mental health patterns in college campuses, Hawley et al. (2015) discovered general mental and physical indicators across 2,049 students and faculty members. The results found that the change in demographics reflected in the mental health needs, as the staff, faculty, and students of some demographic groups were more likely than others to report critical physical and mental health problems. In particular, non-heterosexual individuals, staff and faculty of color, and women were more likely to report worse outcomes for health. Further, students were found to report worse outcomes for mental health compared to staff and faculty.

As Eisenberg and Hunt (2010) pointed out, "College students are often viewed as a privileged population, but they are not immune to the suffering and disability associated with mental illness" For young adults, college represents a developmentally challenging transition to adulthood. Untreated mental illness may have significant implications for academic success, productivity, substance use, and social relationships (Eisenberg & Hunt, 2010). These challenges put more pressure on student affairs divisions to expand their services to accommodate these developing issues. Conflicts between privacy rights and reporting responsibilities also arise regarding mental health.

The Student Accountability and Restorative Research (STARR) Project determined, "The type of conduct process used is the single most influential factor in student learning. Additionally, restorative justice practices were found to have a greater impact on student learning than traditional model hearings" (Karp & Casey, 2014, p. 156). The traditional code of conduct is more a formal process, emphasizing authority and control—much like a court case. Conduct aspirations might be compassionate, developmental, and educational, but focus on discipline.

Meanwhile, the restorative justice model, as explained by Karp and Casey (2014):

[I]s a collaborative decision-making process that includes victims, offenders, and others seeking to hold offenders accountable by having them: (a) accept and acknowledge responsibility for their offenses, (b) to the best of their ability repair the harm they caused to victims and communities, and (c) work to reduce the risk of re-offense by building positive social ties to the community. (p. 156).

Working with a diverse student body with many different backgrounds and concerns calls for IHE flexibility. Higher education decision-makers also need to be informed and prepared to deal with emerging trends such as mental health issues and accommodations for students with disabilities. An equity-based mindset when working with a diverse student population are essential for any administrator, but it is especially necessary in the conduct arena.

Review of Methodological Issues

Evaluation of literature sources will continue to take shape as each article is broken down, and the thesis further investigated. The strengths and weaknesses of each source continue to take place and are carefully examined as this process demands, through the lens of academic critique. For example, *The Student Accountability and Restorative Research (STARR) Project* by Karp and Casey (2014) is an important document about risk management accountability, but it is not necessarily an academic paper. Additionally, findings from 2018's Temple University and the Wisconsin HOPE Lab do not necessarily translate to all areas of the country. Findings could also be outdated and an intense look into the questionnaire could reveal bias or flaws. Other examples, especially case law, are definitive and not as open to interpretation as articles or other dissertations. As this research mentioned prior, as of December 28, 2018, 310 Title IX cases remain open (The Chronicle of Higher Education, 2018). The direction of these cases are likely

to change when Education Secretary Betsy DeVos issues new Title IX guidance. More students removed from their IHE for violating Title IX, like Samuel Goetz, who successfully sued the University of South Florida, St. Petersburg, could make their way into courts. Certainty, the nearly 100 colleges currently under investigation for noncompliance will be impacted with new guidance (Jacquelyn & DiLoreto, 2018). Increased legal challenges place mounting pressure on universities' Title IX proceedings, due to the trend that higher education law experts say is a natural reaction to proceedings that declare "winners" and "losers." (Anderson, 2019, para. 1).

Methodological issues will include developing classification structures via a literature matrix for multiple forms of in loco parentis and risk management, identifying relevant court cases, and examining in-person interviews with current college and university administrators. The researcher will also distinguish between institutionalized in loco parentis examples and isolated incidents; relevant court cases and cases that lead to evaluation of risk management procedures; potential sources of bias in study samples, articles, interviews, and other references; and criteria for selecting citations, comparison groups, risk management issues, and court cases. Some research overlaps on many issues such as the 2015 UCLA student stabbing case, which is relevant for case law, duty of care, duty to warn, and both institutional and personal liability. Additionally, mental health conditions that are often undiagnosed and the management of these conditions is strained due to new surroundings and behavioral concerns that arise (ACPA, 2012). This is especially true in the open enrollment community college system. A 2015 survey from the American College Counseling Association (AACA) determined that only about 10% of community colleges have psychiatric care available on campus while about 85% have psychological care (Boyington, 2016).

This research studied gaps in literature as well, such as shifting campus cultures when it comes to duty of care expectations, changing student demographics, and evolving court cases that may impact IHE ability to internally manage risk management issues. Specifically, in regards to changing student demographics, this research identified how IHE struggle to align emerging needs services with legal requirements. The need for further exploration is addressed in this study.

In loco parentis has not changed its fundamental purpose: to ensure the well-being of students, though polices do evolve. One way institutions can lessen the chance for liability is by "provisions in their literature, stating the documents are not binding contracts or by providing statements whereby institutions reserve the right to amend their publications" (Bowden, 2007, para. 15). From housing to fraternity policies, from alcohol to sexual activity rules, from academic to civil behavior standards, colleges and universities provide catalogs and handbooks to relate guidelines of appropriate behavior and assist with governing it. As institutions function in place of parents, students' activities are under the care of faculty, administrators, and staff (Bowden, 2007).

Synthesis of Research Findings

The conceptual framework of this research is based on the relationship of the issues relating to risk management and institutional duty of care at the IHE. Arguments in this research came from a wide variety of academic, professional, and personal contexts as well as data though interviews with higher administration experts. Issues with the literature review include if the information is reliable, limited, or challenging to access. Other issues with research findings include, but are not limited to, personal bias, poor survey construction, and unreliable or uninformed interview and survey participants. This synthesis pulls together information from a

range of sources to answer the earlier questions posed, as well as to construct the argument of whether IHE are prepared for legal challenges and best monitoring student conduct through a robust risk management assessment.

President Barak Obama's Administration outlined Title IX guidance in 2011. That guidance resulted in more expulsions as IHE vigorously rooted out campus sexual assault and harassment with a preponderance of evidence standard (Anderson, 2019). Even with the 2011 guidance, more than one-fourth of 305 Title IX claims analyzed in a 2015 study by United Educators (UE) were challenged by students in the form of lawsuits or complaints through the Department of Education's Office for Civil Rights (OCR) (Anderson, 2019). "There's a consensus among higher education and legal experts that students are increasingly claiming flawed hearings or unfair disciplinary sanctions as a result of procedural failings at their universities" (Anderson, para. 2, 2019). New Title IX guidance by the Trump Administration is expected to increase the burden of proof to find a student responsible, which will more than likely lead to more lawsuits and complaints.

As explained by Anderson (2019):

The proposed regulations say that Title IX administrators' treatment of both complainant and respondent could constitute discrimination on the basis of sex and a respondent can be unjustifiably separated from his or her education on the basis of sex, in violation of Title IX, if the recipient does not investigate and adjudicate using fair procedures before imposing discipline (para. 9).

Other emerging legal challenges at IHE include affirmative action, privacy, and immigration policies enacted by the Trump Administration. This researcher assumes the connection of relevant case law, literature review, and communication with higher education

professionals suggest that risk review will better inform, promote safety, streamline processes, and reduce litigation. As of October 2019, more than 180 colleges and 40 higher education associations have filed briefs with the U.S. Supreme Court defending the Deferred Action for Childhood Arrivals (DACA) program, which allows some 700,000 undocumented immigrants to study and work in the U.S. in 2-year blocks (Schwartz, 2019).

This study also addresses the theoretical framework of leadership in the investigation of the experiences of the participants. Leadership relates to the management of people, policies, and procedures. However, it also ties in with the ability to be flexible and adapt to changing workplace and societal trends. An adaptive leader, according to Heifetz et al. (2009), possesses the core competencies of having the ability to engage people with organizational changes, to manage resistance to change and to understand that lasting change takes time.

Critique of Previous Research

Research on the lack of IHE risk management cohesiveness and duty of care areas is sparse, and very little information is available that investigates case law and institutional policy-making. These are essential issues for IHE. As Reid (2016) wrote, "The role of courts continues to increase in the educational policymaking arena." Protecting both students and the institution are not easy tasks to align. There are some 5,300 colleges and universities in the United States, everything from beauty schools to Ivy League Universities. Though they are referred to collectively as "the American higher-education system, it's far from an organized system. In essence, they operate as 5,300 little fiefdoms" (Selingo, 2015, para. 1) IHE range from small, private liberal arts colleges to enormous public universities. This literature review focused on the areas of risk management, duty of care, and the balance between those two at IHE.

The literature summarizes existing materials relating to the topic and area of study, with elements of a descriptive study (through interviews and personal observation), and emphasis on the correlation between a lack of preparation, lawsuits, and issues with student conduct. The research will include a matrix identifying broad categories of risk—such as financial, physical, and environmental. There appears to be a surplus of articles and thesis about risk management, in loco parentis, student conduct, and so forth. Additionally, countless college handbooks and policies available to anyone with access to the internet.

Themes and word searches are an essential part of literature critique. As stated by Creswell (2013):

> The process of data collection and analysis is a theory, a substantive-level theory, written by a researcher close to a specific problem or population of people. The theory emerges with help from the process of memoing, in which the researcher writes down ideas about the evolving theory throughout the process of open, axial, and selective coding (p. 88–89).

Strategies to develop risk management plans will come through this study. Court cases, articles, code of conduct policies, and the lack of policies will show that there is not a consensus on best risk management policies or an understanding of in loco parentis and that there are different views on the subjects from college administrators. The expectations of reviewing policies, contracts, and codes of conduct are to find many outdated and conflicting documents. The expectation is, however, for a consensus from risk management specialists who demonstrate frustration with college administrators and policies. The expectation is to balance any bias out with facts, direct court cases, and law.

Themes that this research devolved in and expanded on include:

- What are the college processes?

- What influenced the process?

- What actions were taken in response to the process?

- What were the consequences?

Other valuable sources of information readily available to anyone are court decisions. In this researcher's opinion, it is unwise to critique court decisions. Even if the case law seems absurd, it is the law and needs to be accounted for when considering the formation of policies and decision-making. It is vital to stay informed on cases as they progress from the local to the district courts.

Surprisingly, little research exists on the development aspect of student conduct administration (Karp & Casey, 2014). As stated prior in this paper, the trend among colleges, especially in Washington State, is restorative justice. This researcher had difficulty finding mention of this theme in dissertations and articles, though many IHE have included themes of equity and restorative justice in their student conduct manuals. Moreover, the themes of equity and inclusion as part of conduct administration and process is also lacking. This allows the opportunity for this research to expand on the current subject knowledge. Therefore, special attention is made in participant interviews to the evolution of the conduct process in a state that prides itself on its progression in the areas of diversity, equity, and inclusion.

A recent dissertation in the area of student conduct that this researcher found valuable was from Robert Horrigan at the University of San Diego, entitled *Meaning-making in student conduct administration: A developmental perspective* (2016). The paper is nearly 300 pages, primarily focused on the experiences of six participants. As Horrigan summarized, "A three-

stage analysis of data from two qualitative interviews and a photography exercise was designed to explore the relationship between meaning-making and action logic expression for nine student conduct administrators (SCA)" (2016, p. i). The context of the research did touch on the complexity of student conduct administration in higher education, however, and the thesis did make a note of the tension for conduct officers when it comes to managing legal and policy compliance in the adjudication of cases. The paper also references "restorative justice-minded educators oriented towards student growth and learning" Horrigan, 2016, p. i). The issue with this research regarding duty of care and best practices is that the focus was on the exercise itself and meaning-making.

A related study, entitled "Retributive and Restorative Justice," discussed the emergence of restorative justice as an alternative model to Western, court-based criminal justice and the important implications for the psychology of justice (Wenzel, Okimoto, Feather, & Platow, 2008). The study proposed that two different notions of justice affect responses to rule-breaking: restorative and retributive justice. Retributive justice "refers to the repair of justice through the unilateral imposition of punishment, whereas restorative justice means the repair of justice through reaffirming a shared value-consensus in a bilateral process" (Wenzel et al., 2008, para. 1). This article, named "Retributive and Restorative Justice," concentrated on the relationship between the conduct administrator and the student and advocates restorative justice. However, the article points out limits of the restorative justice framework as well as "the conditions under which restorative justice is considered appropriate, or which need to be established first before it is considered appropriate." (Wenzel et al., 2008, para. 59). This research has value for this thesis in a social justice framework, but it is dated, and its focus is on comparing and contrasting.

Similar to the previous two theses, in that it did not address policy and procedure for best practice that can be utilized widely, is *A National Study of the Ethical Dilemmas Faced by Student Conduct Administrators* (2012), a thesis by Mary Dowd. The research explored the ethical dimensions of administering student conduct. The purpose of the study was to identify the ethical dilemmas experienced by student conduct administrators and to test the applicability of Kitchener's model as a framework for resolving ethical dilemmas. Also examined were the theories, professional codes, and core values informing ethical decision-making (Dowd, 2012). Interestingly, Dowd (2012) commented on the flexibility of the conduct process, "Student conduct administrators reported relying most heavily on their professional code of ethics, personal values, cultural perspectives, institutional mission, and legal ramifications to resolve dilemmas" (p. iii). What was of significance to this researcher was the acknowledgment that each conduct officer operates and makes decisions independently. This paper will add new discussion and information on the drawbacks of that approach and provide a best practices model.

Other related searches in ProQuest were listed with the tags "social justice" and "criminal justice" and not under higher education. The search identified 441 results when typing in "risk management campus events" however, the examples did not address overall campus culture, but rather narrower focused on issues such as "alcohol on campus." One paper did address campus risk management and the "CNN effect" in an interesting way. The authors claimed an imbalance within the process of evaluating and managing risks, including at IHE (Williams & Peterson, 2012). The CNN effect is a theory used by political scientists to describe the effect of constant news media coverage. Rare and extreme events, such as mass shootings, have forced universities to focus inordinately on incidents that have a very low probability of occurring. Yet, it is those very events that are likely to have an enormous impact, regardless of the level of training and

preparedness (Williams & Peterson, 2012). The research question the authors pose is, "How can risk managers in higher education maintain a balanced approach to assessing and managing risks while ensuring all their strategies are not overly influenced by high-profile incidents?" (Williams & Peterson, 2012, p. 27). That question poses the quandary that this research has asked throughout and will delve into deeper: What is the perception of institutional duty of care? And, what is an optimal culture of risk mitigation?

Summary

Court cases, dissertations, handbooks, and articles listed in this chapter provide the basis and context for this research. There is a long history of the duty of care in the form of in loco parentis, as well as information on student conduct and campus events. The lack of explanation and correlation between risk management assessment and in institutional security and student safety warrant further exploration. Responsibilities deficient in the current literature include student conduct and protection of underage students, best practices with international students, emerging privacy and safety conflicts, and accommodation requirements for students with disabilities. This research will explore these topics, and others, to expand on current literature and provide higher education practitioners with best practice guidelines.

Additionally, examples of consequences from a reactionary approach in the areas of campus events and student safety are numerous and also merit further research. Failing to assess and prepare encourages litigation. With the multitude of services and amenities offered at IHE comes even more responsibility. Our institutions are not just "homes"; they are like communes, providing the care and compassion expected of families, while simultaneously offering resources and services to meet a very broad range of needs (Carlise, 2017, p. 49).

As is historically evident, courts play a crucial role in making sure student educational rights are realized. There will always be a role for the courts in shaping educational policy, and this role is likely to expand with an increase in student rights' cases (Reid, 2016). Unless administrators have a template to go by when forming policy, perhaps as Reid (2016) pointed out, the courts are better suited to protect students' rights, especially those who come from marginalized groups. Knowledge of risk management best practices, and applying them to institutional policies and procedures is crucial. With ever-evolving issues of student conduct and campus accountability always looming, college responsibilities are enormous and expanding. Without a risk management roadmap to proceed through the conflicting issues of student rights and an institution's responsibilities, colleges and universities have a higher risk of liability. Inaction by higher education administration in the area of risk management will not only put institutions in legal crosshairs, but more and more administrators are forced to defend their actions—and nonactions—in a court setting with possible personal financial implications.

Chapter 3: Methodology

Introduction

This study addresses two topics: institutional duty of care at IHE—encapsulated in the doctrine of in loco parentis—and the application of the law for risk management at colleges and universities in relation to the duty of care associated with student life. The general problem explored is the need to understand student affairs professionals' best practices for institutional duty of care and risk management to preserve internal decision-making and avoid the dictation of policy by external entities, such as the courts (Reid, 2016). This section describes the methodology for the study, including research population, sampling, instrumentation, data collection, variables in the data, analysis of the research design, validation, expected findings, and ethical issues within the research.

The purpose of this qualitative descriptive study is to explore IHE leaders' perceptions of best practices for institutional duty of care and the application of the law for risk management in the State of Washington. Specifically, the focus is on IHE leaders' responsibility for the actions of their students and the application of the law for risk management. In alignment with the purpose of the study, this study will utilize a qualitative research method to examine the subjective experiences of community college leaders as guided by the research questions. By using a qualitative approach, the goal is to capture the voices of the participants as they describe their respective and unique experiences. As noted by Creswell (2003), the qualitative data collected is used to "develop patterns and relationships of meaning" (p. 15). Upon completion of interviews and transcribing, the next step is to code and extract pertinent information to summarize the data. Words, phrases, and subject matter were reviewed to piece together themes and categories to ascertain meaning and connection to the literature reviewed and the research

questions. As Saldaña (2009) stated: "Just as a title represents and captures a book, film, or poem's primary content and essence, so does a code represent and capture a datum's primary content and essence" (p. 4).

Research Questions

In alignment with the research problem, purpose, the design, and a review of literature, the following research questions will guide the study:

RQ1. How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?

RQ2. How do IHE leaders describe the application of the law for risk management with respect to campus events and student conduct?

Through the exploration of these questions, the researcher will obtain a better understanding of the institution's role and responsibilities. It is vital to understand the law and its limitations to successfully implement any college policy, particularly with issues that overlap and sometimes conflict with the First, the Fourth, and 14th amendment. Moreover, higher education professionals need to be familiar with history as well as the current application of in loco parentis.

Purpose and Design of the Study

The purpose and design of this paper are to research the connection between institutional risk management policy as related to student conduct issues and legal challenges. Personal stories and recommendations will come from thorough interviews with higher education leaders and risk management professionals. Through an extensive review of literature, this paper has investigated prevalent policies, relevant court cases, and the evolution of in loco parentis, and the researcher will tie together supporting themes from the interviews. Combining qualitative data

from interviews and the literature review, the researcher will attempt to determine the levels of risk management readiness at IHE, as well as the awareness and preparedness of administration at colleges and universities pertaining to college responsibility for student behavior and protection.

Specifically, the focus of this research is on institutional duty of care and the application of the law for risk management for campus events and student conduct. In alignment with the research purpose, the researcher selected from the three available research methods, namely qualitative, quantitative, and mixed methods (Yilmaz, 2013). The qualitative method was deemed most appropriate, given the nature of the research and the possible advantages provided by the qualitative method from the available methods. Researchers use the qualitative method to derive large amounts of textual data through data collection procedures developed as transcripts (Miles et al., 1994). The qualitative method is appropriate for the study because, in qualitative research, the researcher attempts to understand experiences, motivations, opinions, and reasons for a specific phenomenon. The phenomena of interest that the researcher seeks to understand are best practices for institutional duty of care and the application of the law for risk management.

The qualitative method will allow for the exploration of themes relevant to the participants' experiences and perceptions about the research problem identified, which is the need to understand student affairs professionals' best practices for institutional duty of care and risk management (Reid, 2016). The qualitative method will allow the researcher to conduct a study in the form of a naturalistic inquiry, in which the participants will be studied regarding the research phenomenon within the real-world settings through an inductive approach, whereby the goal will be to develop rich descriptions (Patton, 2005). Relying on semistructured interviews, the qualitative method will enable the examination of "why" and "how" questions with respect to

the research phenomena. As this is the purpose of the study, the qualitative method is appropriate for the research.

Other methodologies considered for the study included quantitative and mixed methods approaches. In quantitative research, the focus is on measurable empirical data. The quantitative method, as a result, would have been more appropriate if the research fell within specific fields that are more appropriate for quantitative methods, such as sciences, in which rigor is more important than in-depth data (Yilmaz, 2013). Although researchers note the importance of rigor and empirical data afforded through the quantitative method, other researchers have noted that such value is not significant when the purpose of the study is to explore subjective experiences (Mankelwicz & Kitahara, 2010). As a result, the quantitative method was rejected for the study, in which the focus is on the subjective experiences of the participants.

The mixed-methods approach is often useful when the nature of the research inquiry is aimed at obtaining both the empirical data and descriptive data (Venkatesh et al., 2013). Although the mixed methods approach enables a researcher to attain the advantages of the two methods, it is also plagued with the limitations of the two methods and is only useful when utilized for a research study in which such a method is appropriate. Therefore, mixed methods was not selected in this study, as it was determined that exploring IHE leaders' perception of best practices for institutional duty of care and the application of the law for risk management would be better served through the qualitative method alone.

Along with the qualitative method, the research will use a descriptive design approach. In qualitative research, there are multiple research designs, including ethnography, case study, grounded theory, and descriptive design (Auta, Strickland-Hodge, & Maz, 2017). The ethnography research design includes the observation of the research participants in the context

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of their cultural environment over some time (Kelly & Gibbons, 2008). The goal of an ethnography research design is to observe the participants against their cultural environment to understand the exchanges between the participants relevant to the research phenomenon (Auta et al., 2017). Since the research focus in this study is not centered on observing the individual participants, but instead, to obtain descriptions based on experience, the ethnography research design was not selected for the study.

The researcher considered the case study design, in which the focus is on individuals and groups to examine a particular condition from various sources of data (Auta et al., 2017). The case study design was not selected because the focus in the research is entirely on the experiences of the participants based on their descriptions, and thus multiple sources of data were not required for the study.

The researcher also considered grounded theory research for the present study. In grounded theory research, the purpose is to collect data regarding a specific phenomenon to generate a theory regarding that phenomenon (Baxter & Jack, 2008). The grounded theory research design was not selected for the study because the purpose of the research is not to build a theory, but to explore descriptions from participants as informed by their experiences. Thus, the descriptive research design was found to be most appropriate for obtaining systematic descriptions regarding the research phenomenon from the selected population, based on their characteristics (Dulock, 1993). Based on the experiences of the participants, the descriptive research design will help obtain descriptions regarding the research phenomenon in response to the research questions formulated for the study. This design will help the researcher to understand the phenomenon, provide new meaning identified from descriptions of those who have first-hand experiences of the phenomenon to be studied, and present the nature of the

phenomenon as it occurs. In all studies in which the descriptive research design is utilized, the central similarity is the accurate and systematic description of a phenomenon (Dulock, 1993). The descriptive design does not involve the development and testing of hypotheses, but the development and exploration of research questions through participant descriptions.

In the existing literature, the descriptive research design has been used by researchers in a similar context. For instance, Jennings, Gover, and Pudrzynska (2007) used the descriptive research design to examine the problems related to campus safety, such as perceived crime risk and perceived fear of college students. The researchers collected data from undergraduate students and found that students often used constrained behavior to decrease the possibility of victimization. The researchers also reported sexual assault, property, and personal victimizations. The findings suggested differences based on gender among the participants in terms of perceptions associated with risk, safety, and fear. Sexual assault victimization was also found to differ based on gender. The various studies conducted in the context of institutional duty of care and risk management across college campuses in which the descriptive design was used suggest the appropriateness of this design for the study.

Research Population and Sampling Method

In a research study, population refers to all potential members in a group relevant to the research phenomenon (Boddy, 2016). The sample refers to those individuals who will partake in the study, as selected from the research population. Boddy (2016) noted that qualitative studies focus on in-depth experiences and, therefore, do not require a large sample. In the study, the general population will consist of IHE leaders in Washington. The target population will consist of those who represent leadership in areas of institutional duty of care and risk management, such as college administrators like the dean or those at the executive leadership level, state

government risk management professionals, assistant attorney generals, and athletic league executive commissioners, primarily in the Washington State Community and Technical College System. The final sample will consist of 8 to 15 college and university administrators from the target population who are experts in the field of risk management, student conduct (including those in housing), and campus events.

In a qualitative study, the sample consists of those individuals from the target population who are included in the study as participants. The size of the sample determined for the study is consistent with other qualitative studies in which, generally, a small number of participants are chosen (Ritchie, Lewis, Nicholls, & Ormston, 2013). A qualitative descriptive study is focused on in-depth experiences and descriptions and thus requires a small number of participants. Guidelines from the university and previous research were used to determine the right size of the sample for the study. A review of literature conducted by Kim, Sefcik, and Bradway (2016) on descriptive studies found the sample size of research studies in qualitative descriptive design to be between eight participants on the lower end and 1932 participants on the higher end. Out of 55 descriptive studies that Kim et al. (2016) reviewed, 24 were found to have a sample that included 11 participants on the lower end and 20 on the higher end. Only eight studies had 31 participants on the lower end and 50 on the higher end. An important observation regarding the large sample size in some studies made by Kim et al. (2016) was the use of questionnaires. Since the source of data in this study are interviews, a large sample is not necessary. Thus, in alignment with the patterns of previous descriptive research, a sample size between eight to 15 is appropriate.

The researcher forms conceptual definitions out of an evolving framework while making observations or gathering data. The research is operationalized by describing how specific

observations and concepts about the data contributed to the hypothesis and conclusions. The findings emerge with help from the process of memoing, in which the researcher writes down ideas about the evolving findings throughout the process of open, axial, and selective coding (Creswell, 2013, pp. 88–89). As proposed by Creswell (2009), in a qualitative study, the researcher interprets the meaning of collected data. Therefore, the final report has a flexible structure. Creswell also lists qualitative practices of research as the researcher collects participant meanings, focuses on a single concept or phenomenon, brings personal values into the study, studies the context or setting of the participants, validates to accuracy of findings, makes interpretations of the data, creates an agenda for change or reform, and collaborates with the participants. All of these parallel the design of this study.

Strengths of qualitative research include provoking deeper insights into designing, administering, and interpreting assessment and testing; and exploring test-takers' behavior, perceptions, feelings, and understanding. Both qualitative and quantitative research methods present benefits and shortcomings in their approaches, as exhibited in the literature review. Even though quantitative research methods usually involve a larger sample size, this method is often not as in-depth and can overlook a researcher's experiences, as well as what they mean by something (Rahman, 2016). Other weaknesses are often a smaller sample size and a time-consuming process (Rahman, 2016).

Instrumentation

Because of the complexity and the ever-evolving areas of in loco parentis and risk management, this report will include a substantial amount of literature at the beginning of a study to provide direction for the research questions and hypotheses. In a qualitative study, instrumentation includes those sources utilized for collecting data. For descriptive studies,

researchers generally use interviews to collect data. Thus, in this study, data was collected from open-ended, semistructured, one-on-one interviews using an interview protocol that are designed by the researcher. Open-ended questions will allow the participants to describe their experiences with maximum freedom without being constrained by the questions of the researcher. The semistructured form will provide the researcher with both the flexibility and form to conduct a successful interview. Interviews with risk management professionals at the college and state levels will allow for more in-depth information and detailed answers. This process will also allow for interaction between the reviewer and interview subjects. Collecting personal stories and anecdotal information is of value to the study.

Therefore, diverging from the prepared questions with follow up questions is allowed and encouraged. Participants were asked to allow an hour for a taped interview either by phone or in person. The interview will allow respondents to answer in an open-ended fashion, with no limitation of words or characters. Nuances will arise. Those who feel they have a good grasp of risk management issues and who understand the concept of in loco parentis will tend to respond at a higher rate than those with limited or intermediate knowledge of the topics. Those who might be experiencing or have experienced lawsuits might be more inclined to respond as well.

Twenty-three, primarily open-ended questions were prepared for the interviews (see Appendix A). The researcher conducted a field-test for the interview protocol, during which the interview questions developed were established for feedback from experts in the field of research. Through the field test, the researcher determined if the questions developed were alignment with the purpose of the study and were easy to understand and answer. The researcher used field testing to establish instrument validity. The participants in the field test, experts on the research topic, are provided with a form in which they were asked to provide feedback and

suggestions regarding the interview questions. Based on the feedback, the interview questions were modified.

Data Collection

A purposeful sample of nine IHE leaders who represent leadership in areas of institutional duty of care and risk management were selected for this study. Participants were recruited based on public information available online to determine if they were at the dean or vice president level and oversaw areas of conduct, events on campus, or risk management. In alignment with the research purpose and design, which call for a specific population based on certain characteristics, the researcher used the purposive sampling method to select the participants. The characteristics sought in the purposive sampling is that of IHE leaders in Washington who represent leadership in areas of institutional duty of care and risk management, such as college administrators at the dean or executive leadership level in the Washington State Community and Technical College System. Only participants who meet these characteristics were approached and included in the study. To ensure diversity, gender, age, race, and years of experience for the participants were considered.

Once identified, the researcher approached the participants informally to explain the research study and the significance of the research. Once confirmed, letters of invitation to participate were sent to approximately 25 higher educational leaders in Washington State. The Invitation to Participate also included an Informed Consent Form. Interested participants were asked to return the consent form to indicate their willingness to participate in the study. Upon receiving the consent form, a face-to-face interview was scheduled with the interested participants. The first ten participants who respond with the availability to meet for the face-to-

face interview before the end of July 2019 were selected for the study. Interviews were scheduled at the participant's place of choosing, either at his or her office or via phone.

Approximately two weeks before the scheduled face-to-face interview, the 23 interview questions were sent to participants. Most questions are qualitative and open-ended, developed to solicit descriptions from the participants regarding the research phenomenon. Some questions are for contextual purposes, however. The primary focus is on collecting data on personal experiences about institutional duty of care and the application of the law for risk management. The interview protocol will also include questions on recommendations and advice for other aspiring risk management administrators. By providing the interview protocol in advance, it is the intention to build trust with the participants and also to allow for the participants to appropriately prepare for the face-to-face interview.

The interviews were expected to last approximately 60 minutes for each participant. All interviews were scheduled to take place in June and July of 2019. The interviews were semistructured based on the interview protocol format. However, participants were encouraged to tell their stories freely. As necessary, the interview questions were adjusted during the interview to allow the participants to continue sharing their personal stories without interruption. The researcher will keep detailed notes of the interview conversations. All interviews will also be voice-recorded for transcription by a professional transcriber after the interview. Participants signed an informed consent form, approving the process for a recorded phone or face-to-face interview. Once all of the interviews were conducted and transcribed, the researcher provided a transcript of the individual interview via email to each of the participants for final review for accuracy. The participants had an opportunity to correct or remove any responses prior to the final report.

Informed consent was requested and required of all participants. The names of the participants, as well as their respective institutions, were changed to pseudonyms in the final report to ensure confidentiality. Each institution and college are to be identified as College A, College B, so on, with participants identified as Administrator A, Administrator B, and so forth. Student cases are to be identified as Conduct issue A, Conduct issue B, and so forth. All materials were stored in a password-protected file on the researcher's personal computer. Upon publication of the study, all tapes, transcripts, and notes of interviews were deleted or destroyed.

Identification of Attributes

Attributes in qualitative research must have the qualities of being significant pieces of information for each entity that help define or describe that entity (Brumm, 2019). Attributes of effective risk management include process, integration, evaluation, prioritizing, protecting resources, data, communication, and culture (Deloach, 2018). This study utilized the methodology of conducting interviews with nine administrators, who are experts in the field of IHE risk management. Interviews from these participants highlighted the fact that risk management, while often fluid, needs ongoing attention. This term of risk management as it relates to higher education, "is the continuous process to identify, assess and prioritize risks in an effort to control, avoid, minimize or eliminate the effects of risks on an organizations assets" (University Risk Management and Insurance Association, 2019, para. 1).

Data Analysis Procedures

Data from interviews were reviewed to determine IHE leaders' perceptions of best practices for institutional duty of care and the application of the law for risk management. Transcripts of each interview were via secure email to participants for final approval, with the option to validate, clarify, and omit data. A thematic analysis was conducted using procedures

described by Creswell (2003) (see Appendix B). Once the participants approved the transcripts, the researcher began the data analysis process with the reading and coding of the interview transcripts. As stated by Richards and Morse (2013), "Coding is the strategy that moves data from diffuse and messy texts to organized ideas about what is going on" (p. 167). Descriptive coding is appropriate for virtually all qualitative studies, but particularly for beginning researchers learning how to code data from a wide range of data forms such as field notes, interviews, transcripts, journals, documents, correspondence, video, and so on.

A code in qualitative inquiry is typically a word or short phrase that represents and assigns an essence-capturing attribute for a portion of language-based or visual data (Saldaña, 2009, p. 3). As Saldaña (2009) states, the goal is to find repetitive patterns and consistencies in speech that arise from interview transcriptions. The next step of this researcher's analysis will include the interpretation of the responses by identifying common patterns and emerging themes.

Validation, Credibility, and Dependability

Validation

The first step in ensuring validity is to understand and limit personal bias. The goal of this research is to learn as much candid information from the research participants as possible, and neutrality is crucial for valid results. The researcher did not disclose his perspectives and biases with participants and formed questions that did not lead participants, but rather, allowed for unbiased responses. Ethical recruiting is also essential. The researcher did not select any participants based on any personal attachment nor did he have any knowledge of participant's past experiences. Finally, validity was ensured through triangulation. To accomplish this, the research was conducted with the support of literature review, participant experiences, and

interview question selection. During the interview process participants were asked follow up questions to clarify positons as well as to validate prior answers

Credibility

A positive aspect of qualitative research is that it is relayed by the subject responding to interview questions in an unregulated environment. Face-to-face interviews with participants, as well as open-ended questions designed to capture in-depth and detailed data about the individual experiences of the participants, does have limitations and could be manipulated. Data obtained through qualitative research methods are intended to be applied in other IHE by risk management and student conduct officials, in and beyond the Washington State and Community College system. The researcher will not manipulate participants, except in the formation of the questions posed. Additionally, there are no expectations or externally imposed limitations. The credibility of data was established by the candid, forthright responses of participants, and in the review of relevant literature.

Dependability

Member checking is used to validate, verify, or assess the trustworthiness of qualitative results. Doing this reduces researcher bias by actively involving the research participant in checking and confirming the results. Requesting a participant to check the transcript of their interview potentially enhances the accuracy of the data (Birt et al., 2016). Following member checking, data was assessed for consistency among interviewees, responses to surveys, and shared perspectives to contrast, determine, and support the theory presented. This method of member checking increases the accuracy of the transcription of the interview, but it does not enable the researcher to make any claims on the trustworthiness of the subsequent analysis (Birt et al., 2016). Dependability of interview transcripts and analysis was substantiated by aligning with subject literature and case law.

Expected Findings

This researcher anticipates that the results of this research will support and build upon the literature review. Court cases, articles, code of conduct policies, and the lack of policies will show that there is not a consensus on best risk management policies or an understanding of in loco parentis and that there are different views on the topics from college administrators. It is expected that, while researching policies, contracts, and code of conduct, there are outdated and conflicting documents. The expectation is, however, for a consensus from risk management specialists who demonstrate frustration college administrators and policies.

Ethical Issues

Clandinin (2013) stated, "We need to think of ethics in relational ways" (p. 198). The researcher's own expertise—or lack thereof—regarding the subjects of in loco parentis and risk management is one ethical issue in that most of the researcher's experiences have been negative and or frustrating due to the lack of defined preparation, policy and procedures. This background cannot supersede research and data, nor become a conflict of interest. The expectation is to balance this bias out with facts, direct court cases, and law. This research was approved by my dissertation chair and committee and the Concordia University–Portland's Institutional Review Board process. Ethical issues, including personal bias and study relevance were discussed in this process. Protection of participants identities is paramount, though the fallout from any information discussed in this research is negligible. All participants were comfortable expressing their opinions, though confidentiality was vital to all. Participants were also protected by the researcher's secure data storage procedure.

Conflict of Interest Assessment

The researcher wishes to positively affect the areas of risk management in higher

education and to develop best practices as opposed to obtaining personal gains. No one will

profit financially from this study. Therefore, conflicts of interest should be negligible. Those who

should benefit from this research are the administrators who improve their assessment skills, IHE

that advance strategic planning risk initiatives, and students and college employees that will have

had their living, study, play, and workspaces assessed adequately for areas of concern. Ideally,

this document will contribute to existing research in the areas of risk management and duty of

care.

Researcher's Position

This researcher expects that the survey responses and interview answers support the

premise that college and university administrators too often respond in the reactive and not

proactive when it comes to the issues of duty of care and risk management. This method—which

is supported by the literature review—has too often led to conduct issues, a lack of

administrative oversight, and court challenges. The researcher has experienced the reactive

approach at every IHE, though there are many administrators who lead proactively. The

researcher understands and recognizes this bias and therefore will use relevant literature and

participant's experiences to develop conclusions, and not allow personal bias to lead participants

or influence outcomes. Recognizing and developing best practices pertaining to risk management

in the fields of student conduct and events on campus are too important for IHE to allow

personal bias to restrict this study's findings.

Ethical Issues in the Study

Ethical issues can arise when utilizing qualitative methods, specifically when it comes to

a descriptive inquiry. "Ethical considerations permeate narrative inquiries from start to finish: at

the onset as ends-in-view are imagined; as inquirer-participant relationships unfold and as

participants are represented in research texts" (Clandinin, 2013, p. 198). Along with the

researcher's familiarity with interviewees and survey respondents, and with the subject of

institutional risk management, respondents' expertise and willingness to be forthcoming is

another major ethical issue. Significant ethical obstacles include FERPA, HIPA, client privilege,

and other privacy issues that could prevent full disclosure. Conflicts of interest, coercion of the

participants, confidentiality, and unauthorized use of locations can be ethical concerns. As an

administrator in the Washington State Community and Technical College System, the researcher

is very interested in pursuing a community college vice presidency in the future. However, no

participants who will partake in the study will have a personal connection with the researcher.

Summary

This paper addresses a problem of practice in higher education: understanding

institutional duty to the level of care, appropriately applying legal guidelines, and developing

practical risk management strategies. This research will attempt to interpret, from qualitative data

and extensive literature review, how IHE perceive their duties of care (in loco parentis); how

they are addressing emerging issues; whether or not institutions have a risk management office

or officer; whether institutions including risk management in their strategic plans; if they

regularly consult outside experts such as assistant attorney generals; how often internal policies

and procedures are reviewed and vetted; what are the typical training and professional

development opportunities are (relevant to risk management); as well as current issues, such as

lawsuits, internal investigations, complaints filed with the Office of Civil Rights / Title IX; and

any relevant history at institutions that have forced policy review.

The lack of investigation and connection between risk management assessment and institutional security and student safety merit this further examination. Responsibilities that are deficient in the current literature include conduct and protection of underage students, best practices with international students, emerging privacy and safety conflicts, and accommodation requirements for students with disabilities. This thesis will explore these topics, and others, to expand on current literature and provide higher education practitioners with best practice guidelines. Finally, through information gathered from interviews with administrators who are experts in the field of institutional risk management, and in particular those who are effectively navigating the complex topics of risk management and duty of care, as well as those who have had both positive and negative experiences in the field, this study will offer some recommended steps and strategies for higher education leaders to consider.

Chapter 4: Data Analysis and Results

Introduction

The purpose of this qualitative descriptive study is to explore IHE leaders' perceptions of best practices for institutional duty of care. These topics have historically fallen under the doctrine of in loco parentis. This study proposes that college administrators, particularly those at the community college level, struggle to balance duty of care and the need for effective risk management interventions. The researcher chose qualitative research methods for this project as the design is holistic and involves a rich collection of data from various sources to gain a deeper understanding of individual participants, including their opinions, perspectives, and attitudes (Nassaji, 2016). As Creswell (2015) noted, the real beauty of qualitative research is that the possibilities for data collection are very extensive.

Additionally, a descriptive research design is well suited to a study where conducting tightly controlled experimental research is hardly possible (Nassaji, 2016). Descriptive research design, based on the experience of the participants, will help obtain accounts regarding the research phenomenon in response to the research questions. Moreover, the descriptive design will help both the researcher and reader to understand the phenomenon and to provide new meaning identified from descriptions of those who have first-hand experiences.

The research conducted for this study focused on collecting and analyzing data directly related to the conceptual framework and the research questions:

RQ1. How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?

RQ2. How do IHE leaders describe the application of the law for risk management with respect to campus events and student conduct?

In the following chapter, the researcher will describe the data gathered from participant interviews, with an overview of data analysis and results associated with the research study. In a qualitative, descriptive study, the sample is comprised of individuals from the target institutions. Recommendations from the faculty chair and standards from previous research were considered to determine the appropriate sample size for the study. A qualitative descriptive study focuses on in-depth experiences and descriptions and therefore, does not require a large number of participants. Since the source of data in this study is in-depth interviews and not questionnaires, extensive participation is unnecessary. In alignment with previous descriptive research, the sample size for this study was nine, which is consistent with other qualitative studies (Ritchie et al., 2013).

The researcher used a purposive sampling method to select the participants, which is also in alignment with the descriptive research purpose and design, which calls for a specific population based on certain characteristics. The characteristics sought in the sampling are IHE leaders in the Washington State Community and Technical College system who represent leadership in areas of institutional duty of care and risk management and who are administrators at the dean or vice president level. Only administrators who meet these criteria were approached to participate in the study. Intentional consideration was taken to include a diverse range of gender, age, race, and years of experience for this study to ensure maximum representation. The researcher had no control over who accepted the offer for an interview, however.

This chapter includes the analysis and results found during the collection of data from the interviews, coding of transcripts, crosschecking with institutional websites, and the discovery of themes. First, demographic information regarding the administrators of the nine colleges who participated in the study is presented. The research methodology and analysis employed are then

discussed, followed by a presentation of the data and results. The chapter concludes with a summary of the study findings.

Description of the Sample

The target population for this qualitative descriptive study is administrators, specifically dean and vice presidents in the Washington Community and Technical College system who oversee student conduct, risk management, or events on campus. Twenty-four leaders who met these criteria were contacted via email. The researcher approached the participants informally to explain the research study and the significance of the research. Confidentiality and lack of personal and institutional risk were emphasized in the initial email. Ten administrators replied and agreed to be an interview in the timeline set by the researcher. Face-to-face or telephone interviews were then scheduled. Four decided to face-to-face interviews, and six others preferred to speak over the phone. One participant, who preferred a face-to-face meeting, dropped out at the last minute to take care of a campus emergency. The researcher felt the data collected from the other participants was satisfactory and did not reschedule, nor was another administrator sought.

Of the nine final participants, seven are or were vice presidents in student services (affairs), or administrative services, and two are currently deans in student services. Six participants identified as men, three as women. The racial breakdown of the participants is six Caucasians, and three people from ethnic minorities. The experience of the administrators ranges from 10 years to nearly 40 years in the Washington Community and Technical College System, with one retired participant. To respect the privacy of participants and to limit the chance for identification, all other attributes, personal or otherwise, are not to be included in this study.

Moreover, from this point forward, the participants are to be identified as Administrator A, Administrator B, Administrator C, and so forth. The order assigned to each administrator is based on the interview order. Their respective institutions are identified as College A, College B, College C, and so forth. Each participant spoke on their own behalf, and their opinions are solely their own.

Institutional Sample

The nine participants are employed or were employed at nine different Washington State Community Colleges. All participant colleges are accredited by the Northwest Commission on Colleges and Universities, an institutional accrediting body recognized by the Council for Higher Education Accreditation and the United States Department of Education. Participant institutions were intentionally sampled to represent diverse racial and socio-economic areas of Washington State. Institutions vary in location from urban, suburban, and rural areas with a headcount ranging from below 3,000 to above 10,000 students per quarter.

When registering, students are asked several personal questions but are not required to self-identify in terms of ethnicity, race, or even sex. Therefore, demographic data in the Washington State Community and Technical College system lacks true accuracy. However, of those who did respond, the median age of college students at participant institutions range from the early 20s to the late 20s. Females make up the majority at all institutions, though that percentage differs by college. Asians or Asian/Pacific Islanders make up the most significant percentage of students of color, with African-Americans typically the second-largest student of color group. The percentage of students who reported to be first-generation generally is in the 30%–40% range. Many colleges have a large number of international students, usually those with on-campus housing. Four institutions in this study offer on-campus housing, with two

others in the process of building housing; four have on-campus childcare; and all have mental health counseling departments. All but one college sponsors an intercollegiate athletic program.

All participant intuitions claim to have a student conduct committee, either BIT or a CARE team. These committees regularly meet to review reports of concern and to assess interventions to manage student behavior best. CARE teams are intentionally more holistic and a less punitive in its approach to student conduct. Whether it is BIT or CARE, these teams typically coordinate support, resources, and advocacy, in addition to managing student conduct issues.

College policies are available online at each institution, though with varying degrees of difficulty to find with different degrees of detail. Policy location varies by institution, from one single web page to separated by the department of relevance, or cataloged. Specific policies, such as the First Amendment or Free Speech, are not consistently available. College website searches by this researcher were typically "Free Speech policy," "First Amendment policy," and "assembly policy." Searches in the area of rentals were "facility rentals," "campus rentals," or "gym rentals." When searching for reporting information and mechanism, this researcher typed in "incident report," "bias report," and "how to submit a complaint." Relevant links were clicked on for more information.

All colleges investigated utilize Maxient as their online incident-reporting tool. As described by maxient.com: "Maxient is the software of choice for managing behavior records at colleges and universities across North America. Our centralized reporting and recordkeeping help institutions connect the dots and prevent students from falling through the cracks" (Just a Few Things About Us, n.d., para. 1). Maxient software is uncomplicated, intuitive to navigate, and claims to be 100% FERPA compliant. All participant institutions govern through a similar

board of trustees' model, with each college having some form of an administrative leadership team.

Description of Participants

The following describes the sample used in data gathering, including participant background selected for inclusion in the study and the institutions where they currently work.

Administrator A is at a smaller, rural community college with a student body of nearly 70% women. Students of color represent 30% of the student body. Administrator A has 20 years in higher education, with experience in student conduct. This administrator oversees some campus scheduling and is very involved in assessing risk management and college policies in their areas of supervision. Quick facts are found through a site search. Student conduct policies and procedures are easily located as is the mechanism to report a variety of incidents, including discrimination (bias), academic dishonesty, student conduct, concerning behavior, sexual misconduct (Title IX), and an accident or injury. The college does not seem to have a BIT or a CARE team. There are web pages dedicated to policies and policy review timelines, but the researcher did not find any pages that outlined assembly or First Amendment policies. Rentals and rental policies are managed through the business office.

Administrator B works at a midsized urban located community college with a high ratio of male to female students. This college is one of the most diverse in the state, with over 40% of the student body being students of color, but that number is most likely higher as many do not report their ethnicity. Administrator B has decades of experience in the Washington State community college system. The administrator directly manages student conduct as the student conduct officer and has oversight of events on campus. Administrator B is also heavily involved in college risk management and policy. A concise overview of student conduct and related

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procedures and timelines are easy to find via a college website search. Reporting instructions for student conduct, sexual assault, and harassment (Title IX), bias-motivated incidents, and academic dishonesty are also easy to find, though the mechanism to file a report appears to be limited to the Security Office's phone number and vice president's email. The researcher was unable to locate an overall policies page and did not find anything related to First Amendment or assembly policies. Either there is no Behavior Intervention Team (BIT) or Campus Assessment, Response, and Evaluation (CARE) team, or they are not listed online. Rental responsibilities are managed through individual departments.

Administrator C is at one of the largest community colleges in Washington State. The College's student population is nearly 60% female, with over 40% of the student body made up of students of color. This administrator is relatively new to the state's community college system but has extensive Title IX experience with current oversight in the areas of college policy and risk management. It is relatively easy, through a site search, to locate policies in all college areas, including student conduct. The reporting mechanism for multiple concerns is quick to find, and instructions are intuitive. The use of college facilities with time, place, and manner instructions are just as easy to find and follow. The CARE team's scope and goals are listed online. The college has a full-time conduct officer. College rentals and outside group monitoring are through one office.

Administrator D works at a large, suburban college made up of over 40% of students of color, with 55% of students identifying as female. Administrator D has directly supervised the areas of student conduct and is currently responsible for many college policies and risk assessments. This administrator has experience at the 4-year level and has been in the Washington State Community and Technical College system for decades. The College's policies,

including free speech and assembly, are all on one page and easy to find via a site search. Student conduct policies and procedures are online, though they are currently in an archived section of the website, which could lead to some confusion. The college has a CARE team and a CARE team webpage that outlines its purpose and scope. Reporting instructions for student conduct, sexual assault, and harassment (Title IX), bias-motivated incidents, and academic dishonesty are easy to find and fill out. The college has a full-time conduct officer. College rentals and outside group monitoring are not done through one office but are instead are divided by department.

Administrator E works at a small community college located in a midsized city setting. This College student body is 56% female, with 35% being students of color. Administrator D has worked in the Washington State Community and Technical College system for close to 20 years and has extensive experience in student conduct, policy formation, and risk management. There is no BIT or CARE team. A staff member whose tasks include student conduct duties adjudicates conduct matters. Polices are located by department and not at one location. A College website search of "Free Speech policy," "First Amendment policy," and "assembly policy" did not produce any relevant links. A rental information search directed to different campus departments. Incident reporting is through an online form. The form itself separated the type of complaint or concern from conduct to academic dishonesty. The researcher could not locate a stand-alone bias reporting form.

Administrator F is at a mid-to-large urban institution with students of color making up the majority of the student body. Female students outnumber male students by nearly 20%. Administrator F has experience in core college functions (advising, enrollment, and financial aid) and has experience as a conduct officer. This administrator is involved in campus policy

management and risk management mitigation. Reports of concern are managed through a committee, much like a BIT or CARE team. The college has a full-time student conduct officer. Student Rights and responsibilities are listed and easy to locate. Reporting seems limited to academic dishonesty, sexual misconduct (Title IX), and student conduct code violations. A rubric to help clarify different levels of conduct violations seems unnecessary and confusing. College policies, however, are quick to locate and are all in one, easy to navigate webpage. This page includes First Amendment and assembly policies.

Administrator G worked in student services at one institution through four decades. This College is located in a mid-sized community and is one of the fastest-growing colleges in the state. Thirty percent of the student body is students of color. This administrator served the College as the student conduct officer. As an executive leadership member, they were also involved in most college decision-making. College policies are listed under one webpage and sectioned by division. This researcher's searches for First Amendment, Free Speech, and college assembly policies yielded no results. Student conduct and student rights and responsibilities are listed, however, though there does not seem to be a full-time conduct officer. The College did have an on-line reporting mechanism (Maxient), which mentions the BIT team, but a search for "BIT team" also yielded no results. The incident reporting page did outline types of reporting, including bias incidents, student conduct, Title IX, and academic integrity. Conference Services handles campus rentals to outside groups.

Administrator H works at a small, suburban college. Information on college policy, including time, place, and manner, information on the CARE team, student conduct, and the many types of incident reporting were simple to find. This institution seems very organized, and its website intestinally easy to navigate. The college has a median age in the 30s, is 60% female,

and 35% of students of color. Administrator H has experience at both the 4-year and 2-year institutions with backgrounds in risk assessment, policy, and student conduct. The College has a part-time student conduct officer who works with a CARE team committee that is directly managed by Administrator H.

Administrator I works at a suburban campus. This administrator acts as the college's student conduct officer. Policymaking is typically done through the board of trustees and the executive leadership team, though some policies reside exclusively in departments managed by Administrator I. This College is diverse, with whites making up just over 40% of the student body. Asian/Pacific Islander, Hispanic/Latino, and Black/African American students comprise 37% of the student population. Many other students identify as multiracial or do not select at all—which is typical in Washington State. An assembly policy with time, place, and manner is easily located online, as are other college policies and student conduct. Administrator I's college has a CARE team website with a link to reporting a concern. Maxient is the student conduct reporting form, with links to reporting Sexual Misconduct/Title IX and academic dishonesty located on the page.

Research Methodology and Analysis

The following section provides a summary of the methodology, as well as the conceptual and theoretical frameworks detailed in previous chapters. Included in this section is an overview of the methodological grounding, analytic strategies employed, key themes identified, and a summary of the research. This section provides a detailed description of the implementation of the data collection process utilized. The coding procedures selected to analyze and organize the data explained in detail. The specific methods used to identify themes/patterns based on the codes that emerged during the analysis are later presented. The purpose and design of this paper

are to research the connection between institutional risk management policy as related to student conduct issues and legal challenges. Personal stories come from interviews with higher education leaders with direct supervision over related areas. As guided by current and relevant literature review, this paper investigated prevalent policies, significant court cases, and the evolution of in loco parentis. The researcher will tie together these themes with participant interview data. The study design set the basis for the research, which established a purpose and provided more focused data and a specific analytic process.

Twenty-four administrators, who met the previously mentioned criteria, were sent an email by the researcher that detailed information regarding this study and clarified that anyone who agreed to an interview spoke as an individual and not for their institution. Moreover, the email specified that no one and no institution would be directly referenced in the study. There is, therefore, essentially, no risk to participants. All administrators who agreed to the interview were sent a return email to verify their willingness to participate. Out of 25 emails sent, 10 participants responded and agreed to an interview, with one later dropping out. Interview times were scheduled, and interview questions sent via email ahead of time. During each interview, this researcher restated the purpose of the study to the participants, the role of the participant, and the importance of the research, and data would be collected. The interviews lasted between 35 and 60 minutes in length. In one case, a 5-minute follow-up interview was requested for clarification on two of the participant's answers. Twenty-three questions were asked during interview sessions, nearly half of those for context purposes, with the remainder being intentionally broad as to result in thoughtful responses. If ensuing questions were covered during an answer, those questions were omitted to reduce redundancy and to respect participant's busy schedules. The

researcher did take notes during each interview, with keywords written down during the audio recordings as a form of initial coding.

The researcher then uploaded all interviews on the transcription website Otter.ai. After website transcription, the researcher carefully listened to each interview in detail to verify transcript accuracy. Initial line-by-line coding is particularly useful for interview data (Charmaz, 2015). The researcher also went through each line to clean up transcriptions. Words like um, uh, you know were omitted, as were some redundancies. A few sentences that started, stopped, and started again were connected to ensure clear and effective communication.

The next step was to securely email participants with the attached interview transcription. Participants were able to review the transcriptions for accuracy and to make adjustments or clarify remarks. The researcher thanked each participant for his or her valuable role in the study. Only minor changes were made to scripts, none that impacted prior coding or memoing. After member-checking, the researcher felt that data saturation had been met, given that no new or additional data or codes were found, with the same ideas being discussed repeatedly by multiple participants. Next, the transcripts were coded, and pertinent information was extracted to summarize the data. Review of those words, phrases, and the subject matter followed to gather together themes and categories as well as to establish meaning and connection to the literature reviewed and the research questions. Coding to determine comparative analysis was completed in sequences. Otter.ai provided the first round of coding by automatically generating 10–15 keywords per interview. Many of these keywords overlapped between interviews, producing a total of 38 keywords, with "contract" being the final one. The researcher selected those keywords and put time into the "find" tool of a Word document. The number of times that those words appeared were recorded and compiled in a chart, as shown in Table 1.

Table 1

Initial Keywords

Word	Times Mentioned
Student	387
College	292
Campus	160
Policy	139
Conduct	137
People	120
Report	113
Risk	101
Services	97
Issue	96
Community	74
Happened	69
Care	66
Law	57
Management	55
Liability	55
Student conduct	53
Compliance	53

Continued

Initial Keywords Continued

Word	Times Mentioned
Recommendation	49
Safety	43
Risk management	42
Culture	41
Change	41
Areas	40
Support	36
Incident	35
State	33
Public	31
Communication	30
Record	25
Duty of care	24
Training	24
Threat	24
Mental	21
Counseling	18
Washington	18
FERPA	15
Mental Health	15
Contract	14

In the second round of coding, the researcher looked deeper into the data in anticipation of finding correlating and differentiating themes. Coding provides a way of recognizing participants' tacit knowledge, meanings, and actions to explore in further data collection (Charmaz, 2015). An additional round of coding was conducted through software downloaded at Atlast.ti to provide more theme examination.

Additional coding to discover themes was undertaken in four sequences. In the first round, the researcher collapsed the 19 keywords into three categories that embodied common keywords and highlighted messaging around the concept: college culture, duty of care, and risk management. Table 2 presents the ways in which the keywords were collapsed into categories.

Table 2

Collapsed Keywords: First Round

College Culture	Duty of Care	Risk Management
College	FERPA	Liability
Campus	Care	Report
People	State	Risk
Community	Mental Health	Law
Public	Counseling	Management
Washington	Training	Communicate
		Contract

In the third round, the researcher collapsed another round of remaining keywords into three more categories: policy, student conduct, and threats to campus. Table 3 presents the ways in which the keywords were collapsed into categories. In this round, 11 keywords were collapsed; "Washington" was used both under policy and college campus, as the keyword fits in

both groups. One keyword, "Recommendation," did not match any of these categories. The data from this keyword was used in Chapter 5 to help shape practical applications of these results.

Table 3

Collapsed Keywords: Second Round

Policy	Student Conduct	Threats to Campus
Services	Student	Incident
Safety	Conduct	Issue
Areas	Happened	Threat
State		
Washington		

After coding, the next step was memo-writing, an important component in the analysis process, and a pivotal step in developing analytic categories (Charmaz, 2015). This researcher's memo-writing originated by investigating the codes and data, making comparisons, and finding links between themes, which helped interpret the data.

According to Charmaz (2015):

Memo-writing consists of private conversations grounded theorists have with themselves as they take their codes apart and analyze what they might mean. Memo-writing frees students to explore their ideas, scrutinize and improve their codes, make conjectures, examine their assumptions, and express doubts (p. 13).

Through memo-writing, the researcher can process the interviews and consider the data (Charmaz, 2015). Some memo-writing was in note format, written alongside interview questions and responses. Other memoing conducted through the Atlas.ti program provided a digital platform for multiple codes, highlighting, selection of text, and color-coding.

With word coding complete, the researcher utilized coding to provide the foundation for analyzing differences among participants and summarized the relationships between themes. The researcher used inductive reasoning to examine the coded data further and developed themes based on the categories. Table 4 shows the ways in which categories, as well as keywords, were linked and combined into major themes.

Table 4

Categories to Main Themes

Shifting Campus Cultures	Duty of Care Evolution	Student Conduct, Reporting, Policies, Risk, and Compliance	Limitations and Issues
College Campus	Duty of Care	Student Conduct	Training
Services	Mental Health	Policy	FERPA
Policy	Community	Threats to Campus	Threat
	Threat	Communication	Communication

Methodological Grounding

The literature review provided a basis for the conceptual and theoretical framework of the research. The conceptual framework acted as a structure for communicating the research questions and themes (Rativich & Riggins, 2017). The primary body of literature and theory that informs this study is competency-related, which strives to understand the various opinions and perspectives related to risk management in student affairs, specifically in the areas of student conduct and campus events. Much of the literature review concentrates on the history and emerging themes regarding IHE risk management, according to the body of recent research. The intersection of the conceptual and theoretical framework, coupled with a review of the literature

supported the purpose of the research methodology and analysis of this study. The conceptual

framework developed shaped the research into a few key characteristics.

Methodological Strategies

The methodological strategies utilized with the participants in this study were individual

interviews with principals, which were conducted during the summer of 2019. Four interviews

were held in person, with five participants requesting phone interviews. Each of the participants

was given a list of 23 questions prior to meeting face-to-face or over the phone. Questions were

listed under four themes: culture, student conduct, policies and events, and decision-making.

Initially, this researcher planned only one interview with participants, with at least an hour

scheduled. However, some participants, due to receiving the questions beforehand and due to

various degrees of expertise, many participants answered the questions succinctly. Therefore,

this researcher allowed for interviews to go under the time scheduled and implemented just one

follow up interview.

Each participant was asked the questions that inquired into personal and professional

experiences and individual perceptions (see Appendix A). The questions were based on the

original research questions and conceptual framework. For example, some questions related to

culture were: what are your thoughts on how duty of care (in loco parentis), as far as services,

has evolved during your time in higher education; and how is your college aligning services and

updating policies when it comes to duty of care; and what are your college's top risks. Two

questions related to policies included: have there been issues around campus events and

demonstrations, and how are decisions typically made and communicated when it comes to

policies and procedures. Questions related to conduct were: describe your college's reporting

structures, whether it is Title IX, conduct, academic integrity, or bias issues, and do you think

faculty and staff understand process and timelines. Questions related to decision-making included, how are decisions typically made and communicated, and, in your experience, what is key to ensuring your areas are compliant with laws, regulations, and standards?

Data Analysis

In this study, the researcher collected data mainly from participant interviews. Website searches were conducted to verify interview answers and to search for layout and navigation patters as well as discrepancies and commonalities between institutions. This researcher followed Creswell's (2014) steps of the coding process to provide the foundation for analyzing differences among participants and summarize the relationships between themes, as described in the preceding sections. An open coding process to analyze the data and to look for common themes was utilized. After coding, common themes in each data set were compared, and step-by-step memoing procedures are undertaken.

Summary of the Findings

Overall, this researcher uncovered four predominant themes that linked to the two primary research questions. Within the first research question—How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?—there were two major themes: shifting campus cultures and duty of care evolution. The second research question—How do IHE leaders describe the application of the law for risk management with respect to campus events and student conduct—also had two themes, 1. student conduct, reporting, policies, risk, and 2. compliance and limitations and issues. Each of these themes, organized by the corollary research question, is presented below, using the most relevant quotes from the participants to explore the topic in greater detail.

RQ1: How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?

From the first research question, two major themes emerged: shifting campus cultures and duty of care evolution. Within both of these major themes, participants described how the changes within campuses, as well as the students themselves, have altered best practices regarding duty of care.

Major theme 1. Shifting campus cultures. The first major theme that emerged from the data is changing campus culture to meet student needs. Administrator F repeated an often used, but hard to establish motto of, "colleges being student ready and not students being college-ready."

Administrator F went on to say,

I'm talking about is shifting the culture and mindset of people. You know, to shift the college from our support staff saying, "That's not my job, that's not my job duty" and instead ask, "What can I help you with?' And go the extra mile."

To accomplish this, Administrator F's college is, "Realigning structure and restructuring to really be optimal and efficient," and to "really look at the reimagine the student experience all the way from when we first have contact with them all the way through completion." Administrator F followed up by saying, "That means developing and putting in place onboarding and entry process. [Colleges] need someone to greet students to help them navigate through processes."

The viewpoint of improved services—with particular attention to diversity, equity, and inclusion, is becoming the norm. Administrator D said, "[We have to make] sure that we're providing culturally relevant services." Not only does this improve customer service and the student experience, working through an equity lens is a better business model. Administrator D

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noted that commitment to equity had been a discussion for years in Washington State, especially when institutions noticed local demographic shifts. Leadership told Administrator D's president 15 years ago that diversity, equity, and inclusion needed to be on the institutional level. "The only way this college is going to go to the next level is to hire someone who's going to be on President's Cabinet and work with the president," said Administrator D, who observed over the last 20 years that campuses have more resources for LGBTQ students, more resources for students of color, and more resources for first-generation students. Those types of changes, according to Administrator I, have "impacted us in that we've had to respond to who our students are and what their needs are."

Commitment to equity is especially necessary considering community college demographics and the large percentage of first-generation students. Most administrators highlighted this approach as well as how today's student bodies differ from the past.

According to Administrator I,

There's a lot of energy around guided pathways and making it more manageable for our students, not just the first-generation students to navigate and make good informed intentional choices, and planning to make the most and most efficiently utilize their opportunity for higher education and help them reach that next goal.

Other administrators experienced a reactive campus climate that often comes with a lack of or misleading communication. During Administrator B college's accreditation, the institution claimed that Student Handbooks on conduct and complaints are located in various areas around campus. This claim was not accurate; Administrator B was therefore tasked with writing and disseminating these policies to meet accreditation standards. "This can really compromise the

safety of our students," said Administrator B. "I will call it deficient, but now we are becoming up to par."

Administrator I felt that colleges do attempt to keep abreast of changes, trends, current practices, policies, and procedures. However, IHE are, "Usually dealing with some dated information . . . and we're working to get up to speed." The result is operating somewhere in between being proactive and reactive. Administrator E said, "I really love and appreciate about this campus culture . . . there's a real culture of ownership." Still, when asked where their college was in terms of policy, Administrator E admitted, "I'd like to say we're super proactive, but the reality is reactive." Administrator E explained further that due to multiple areas that need attention, much of an administrator's time is spent maintaining day-to-day operations; therefore, it is typical for colleges to respond to an evolving issue after something has happened on their campus, or at another IHE.

Major t**heme 2**. **Duty of care evolution**. As stated in previous chapters, college demographics have changed. First-generation students, students of color, older students, students with children, and students with mental and physical disabilities are tasking IHEs everywhere to meet their needs. These needs are shifting duty of care expectations and creating a new definition of in loco parentis. Administrator D noted that when in loco parentis began, the primary focus was for the support of white males, as they were the predominant group attending college. Moreover, much of the prevalent research and student support development was from studying white males. "The landscape for student development was really defined by what the white male experience was," said Administrator D. The same administrator saw more research in the 1990s and 2000s that focused on diverse populations attending college, with updated practices around LGBTQ students and students of color.

Administrator G personally saw changes in student populations through the 1970s and into the 2010s, noting that colleges are now dramatically different in terms of race and ethnicity and that the student population is generally older. Administrator G believes IHE are making concerted efforts to reach out to communities that traditionally did not attend college. Administrator I noted colleges could not expect students to be successful when other more base, hierarchical needs are not addressed. Furthermore, all the complexities between the law and Colleges are developing programs and processes to help those students. "Partially because we have a duty to do it." Requirements and resources and equity and the complexities of the duty of care have to be central when institutions think about serving students. Administrator I asked, "Instead of what doesn't the student come with, what does a college need to do to realistically and ethically create the opportunity for that student to succeed?" said Administrator I. Most study participants echoed that same perception. Administrator C said, "It's clear that their responsibilities have increased because . . . we have students that need a lot of help and care."

Student's needs are going beyond what federal, state, and local governments can provide, however. Administrator D believes the trends of food and housing insecurity are causing colleges to align services and to collaborate with community organizations to better serve students. Administrator I concurred, noting that low-income students have additional barriers, which explain, "the prevalence and growth of benefits hubs and food pantries and wraparound services."

Other emerging risks are influencing IHE across the United States. At the top of everyone's risk/ threat lists are mental-health care, sexual harassment, and safety and security. Administrator H noted, "In the 2-year system, in particular, we have essentially no entry requirements. We're open enrollment. Everybody comes, and everybody's not necessarily ready

to interact with everybody else yet." In reaction, colleges are changing the way they do business in terms of policy-making, student conduct, mental-health counseling, and services for students with disabilities. More interventions and services can push IHE past capacity.

Administrator D said, "One of the risks that we have right now has to do around safety and security when it comes to students who are exhibiting concerning behaviors." Administrator E replied, "What I'm starting to see manifest and unfold on this campus is a lot more students with a psychiatric disability."

Administrator H stated:

Threat assessment is the first [risk] that comes to mind. Just because it's so prevalent, I mean, we're coming up a terrible weekend (two mass shootings happened during July 2019). And I'm dealing with issues this every week on that scope. So keeping our community safe, keeping individuals safe and supported, is again, central to them being able to focus on the studies, and our faculty, frankly, being able to teach, and our staff being able to work.

Administrator B noted, "I always fear safety. And with safety now, I look at violence against women, harassment, sexual harassment, bias incidents, bias, and hate incidences." Many administrators also offered up sexual harassment as well as compliance with Title IX and Clery guidelines as an imminent threat. According to Administrator C, the vast number of students and employees at most institutions limit a college's ability to be deal with the volume of required tasks. "There's so many laws around employees and personnel and Title IX and Clery," said Administrator C. "It's very difficult to keep up and make sure you're complying with all the new laws and judgments and everything else." Administrator H concurred, "One of our top risks is anything related to Title IX . . . that's because it's complicated, it can be messy when you're

doing investigations because of the emotion and conflicts involved in it." As their college navigated their way out of some human resources lapses, Administrator F said, "I think biggest risk right now is probably Title IX policies." Previously, "[College F] swept everything under the rug." Administrator D listed compliance as a risk, in part due to limited resources, "there are so many unfunded mandates that colleges have to follow."

Administrator A recalled current conversations:

I heard from a couple of my colleagues who just got fined for some Clery stuff. And they're saying, "Did you know that you need to be reporting? Like if your student leaders go off to conferences and they're staying in a hotel, and it's not safe? Like, are you aware of those things?" I'm like, "Oh, my gosh, no wait, why don't you know?"

On-campus housing and the round the clock attention that comes with it heightens apprehension when it comes to risk, safety, and compliance. "Any college that has housing, you're inheriting a risk because you have students who are living in loco parentis," said Administrator D. Administrator I noted, "[Housing] in itself will shape and change the way that this campus feels, knowing that we're going to see a dramatic increase in conduct related matters in the residence hall as well."

Administrator E went right to the point:

Residence halls! I don't want anyone to die! I think housing is a great opportunity to really engage the students and to really provide students a place to live. I think it's good for enrollment also. But it's also challenging because it puts a burden on campus safety and public safety. There's more issues of drug and alcohol that you have to be aware of; there's more potential when you have students living here 24/7. That and housing has roommate conflicts . . . I mean, it keeps our student officer much busier!

Still, to what extent are IHE responsible for mitigating emerging trends? There is no clear consensus. Administrator H believes colleges need broad and significant health services and counseling services on campus. To Administrator H, the evolution of in loco parentis explicitly means that colleges do have an increased level of accountability when it comes to duty of care and is responsible for ensuring that students are safe and focused on their education. Administrator B's opinion is that "Colleges are responsible for the safety of our students as well or all the other communities of residents, including the staff and faculty." Administrator E said, "I don't know if we're in a perfect storm, but there's a lot of forces requiring a very thoughtful analysis of what needs to be done . . . and to provide the appropriate responsiveness." Administrator E said expectations are high and colleges are receiving students with more complex, and better-diagnosed, health and other conditions. Therefore, "getting it right becomes more complex in how we manage meeting accommodations requirements, and inaccessibility, and conduct." Administrator I talked about the evolution of duty of care and the vast list of resources required from colleges. "People would have just thrown their hands up in previous generations," said Administrator I.

A few participants struggled when asked to give examples of a specific incident that brought forth change at their IHE. Though when reminded about Seattle Central College and the Occupy Seattle group episode, most acknowledged this particular event prompted a system-wide policy change. Examples of IHE reaction ranged from humorous to grim. Administrator I recalled during their time as an undergrad when college residence halls removed lofts because "somebody got drunk and fell out of bed." Administrator B shared the most examples. The first was when an earthquake occurred during office hours. While the shaking started, Administrator B came out of their office and directed staff to get under their desks or a table. Someone else

came in and shouted, "Everybody run outside!" Another person ran into the room and yelled, "Everybody jump underneath the doorway!" In the aftermath, Administrator B wondered, "Where is our protocol?"

While at another college, Administrator B remembered,

We had a shooting adjacent to campus. My staff in my building, we're aware of it. We went right into lockdown, barricaded things, did everything you do. Thirty minutes later, I'm calling the campus and asked, "What are you all doing over there, and did you know that there is a shooter running around out there?" Nobody does anything. So we see it is secure, and we come out of lockdown. Forty-five minutes after the [shooter] killed himself, security calls and says, "Everybody get in a locked down." We said, "We've have been in it lockdown and then out of lockdown. Now you want us to go back to lockdown?"

Lack of protocol examples was typical. Administrator B once worked at a college that only required outside groups to get keys when renting. No one at the college-oriented groups nor monitored their behavior. Administrator B responded by implementing a fee and requiring part-time staff to oversee rentals because "When I got there, I see they uprooted plants to put their decorations in. You don't give somebody the keys to your facility and expect them to care for it without any institutional supervision." Administrator A's college recently reviewed its student death notification process, because unfortunately, "We had a student who committed suicide recently."

RQ2: How do IHE leaders describe the application of the law for risk management with respect to campus events and student conduct?

Within the first research question, there were two major themes that emerged:

student conduct, reporting, policies, risk management, and compliance, and limitations, and issues. These themes explored how policies and practices were implemented, as well as the limitations and challenges of those policies and practices, according to regulations and laws.

Major Theme 3: Student conduct, reporting, policies, risk management, and compliance. Every IHE investigated in this study has a student conduct structure in place with a full-time student conduct officer (see description of participants). All have policies that explain time, place, and manner—though with varying degrees of difficulty to find. In addition, all have an incident reporting mechanism in place that notifies officials of student conduct, Title IX (sexual harassment), academic dishonesty, and bias matters. Some inconsistencies are communicating college and legal procedures and following internal processes. Another issue Administrator I pointed out is college policies can be "hard to navigate, especially if you're first-generation, and not computer savvy."

View of student conduct. Most college administrators have a favorable view of the student conduct (these structures can be found in the participant description section). Mainly due to clear procedures and excellent communication, staff and faculty understand and believe in the process. Administrator E claims college employees are confident of the student conduct process because "We build in those social systems and support and success for students." On the other spectrum, Administrator B's college does not have a well-defined student conduct system, and there is a lack of faith in the system. Surprisingly, student conduct is adjudicated occasionally through an administrative assistant.

Reporting. Reporting is the same at all researched institutions: online through Maxient software. Administrator A thinks their college is aware of reporting processes, rights, and due process. Administrator B said of their college's reporting system, which has just recently

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transitioned from paper to online, "I'm being honest; it's difficult to find when you don't have it. So we are very much lacking in that area." According to Administrator C, in respects to reporting, "We're not 100% there, but we're getting there." They also believe there is some hesitation due to a fear of retribution. Administrator D noted that reporting is evolving through constant education and awareness about the importance of reporting. Administrator D believes their college has made it reporting easy and communicated its significance. Administrator H noted that their college is working on following up, "We are also still working on how to make it super easy and encouraging to faculty; that they don't believe that it just went into a vacuum." Administrator E said, "Faculty and staff are doing a great job of reporting, even if it's something small."

Policy development and review. Most participant institutions take policy management seriously and proactively, which includes a policy review process and discussions on emerging trends at IHE. "We have clear guidelines that all policies need vetting through our faculty governance group," said Administrator A. Campus feedback is also welcomed in the process. Administrator B said their college cabinet has a responsibility to initiate an information campaign to inform college, faculty, and staff of new policies, and timelines. Moreover, at Administrator B's institution, "We have college staff who are responsible for reviewing existing policies, finding out about new policies, and then conveying that to our college cabinet." Administrator C said, "We discuss some of the new laws that have come out that would impact the college." The same with codes and policies. Administrator A's college does not have discussions of emerging matters written into their leadership team meetings but will make room on the agenda when needed. Administrator D explained, "It is important to just do it in inventory once in a while and say, 'What do we have and where are the gaps?'" When it comes to policies,

Administrator E's institution, "Is very fixated and almost to a fault, where it's almost anxiety-producing."

Generally, though, as Administrator H noted, policy is typically updated when something happens on your own campus, at another college, or due to guidance from the Attorney General's office. Administrator I explained, "The Board of Trustees is required to approve any policy changes," but, "the board had not updated a number of policies in some time." Administrator F heard of a college in the system fined for not meeting all the Clery requirements, "We're looking at that and learning from their mistakes. We don't want to get fined somewhere between $75,000 and $100,000." Administrator H explained, "It's very common in higher ed. The reason you have a policy that you can't repel off the building is because somebody did it, not because you may have thought that somebody was going to repel off the building."

Risk management and compliance. Every IHE investigated understands the value of being proactive in the areas of risk management and compliance. As with policies, and often in correlation to policies, most institutions undertake periodic risk and compliance assessments. According to Administrator B, "Litigation has been increasing, and colleges are a lot more responsible for risk management to eliminate the possibility of any lawsuits." In fact, said Administrator B, "I think more people have played much more attention, not just giving lip service, but putting in practices and policies that really conveyed the message that [risk management and compliance] are important to the campus." Administrator C said their institution "is very focused on compliance and keeping the college out of trouble. Because keeping the college out of trouble could also mean taking care of the students." Administrator D stated as a state system; colleges are very fortunate to work with a state board that raises the red flag when they hear something coming up. Administrator D's leadership team recently brought

in an article from the Seattle Times regarding a lawsuit at a college. "It gave us an opportunity to

have discussions and say, 'Hey, so where are we? Are we good? You know, do we have gaps?'"

Issues and Limitations

IHE offer a multitude of services and interventions, including mental health counseling

centers, student conduct committees, but many campuses are struggling with capacity and the

balance between duty of care and the duty to warn. According to Administrator E, parents are

asking what colleges are doing to protect or mitigate risk for students. "We're seeing this more

than ever—the duty of care duty, to warn, duty to protect and, and in loco parentis practices."

Yet, as Administrator H observed, "Quite honestly, the majority of our students show up without

any expertise or background in really knowing how to navigate services." Administrator C

supports food pantries and many services that are trending on campus and believes their college

"does try to take care of the students and meet their needs and help them kind of get through life

and be productive." Administrator C has a differing opinion and does not believe a college is

inherently responsible for all student needs. "Colleges have some, not a lot, but some

responsibility to take care of the students that are on the campus," they said. When explicitly

asked about in loco parentis, Administrator C said, "Do I think that the college to serve in place

of the parent like for emergencies? Any type of situation? No. No. Not at all."

Administrator I found uncertainty when it comes to duty of care and duty to warn,

especially in the areas of conduct and free speech. Most campuses have not determined the

balance of protecting the needs and rights of the individual with the balance of reporting when an

individual's behavior may impact the community. As of now, that line is not crossed until there

is a specific threat to an individual or community. Administrator D is struggling with those same

issues, saying, "A student has rights, and we have to make sure that they're given their rights and

their due process. But on the other hand, they could potentially pose a risk." Administrator E

hears much anxiety when it comes to FERPA and said IHE go to extreme lengths to protect

student privacy. Yet, reverence to FERPA often prevents IHE from disclosing a potential risk

when, in reality, the potential risk should be the biggest concern and not potential privacy issues.

"Violating FERPA is kind of like getting mauled by a small kitten," said Administrator E, who

followed up by noting, "Colleges don't get in trouble for violating FERPA. Where institutions

are getting nailed is when you have a student that has posed some significant health and safety

risks to the campus community and not sharing that information."

Administrator I tipped their balance slightly toward campus safety and away from

privacy. They believe FERPA allows a response to safety threats and emergencies, saying, "If

I'm responding because I believe there's a threat here, out of concern for safety, I am going to

disclose some information. It [FERPA] allows for that exception." Most administrators vocalized

the need for someone whose job is to manage essential processes and not administrators who

have areas like conduct, compliance, and risk management as an add-on to their current position.

Another less discussed issue, with so much pressure put on college services and personnel, as

Administrator E said, "I've seen way too many colleagues burnout." Administrator C also

discussed legal issues and the possibility of negative media coverage—a common fear.

> Administrator H talked in length of how problematic the current legal climate is:
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> Discipline carries risk, unfortunately. That has been where we faced the most legal
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> involvement in some way, whether that's from students getting a lawyer because they
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> disagree with something that happened or an employee getting a lawyer because they
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> disagree with something that happened. So those are the most common things I have seen
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> happen. And I think it's an ongoing risk, even when we do everything exactly the way

we're supposed to, which honestly happens more often than not, we do it the right way. People don't like the outcome. And I think there's an increasing belief in our national context: If you don't like the outcome then you're entitled to take it to court. Even if you got your due process and even if it was a fair process.

Administrator I also cited IHE dependence on adjunct faculty typically leads to severe information and reporting gaps. "They're the hardest subpopulation to connect with," they said. In part due to their busy schedules, part-time faculty cannot participate at division meetings, days of learning, and convocations. Moreover, adjuncts typically do not follow all campus communications or take place in needed training, nor do they understand all reporting processes and procedures.

Summary

Chapter 4 began with an overview of this qualitative descriptive study which explored how an IHE leaders' perceptions of best practices for institutional duty of care. Themes encapsulated in the ever-changing doctrine of in loco parentis, and the application of the law for risk management at colleges and universities concerning institutional duty of care. The target population for this qualitative descriptive study is administrators, specifically Dean and Vice Presidents in the Washington Community and Technical College system, who oversee student conduct, risk management, or events on campus. In this chapter, the researcher provided an overview of research methodology, data analysis, and research results, which included interview data and note-taking. The data collected was outlined in detail and then used to answer the two research questions: (a) How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?; and, (a) How do IHE leaders describe

the application of the law for risk management with respect to campus events and student conduct?

The data indicated that administers are typically content with their institution's current risk management status, yet have concerns about the increasing duty of care responsibility required of Washington State Community and Technical Colleges. Most administrators had similar concerns: the mental-health crisis; campus safety and security; proper communication, the threat of lawsuits; gaps in reporting structures; a lack of policy guidance in decision-making; housing with students on campus around the clock; and being compliant. Differences exist on what responsibility and capacity the community college system have for student duty of care. In Chapter 5, the researcher will discuss the findings, their relation to the current literature, and conclude with recommendations.

Chapter 5: Discussion and Conclusion

Introduction

In this chapter, the meaning of the results from Chapter 4 are explored. This exploration will include a summary of those results, as well as an evaluation of the results. Next, the results are discussed through the lens of the existing literature, exploring the ways in which the results reinforce, inform, challenge, and complicate scholars' previous findings related to this study. The limitations of the study will then be presented, followed by an examination of the implications of this study's results. These implications are looked at through their application to practice, to policy, as well as to theory. The chapter will then contain recommendations for future research based on both the limitations of this study, as well as the results found. Finally, the chapter will conclude with a summary.

Summary of Results

The results of this study indicated that administers were typically content with their institution's current risk management status yet have concerns about the increasing duty of care responsibility required of Washington State Community Colleges. Administers noted that campus cultures were changing from what they looked like historically, particularly given that IHEs now include a traditionally larger share of first-generation students, students of color, older students, students with children, and students with mental and physical disabilities. Participants noted that such changes necessitated improved services—with particular attention to diversity, equity, and inclusion. They also described other emerging, and as they noted, frightening, risks that are influencing IHE across the United States. At the top of all participant risk/threat lists were the mental-health crisis; campus safety and security; proper communication, the threat of lawsuits; gaps in reporting structures; a lack of policy guidance in decision-making; housing with

students on campus around the clock; and being compliant. However, there was no clear consensus among the participants about the extent to which IHE are responsible for mitigating emerging trends. Differences existed on what responsibility and capacity the community college system have for student duty of care.

Moreover, the participants of this study argued that while their institution may offer a multitude of services and interventions, including mental health counseling centers and student conduct committees, they are also struggling with capacity and the balance between duty of care and the duty to warn. This includes in the procedural end—like inconsistencies communicating college and legal procedures and following internal processes. A large part of this struggle, according to the administrators in this study, is linked to the challenge of being compliant with the law—balancing free speech, privacy (in the form of FERPA), as well as the demand to mitigate risk for students.

Discussion of the Results

One of the study's objectives was to examine why IHE waiver between providing too much and too little regulation and protection. The results of this study indicate that this position often comes from a lack of resources, which frequently puts administrators in the position of being reactive rather than proactive. As Administrator E said, "I'd like to say we're super proactive, but the reality is reactive." Administrator E explained further that due to multiple areas that need attention, much of an administrator's time is spent maintaining day-to-day operations; therefore, it is typical for colleges to respond to an evolving issue after something has happened on their campus, or at another campus.

Moreover, this study found that while administrators would like to provide just the right amount of protection and regulation, the sheer volume and speed with which regulations and policies change was difficult to manage.

This milieu of continually changing practices, policies, and regulations did make the study's objective of uncovering best practices for risk management ground in current law more difficult. The participants of this study noted that pertinent laws were not only numerous but often changing, which could impact not only the IHE's ability to be proactive but also to simply be aware of the content of such laws. Administrator D listed compliance as a risk, in part due to limited resources, "there are so many unfunded mandates that colleges have to follow."

Additionally, the participants noted that the litigious nature of current culture also precluded consistent and proactive risk management policies. While Administrator C discussed legal issues and the possibility for negative media coverage, Administrator H specifically noted how IHE policies could get them sued: "Discipline carries risk, unfortunately. That has been where we faced the most legal involvement in some way, whether that's from students getting a lawyer because they disagree with something that happened or an employee getting a lawyer because they disagree with something that happened." Such a climate makes the creation and application of best practices more difficult.

However, there was an agreement in one particular area of best practices, which involved the concept of in loco parentis. The administrators in this study agreed that such an idea is at the legal and practical heart of their policies and practices, and noted that its meaning is continually evolving as colleges and universities attempt to provide the care and compassion expected of families, while simultaneously offering resources and services to meet an extensive range of needs. First-generation students, students of color, older students, students with children, and

students with mental and physical disabilities are tasking IHEs everywhere to meet their needs. Administrator D noted that when in loco parentis began, the primary focus was for the support of White males, as they were the predominant group attending college. As Administrator D said, "[We have to make] sure that we're providing culturally relevant services." Equity-based services that work with underserved student populations have been around for years.

One such service is TRIO, which are federal outreach and student services programs designed to identify and provide services for individuals from underprivileged backgrounds. TRIO includes programs targeted to serve and assist low-income individuals, first-generation college students, and individuals with disabilities to progress through the academic pipeline from middle school to postbaccalaureate programs (Federal TRIO Programs). Most institutions employ TRIO Student Support programs in where funds are awarded to institutions of higher education to provide opportunities for academic development, assist students with basic college requirements, and to motivate students toward the successful completion of their postsecondary education (Student Support Services Program).

Moreover, this study's framework seeks to identify the risks at IHEs and what the responsibilities of IHEs are to manage those risks. The results of this study were successful in identifying those risks, even if the paragraphs mentioned above explored the difficulties in managing those risks. At the top of all participant risk/ threat lists are mental-health care, sexual harassment, and safety and security. As Administrator B noted, "I always fear safety. And with safety now, I look at violence against women, harassment, sexual harassment, bias incidents, bias, and hate incidences." These types of incidents have not affected all campuses, but heightened anxiety in this era of mass-shootings, crimes motivated by bias, and the Me Too Movement are forcing action everywhere. Similarly, Administrator D said, "One of the risks that

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we have right now has to do around safety and security when it comes to students who are exhibiting concerning behaviors." Administrator E replied, "What I'm starting to see manifest and unfold on this campus is a lot more students with a psychiatric disability."

Verifying this claim are statistics from *collegestats.org* that claim that 50% of college students both struggle significantly with anxiety and rate their mental health below average or poor, and 30% report they have had problems with schoolwork due to mental health issues (Mental Health Guide for College Students, 2019). Delving deeper into these statistics shows that 13% of college students have been diagnosed with a mental health condition linked to anxiety, with 9% contemplating suicide in the past year (Mental Health Guide for College Students, 2019). Furthermore, according to *Psychology Today*, rates of college students seeking "past year treatment" for mental health issues had risen from 19% in 2007 to 34% in 2017. In addition, students with lifetime diagnoses increased from 22% in 2007 to 36% in 2017. The trend lines in these categories had been moving up steadily through the 1990s (Henriques, 2018). In the 1980s, at any given point, perhaps one in 10 college students could be readily characterized as needing/wanting/using some form of mental health treatment. Now that number is one in three, with trend lines rising (Henriques, 2018).

Discussion of the Results in Relation to the Literature

In general, findings from this study support current literature regarding IHE being in transition. One reason for this volatility, found in both the results of this study as well as the existing literature, is the consumption-based model of college. As Administrator D noted, the "culturally relevant services" they need to revamp constantly is about improved customer service and better student experience, which the participant described as a better business model. This perception aligns with Couture, Schwehm, and Couture (2017) who argued that colleges are

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continually adding new services and amenities, attempting to provide a surplus of options to improve each student's experience, engaging in what the authors called "an amenities 'arms race.'"

Another factor in the ever-shifting decisions regarding risk management and institutional duty of care for IHEs is the rapidly changing population of college students. As the literature proved, more and more students are first-generation, women, people of color, nonresidents, and international. Students are also older, most hold jobs, and almost 5 million college students are raising dependent children, with more than half of those, mostly women, being single parents (Romo, 2018). The administrators in this study are highly aware of these changes, and, perhaps more importantly, are working to institute and reinforce resources for those shifting populations. For example, Administrator D noted that commitment to equity has been a discussion for years in Washington State, especially when institutions noticed local demographic shifts and that during the last 20 years, campuses have had more resources for LGBTQ students, students of color, and first-generation students.

As the literature makes clear, and this research expands upon, one of these shifts in the changing demographics of students it the prominence of mental health concerns. Prince (2015) found that changes in student behavior, especially the unprecedented number of students who seek counseling for mental health in colleges and universities, present significant challenges to risk management in the United States. More specifically, both the literature and the participants of this study noted that concerns regarding mental health, such as alcohol consumption, anxiety, and depression, disrupt the learning ability of students and present a challenge to university risk management approaches, and that higher education decision-makers need to be informed and prepared to deal with such mental health issues. However, the results of this study that while IHE

offer a multitude of services and interventions, including mental health counseling centers, many campuses are struggling with capacity and the balance between duty of care and the duty to warn.

Yet another aspect of the continuously shifting balance between protection and regulation found in both the literature and the results of this study is speed, volume, and changes of local, state, and federal laws. Many administrators cited sexual harassment as well as compliance with Title IX and Clery guidelines as an imminent threat. Likewise, the literature shows the IHE must not only align their policies with current law but also make sure to follow their own procedures, regardless of circumstances or perception. There is a distinct obligation to designate a Title IX coordinator with the primary responsibility of coordinating campus compliance with Title IX, including grievance procedures for resolving Title IX complaints (Jacquelyn & DiLoreto, 2018). This coordinator's tasks include monitoring outcomes, identifying and addressing any patterns, and assessing effects on the campus climate (Jacquelyn & DiLoreto, 2018). Each institution is also required to report instances of sexual violence.

Furthermore, as the literature noted, the relationship between risk management and duty of care is complicated by "litigious societal trends, students appear to be more willing to pursue lawsuits against institutions for failing to protect them from the conduct of others and even their own conduct" (Thomas, 1991, p. 37). Within the literature, cases such as *Commonwealth v. Eric W. Neilson* (1996), *Morale v. Grigel* (1976), *Commonwealth v. McCloskey* (1975), and *Piazzola v. Watkins* (1970) show the fears of administrators in this study are not unfounded. For instance, Administrator B said, "Litigation has been increasing, and colleges are a lot more responsible for risk management to eliminate the possibility of any lawsuits." Administrator F also discussed the

financial implications, saying, "We don't want to get fined somewhere between $75,000 and $100,000!"

What the results of this study have found are barriers to the adaptive leadership theme that helped scaffold this study. The core principle of adaptive leadership theory is the promotion of adaptability to allow the leader and organization to flourish, which enables people to "tackle tough challenges and thrive (Heifetz, Grashow, & Linsky, 2009). However, given the rapidly shifting demographics and needs of the student body, as well as the rotating regulations, policies, laws, and lawsuits, the participants in this study found that such adaptability was constrained by fear and anxiety, as well as a lack of clear policies and protocols. Given the reactive nature of policy changes, whether on the campus, local, or state level, as well as the lack of resources for these changes, the participants in this study demonstrated the need for—but challenges to— implementing a model of adaptive leadership. This research expands on current literature in this area.

Limitations

The limitations of research refer to the weaknesses in the design and nature of the study over which the researcher has no control. The first limitation of this study is that data were collected only from administrators from Washington State community colleges. Moreover, the limited sample size of nine could mean that the views and experiences that participants express in this study might not be representational of other colleges and universities in Washington. This limited transferability might be particularly evident regarding administrators and schools from different states in the country. Therefore, the findings of the study may not be directly generalizable to other settings, populations, and phenomena. To mitigate this particular

limitation, additional future qualitative and quantitative research should be conducted to gather data from these excluded relevant populations.

Another limitation was the possible influence of researcher bias. The researcher has personal opinions, perceptions, and beliefs about the study, which may unnecessarily influence the findings of the study if left unaddressed. Therefore, the researcher acknowledged personal opinions, perceptions, and expectations to increase awareness and cautiousness when making decisions and conclusions in alignment with these sources of personal biases.

The study might have been limited through the single data collection source as well. The design itself limited the overall validity of data because all data, findings, and conclusions came from the participants themselves, without substantiating data from other sources, such as documentation or observations. However, these data were compared across all participants, thereby allowing the different participants' accounts to substantiate other participants' experiences. In addition, the researcher also asked participants to review their transcripts and partake in member-checking the final study findings. This process of combining member-checking and transcript review ensured higher levels of validity and credibility for the study.

Implication of the Results for Practice, Policy, and Theory

This study's framework identified the owners of risks and what their responsibilities are to manage those risks. Factors that influence risk management include the resources, capacity, and funds that are needed, as well as IHE ability to recognize the necessity for categories and definitions of risk probability and risk impact. As Rahim (2016) stated, risk review includes clearly defined deliverables, the cycle of evaluation, and the frequency of communication.

The conceptual framework of the research indicates that a risk assessment plan that is influenced and supported by current law, along with the application of best practices, lead to

better institutional and stakeholder stability. This conceptual framework is based on the relationship between issues relating to risk management and institutional duty of care, especially concerning in loco parentis in IHE. The researcher based this assumption on case law, an intensive literature review, and communication with higher education professionals, which, in combination, suggest that risk review will promote safety, streamline processes, and reduce litigation. Literature review investigated this framework, as did participant interviews. Based on the results of this study as guided by the conceptual framework and research questions, there are several recommendations for practice, policy, and theory. These are listed and explained below.

Relationship Building

IHE leaders should work to augment trust and understanding between campus stakeholders. As Administrator D noted, "I think it's very important to have as many people at the table as possible early on because what I find is that what you don't want to happen is you just want to have, you know, two or three people." Such relationships should be strengthened by using existing lines of communication as well as building new ones. These relationships include those between campus administrators, the students on campus, campus security, police officials, legal personnel, and the community as a whole.

Defining and Clarifying Roles

To ensure that schools can not only effectively respond, but also take proactive steps before issues arise, IHE should have an established system of coordination. Such a system could include roles with specific responsibilities and a well-defined chain of command. As Administrator As said, "I'm kind of the approach of both assigning people, I mean, you want that person who's responsible, who's writing your clarity report, you want to know who's making sure your title nine is up to date, and those sort of things. I think having that point person is really

critical." Another crucial step is assigning a position the responsibility for the writing, implementation, and review of specific policies and procedures, rather than a person who might leave during the policy creation or review process. This promotes consistency and succession planning.

Training

The administrators in this study agreed that training was an essential philosophical and practical element. These trainings should cover a range of topics, such as communication, modeling situations, and legal updates. Trainings would be required and would help educate administrators as to current laws, policies, and regulations, as well as help them feel confident to have the tools to address an escalating situation. Administrator E also noted how training coincides with the previous recommendation of defining roles: "We're looking at coinciding job duties and responsibilities to take on, meaningfully take on this work, it's going to require more training and resources to be able to do that."

Assessment

Assessment as a policy and practice should be applied in three phases. The first phase is when the administration is taking into consideration any new policies or any changes to policies. Such an assessment will include an evaluation's potential impact on students, on the campus, on the budget, and on people's capacity, particularly on the staffing level. Such an assessment may include a formal Strength Weaknesses Opportunity and Threat (SWOT) analysis or may consist of a less formal evaluation. The second phase of assessment should occur after an incident on campus: a post-intervention assessment. As Administrator I explained, this evaluation should answer:

What was the damage locally, was the impact on services? Was the building safe? What

the resources that we have to bear on that? What can we learn from that for the next

incident? There's the short term response, and then there's a reflective piece of it. What

can we learn from this? The immediate response, which is typically the crisis response?

What do we have to do in the immediate? And that's usually around safety and security.

Right? And then you work your way up from that or work your way back with time. Is

there business continuity implications, are there policies procedures, we would want to

revise or have more training? I haven't mentioned that I would say you know, training of

the staff to respond and be prepared. So, where were the gaps? Or did everything go well,

and what did we do well, and let's acknowledge that and reflect on that.

The third phase of the assessment process is periodic policy review. Many administrators

admitted their institutions do not review policies regularly. Some colleges attempt an annual

policy review, while others require all policies are reviewed every three years. Not every IHE

employs a risk management professional; in that case, it is imperative to assign review

responsibilities to positions with subject authority. Assistant Attorney General review of policies

when possible, especially new policies, is not only helpful; it commits the State to defend any

approved policies. Administrator B said, "First of all, having someone who is knowledgeable

about the laws and regulations [is important], and then someone who can convey that to the

administration."

Background Principles

Any policies, regulations, and systems should include the principles enumerated by the

participants in this study. This includes a commitment to learning, discovery, and imagination,

which is crucial to an IHE responsibility to freedom of expression and the free exchange of

ideas; accountability and responsibility for both students and the staff of the campus; respect for different viewpoints and goals; inclusion and transparency. Importantly, IHE should not attempt to create a flawless—and probably unattainable—plan. Administrator C noted:

> A lot of times, when you're developing these policies or procedures, people get caught up on getting exact, the policy that will is, is designed to end all policies, right? The perfect policy. And we can spend five or six years trying to get that perfect policy down. But we can get the 95% solution and maybe three, four or five months and then tweak it from there, right. And so that's a big thing for me, just let's get something out on the streets, as opposed to trying to ensure we've got the exact perfect right policy, it's going to take six years, or never get really what happens, never gets that never gets done.

Finally, when administering student conduct or citing policies, the IHE must follow existing policies and procedures as carefully as possible. A poorly-written policy can undoubtedly lead to legal challenges. However, failure to follow through on existing policies is more of a risk.

> Administrator H said:
>
> I think the most important thing for college is to do whatever it is you say you do. Even if you think it's a stupid process, even if you think this wouldn't, this is such a low-level thing I couldn't possibly go to court later, I could skip a step or two, don't, whatever it is your policy or procedure says you do that, if you don't like it, change it, so that you can do it differently next time. But while you're in the midst of it, you do whatever it is that you have published.

Recommendations for Further Research

This study's findings suggest a need for additional research that would include examining the effectiveness that colleges and universities' administrators have had developing and implementing risk-management plans. Future studies could review these best practices for specific types of incidents. For instance, researchers could explore, either qualitatively or quantitatively, best practices during a local or national disaster, campus protests, sexual assaults, student deaths, or other significant events.

Other research could examine research variables that constrain an institution's ability to establish a clear vision, direction and focus when it comes to particular policies and regulations. Research in both the creation and implementation of policy and regulation could be useful. In addition, given that this specific study was only within a particular region in the state of Washington, future researchers should expand the geographic range. This could include a comparative analysis of schools from different states, regions, and areas of the country, or could also include a comparison between 2-year and 4-year institutions, as well as private or public universities. Such research can enable better contextualization for best practices, taking into account socio-cultural, political, economic, and geographic factors.

Conclusion

College authority by the level of care required has evolved from almost absolute power in the hands of colleges and universities to an approach more focused on individual students and their rights. This shift caused confusion and has led to institutions having to defend their policies and procedures in the courts. The problem that this study addressed is the need to understand student affairs professionals' best practices for institutional duty of care and the application of the law for risk management. Such an understanding may aid in improving internal decision-

making and avoiding the dictation of policy by external entities, such as the courts. Thus, the purpose of this qualitative descriptive study was to explore IHE leaders' perceptions of best practices for institutional duty of care and the application of the law for risk management in the State of Washington. Specifically, the focus was on institutional duty of care and the implementation of the law for IHE risk management, specifically with respect to campus events and student conduct.

The researcher chose qualitative research methods for this project as the design is holistic and involves a rich collection of data from various sources to gain a deeper understanding of individual participants, including their opinions, perspectives, and attitudes. Through information gathered from interviews with administrators who are experts in the field of institutional risk management, and in particular those who are effectively navigating the complex topics of risk management and duty of care, as well as those who have had both positive and negative experiences in the field, this study explored some recommended steps and strategies for higher education leaders to consider. Overall, this researcher uncovered four predominant themes that linked to the two primary research questions. Within the first research question—How do IHE leaders describe the best practices for institutional duty of care with respect to campus events and student conduct?—there were two major themes: shifting campus cultures and duty of care evolution. The second research question—How do IHE leaders describe the application of the law for risk management with respect to campus events and student conduct?—also had two themes: student conduct, reporting, policies, risk, and compliance and limitations and issues. The data indicated that administers were typically content with their institution's current risk management status yet have concerns about the increasing duty of care responsibility required of Washington State Community Colleges. Most administrators had similar concerns: the mental-

health crisis; campus safety and security; proper communication, the threat of lawsuits; gaps in reporting structures; a lack of policy guidance in decision-making; housing with students on campus around the clock; and being compliant.

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Appendix A: Interview Questions

Culture
1. What are your thoughts on how duty of care (in loco parentis), as far as services, has evolved during your time in higher education?
2. How is your college aligning services and updating policies when it comes to duty of care?
3. How does your college evaluate its policies to ensure alignment with current law and best practices (such as Title IX changes and case law)?
4. How often are policies/handbooks, etc., regularly reviewed and updated?
5. Who or what department handles and arranges events on campus?
6. What do you think are your college's top risks?
7. What are some suggestions you'd give when it comes to preparing for a risk management issue?
8. What are some suggestions you'd give when it comes to dealing with risk management issues (basically something happened, what next)?

Policies
1. Does your institution have policies and procedures in the areas of conduct, events, and other areas that need risk assessment?
2. Does your institution have a first amendment/ assembly policy with time, place, and manner guidelines?
3. How are decisions typically made and communicated when it comes to policies and procedures?
4. Do you know when those policies were created and how often they are reviewed?
5. Have there been issues around campus events and demonstrations? If so, please elaborate

Conduct/Reporting
1. Who or what department or committee handles conduct at your college?
2. Is anyone dedicated to conduct part or full time?
3. What do your college's reporting structures, whether it is Title IX, student conduct, academic integrity, or bias issues, look like?
4. Do you think faculty and staff are willing and comfortable to report issues?
5. Do you think faculty and staff are aware of conduct processes and timelines?

Decisions
1. In your experience are conduct codes and handbooks typically created in response to an event or incident, or are colleges typically proactive?
2. Are there regular discussions inside the executive leadership team about court cases, new laws, new codes and how they relate to college policies?
3. How involved is the attorney general's office when it comes to making decisions?
4. Have there been issues or incidents that forced the college to make a policy—to prevent an incident happening or happening again at the college (court cases, a lawsuit, an event on campus or another campus)?
5. In your experience, what is key to ensuring your areas are compliant with laws, regulations, and standards?

Appendix B: Creswell's Eight Steps of the Coding

1. Read all the transcriptions carefully;

2. Pick one interview and ask, "What is this about" and then write thoughts in the margin;

3. Make a list of all topics and cluster together similar themes;

4. Take the list and go back to your data;

5. Find the most descriptive working for your topics;

6. Make a final decision on the abbreviation for each category and alphabetize the codes;

7. Assemble the data belonging to each category and alphabetize the codes; and

8. If necessary, recode your existing data.

Appendix C: Statement of Original Work

The Concordia University Doctorate of Education Program is a collaborative community of scholar-practitioners, who seek to transform society by pursuing ethically-informed, rigorously-researched, inquiry-based projects that benefit professional, institutional, and local educational contexts. Each member of the community affirms throughout their program of study, adherence to the principles and standards outlined in the Concordia University Academic Integrity Policy.

This policy states the following:

Statement of academic integrity.

As a member of the Concordia University community, I will neither engage in fraudulent or unauthorized behaviors in the presentation and completion of my work, nor will I provide unauthorized assistance to others.

Explanations:

What does "fraudulent" mean?

"Fraudulent" work is any material submitted for evaluation that is falsely or improperly presented as one's own. This includes, but is not limited to texts, graphics and other multi-media files appropriated from any source, including another individual, that are intentionally presented as all or part of a candidate's final work without full and complete documentation.

What is "unauthorized" assistance?

"Unauthorized assistance" refers to any support candidates solicit in the completion of their work, that has not been either explicitly specified as appropriate by the instructor, or any assistance that is understood in the class context as inappropriate. This can include, but is not limited to:

- Use of unauthorized notes or another's work during an online test
- Use of unauthorized notes or personal assistance in an online exam setting
- Inappropriate collaboration in preparation and/or completion of a project
- Unauthorized solicitation of professional resources for the completion of the work.

Statement of Original Work (continued)

I attest that:

1. I have read, understood, and complied with all aspects of the Concordia University–
    Portland Academic Integrity Policy during the development and writing of this
    dissertation.

2. Where information and/or materials from outside sources has been used in the
    production of this dissertation, all information and/or materials from outside sources has
    been properly referenced and all permissions required for use of the information and/or
    materials have been obtained, in accordance with research standards outlined in the
    Publication Manual of The American Psychological Association.

Jorge de la Torre

Digital Signature

Jorge de la Torre

Name (Typed)

November 30, 2019

Date