

Do Words Really Matter:
A Mixed Methods Grounded Theory Study of
Student Conduct Codes and Campus Racial Climate Data

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Doctoral programs are described often as isolating experiences. The work you do is yours alone, and you spend many hours by yourself, separated from the people and things you love. In truth, nothing about this work has been isolated; it has been unique, it has been insular and lonely at times, but I have never been truly alone. The pleasure of this work rests in all the people who have guided, nurtured, and supported me along this incredible journey.

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Daddy, how I miss you. How I wish you could be here to see this. Thank you for all of it. I love you.

Dedication

To my family—small in quantity, large in quality

Greg, Sam, Mom, Daddy, Chad, Veronica, Julissa, Victoria, and Kennedy

ABSTRACT

Among the most bedeviling problems on college campuses today is whether and how an inclusive campus racial climate and freedom of expression can co-exist in a complementary manner. Public universities must adhere to the First Amendment, just as the rest of society does; the difficulty they face is the balance between protecting the right to free and open expression and creating a positive racial climate for their many students of differing backgrounds. There are few limitations on freedom of speech and expression, but universities do not want to appear as though they do not take seriously accusations of racial bias and discrimination, nor that racism and racial microaggressions are acceptable. At the heart of the issue is how to allow legally protected speech to exist on a campus while simultaneously ensuring civil rights of historically underrepresented students, staff, and faculty. Historically, this is where student conduct codes have been utilized, as speech cannot be regulated legally in the same way that conduct can. This mixed methods grounded theory study explored the current discussion around campus racial climate in relation to freedom of speech, examining both legal and policy positions, and sought to understand the relationship between the specific verbiage and themes used in student conduct codes and students' perceptions of campus racial climate on an individual campus. This analysis of student conduct codes, mission statements, legal cases, and data from the undergraduate Student Engagement in the Research University survey revealed that: a) student conduct codes remain focused on punishment, not student development; b) institutions continue to employ overly legalistic language in student conduct codes; c) student conduct codes do not reflect mission statement values; and d) the absence or presence of diversity discussion in student conduct codes shares a relationship with student perceptions of campus racial climate.

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CHAPTER 1: INTRODUCTION

Among the most bedeviling problems on college campuses today is whether and how an inclusive campus racial climate and freedom of expression can co-exist in a complementary manner (American Association of University Professors [AAUP], n.d.b.; Cole 2016; Thorne, 2013). The conflict between these ideas leads to myriad tensions, as evidenced by recent protests by students of color at Harvard, Yale, and the University of Missouri, among several others (Libresco, 2015). Freedom of speech is a core value in United States (US) society, and one upon which the country was founded (Smolla, 2002). A healthy and diverse campus racial climate is vital to college student integration, persistence, and success (Cabrera, Nora, Terenzini, Pascarella, & Hagedorn, 1999). While many campuses have adopted speech or conduct codes that include language attempting to regulate discriminatory speech on campus, legal challenges to contest them have seen mixed results, with many struck down by the courts (Delgado, 2018), while faculty on campuses across the country argue that specific speech policies infringe on academic freedom (AAUP, n.d.a.; Thorne, 2013).

Problem summary

Through watershed cases, the United States Supreme Court affirmed its commitment to a diverse student body as a core value in US education (*Fisher v. University of Texas*, 2016; *Gratz v. Bollinger*, 2003; *Grutter v. Bollinger*, 2003; *Regents of the University of California v. Bakke*, 1978), but research shows that racial discrimination remains a problem, and campus climate has a very real and profound effect on students (Cabrera et al., 1999; Harper & Hurtado, 2007). Researchers insist that continued microaggressions aimed at racial minority students negatively affect campus

racial climate, as well as the physical and mental health of those students (Davis, 1989; Doan, 2011; Pierce, 1974; Solórzano, Ceja, & Yosso, 2000).

Recently, there have been high profile examples of conflicts related to campus climate, particularly racial climate, at institutions such as the University of Missouri, Harvard, Princeton, Brown, and Yale, just to name a few. The racial tensions on campus both reflect and infuse the racial frictions in other arenas of society. A group calling itself “WeTheProtestors,” a self-described “national collaborative of activists fighting to end racism and police violence in America,” started a separate project initially called “Thedemands.org,” which now operates as the “Black Liberation Collective” (Black Liberation Collective, n.d.). The Black Liberation Collective (BLC) encompasses both national demands around racism and police violence as well as individual campus demands. To date, representative student groups from 80 universities, including all the institutions listed above, have signed on as supporters of The BLC (BLC, n.d.). As these students and others demand “safe spaces,” “trigger warnings,” and recognition of “microaggressions,” they exercise their rights to free speech; at issue is figuring out where one individual’s rights end and another’s begin.

Additionally, hardly a day passes without an entry from *Inside Higher Ed* or *The Chronicle of Higher Education: Academe Today* alerting email inboxes to the latest controversy about a “free-speech circus [enveloping] a campus” (Quintana, 2017, para. 8), conservative lawmakers penning free speech bills to impose upon higher education, heated discussions about “trigger warnings,” and threats to academic freedom through complaints against faculty who discuss race in their classrooms (Flaherty, 2017a; Flaherty, 2017b; McMurtrie, 2017). Presidents, provosts, heads of student affairs offices,

and faculty members are being dismissed at high rates because of these controversies (Selingo, 2016).

There is also a conflict of sorts that manifests itself in the form of confusion on the part of students. In a 2016 survey sponsored by the Knight Foundation and Newsom Institute in conjunction with Gallup, students showed interest in finding peaceful coexistence for campus climate and freedom of speech but remained unsure as to how to achieve it (Gallup, 2016). Fully 78 percent favored an “open learning environment,” on their campuses—even when instructed that this would allow for speech that could be offensive or biased against certain groups of people—over a “positive learning environment” through prohibitions on or censorship of offensive or biased speech (Gallup, 2016). This larger majority included majorities within racial subgroups, including 70 percent of Black students (Gallup, 2016). However, these students grappled with the same issues that campus administrators do; for example, a majority of the students polled indicated that political views should not be restricted, but language that intentionally targets racial groups should be limited (Gallup, 2016). In 2018, Gallup released an updated report that included many of the same questions, along with some new ones (Gallup, 2018). The year and a half between reports brought with it a “contentious 2016 presidential election, student objections to invited commencement speakers, and a series of violent confrontations on college campuses when controversial speakers or groups expressed their views on campus” (Gallup, 2018, para. 3). While students still chose overwhelmingly an open learning environment, the percentage shifted downward slightly to 70 percent (Gallup, 2018). This same downward shift was evident in the percentage of Black student support, which decreased to 62 percent (Gallup, 2018).

Additionally, almost three-quarters of the students polled in 2018 felt that language intentionally targeting racial groups should be limited, an increase of 4 percent (Gallup, 2018).

Public universities must adhere to the First Amendment, just as the rest of society does; the difficulty they face is the balance between protecting the right to free and open expression and creating a positive racial climate for their many students of differing backgrounds. There are few limitations on freedom of speech and expression, but universities do not want to appear as though they do not take seriously accusations of harassment and discrimination. At the heart of the issue is how to allow legally protected speech to exist on a campus while simultaneously ensuring civil rights of historically underrepresented students, staff, and faculty, and protecting the liberties of individual students on that campus.

Purpose statement

My dissertation explored the current discussion around campus racial climate in relation to freedom of speech and examined both legal and policy positions by looking at student conduct codes and legal cases related to them. I chose student conduct codes primarily because of the bridge they provide between student speech and student conduct. As stated above, there are few limitations on freedom of speech and expression, but there are legal constraints on conduct. The challenge arises when the law must determine when speech goes beyond being just speech, and transitions into the realm of punishable conduct. One example of this is found in *Virginia v. Black* (538 U.S. 343, 2003), in which the United States Supreme Court found that cross-burning, often viewed by the Court as free speech, could be viewed as legally punishable conduct if “carried out with

the intent to intimidate” (538 U.S. 343, 2003, p. 343). The Court saw this as what is legally referred to as a true threat, and decided that, “a State may choose to prohibit only those forms of intimidation that are most likely to inspire fear of bodily harm” (538 U.S. 343, 2003, p. 345). Of all the policies on a college campus where the tension between freedom of speech and punishable conduct should be evident, it is in student conduct codes.

Student conduct codes serve the purpose of proxy in this dissertation for all institutional policies that apply to students. In other words, students on an individual campus should be able to look to their student conduct code to understand clearly the institution’s expectations of them as citizens of the campus, and to see outlined plainly the punishments involved for violating those expectations. Additionally, and more importantly, those expectations and punishments should reflect the stated values on that individual campus, including values about diversity. While it is entirely possible that a student might complete a degree on a campus without ever reading the student conduct code, that fact is irrelevant. The more important point is that the student conduct code should reflect the collective stated values of that campus, as should all policies, regardless of the intended audience. The collective stated values of a campus encapsulate the culture of that campus (Schein 2016; Schneider et al., 2013; Stamarski & Hing, 2015). The policies and practices employed to execute that culture influence directly the climate on that campus (Schein 2016; Schneider, Ehrhart, & Macey, 2013; Stamarski & Hing, 2015). In this sense, using student conduct codes as a proxy allowed me to examine campus racial climate as an extension of campus culture.

In my work, I hoped to contribute to the process of establishing policies that meet legal standards and also make clear that US public universities—administrators, faculty, students, and staff—not only have the right to express openly their collective values on the issue of diversity, but they also have an obligation to do so. The purpose of this mixed methods, grounded theory study was to explore what, if any, type of association exists amongst student conduct codes that promote freedom of speech and positive campus racial climate, examine whether the words institutions used in student conduct codes affect students’ perceptions of campus racial climate, and determine how public universities can use this information to write student conduct codes that have a positive effect on campus racial climate.

Theoretical Perspective

To determine my theoretical perspective for my dissertation, I looked both inside and outside of academia, to include legal perspectives. My initial review quickly led me toward three possibilities, each of which has its merits and shortcomings in terms of analyzing issues involving law and race.

Radical Critiques of the Law

Radical critiques of the law are those that are “self-consciously critical of aspects of American law and the institutions of the liberal state” (Griffin & Moffat, 1997, p. 1). While “radical” may be in the eye of the beholder, when evaluating the law, looking outside of the Constitution and legal precedent to include perspectives related to race and feminism, to the point of questioning how the country can continue to enforce laws written in a world dominated by White men and, as such, viewed as inherently biased, is considered a radical lens (Robison, 1997). Given that my topic centers around the law

and how it intersects with race, these critiques seemed a natural fit. The more difficult task was choosing which lens to adopt for my studies.

Law and economics. While the theory of law and economics is based in contract, tort, and property law, in recent history it has been applied in the areas of discrimination and constitutional law (Simon, 1997). Among the more interesting lines of thought in this theory is an algebraic equation posited for use in free speech cases:

$$V + E < P \times L(1 + i)^n$$

The values in this equation, advanced by Judge Richard Posner and based on the Learned Hand equation first used in *United States v. Carroll Towing Co.* (1947), and then applied again in the infamous case, *United States v. Dennis* (1950) are:

- V = Value of speech
- E = Social cost of harm
- P = Probability that speech will do harm
- L = Legal error costs
- n = Length of time between speech and harm
- i = Discount rate (translation of a future dollar of social cost into present dollars)

In this equation, the larger the values of n and i, the smaller the harm from the speech in question (Posner, 1986). For example, while a riot results in less harm than a “violent revolution” (Posner, 1986, p. 8), speech that incites a riot may, “after the anticipated harm from violent revolution is discounted to present value, have an expected harm nearly as great as that of a speech advocating revolution in the distant future, even if the probability of the two events is identical” (Posner, 1986, p. 9).

While an intriguing notion, unfortunately, I felt that this theory could not pass the test of indeterminacy, largely based on the fact that the equation—and the theory it supports—are almost entirely dependent on value judgments, as put forth by Posner

himself (Simon, 1997). Posner almost disintegrated his own theory by discussing at length the difficulties in determining “V,” the value of the speech in question. He made some argument for the placement of political speech at the top of the hierarchical structure, but then proceeded to dismantle this contention by articulating eloquently the complexities inherent in determining political speech versus other speech, and even somewhat foreshadowed the difficulty US society would face now, in the wake of *Citizens United v. Federal Election Commission* (2010; Posner, 1986).

Communitarianism. The second perspective I considered, communitarianism, is rooted in the collective social affiliations of an individual, and directly contrasts the individualism found in law and economics (Simon, 1997). While law and economics considers individual harms, communitarianism “emphasizes community harms” (Simon, 1997, p. 300), and in that sense, places a greater value on civil rights as opposed to individual liberties. This collective approach defines a verbal confrontation directed at one individual who identifies as part of a racial group as an attack on all who identify as part of that same group (Simon, 1997).

This lens appealed to me more than the law and economic theory because of its collective nature. While I certainly think there is a case to be made for individual harm, the idea of this collective approach drives home the visceral nature and societal impact of racial verbal attacks. Rather than viewing them as incidents of racism against a single human being, it places emphasis on our general humanity. Unfortunately, again, I found issues with the test of indeterminacy, albeit on a far more complex scale.

First, there is the thorny concept of “racial identity.” Communitarianism depends on a person’s belonging to a particular racial identity group. What does this mean in

terms of the actual harm done? Is the harm done because “it adversely affects a person’s racial identity or because, among other things, it wrongly classifies a person” (Simon, 1997, p. 301)? This theory also requires that individuals be attached to one racial identity. As US society seemingly moves forward with the idea of intersectionality, must an African American person have to put her race front and center in order to prove that she has been harmed (Simon, 1997)? Finally, communitarianism makes no distinction between and amongst groups, meaning that neo-Nazis are “equal” as a group to African Americans. When contrasted with, for example, Iris Young’s political theory work around social groups, interest groups, and ideological groups, this struck me as an enormous oversight (Young, 1990). Absent any criteria with which to differentiate between and amongst groups, the argument to discern types of group harm becomes challenging at best.

Critical race theory. Like the previous two theories, critical race theory (CRT) has origins in the legal realm; however, unlike the others, it has become an expansive and inclusive umbrella for lawyers, legal scholars, activists, academic scholars from different fields, and students (Delgado & Stefancic, 2012). Adherents to this theory view the test of indeterminacy as invalid; they embrace the notion that a case can have different outcomes depending on how facts are interpreted and/or how emphasis may be placed “on one line of authority over another” (Delgado & Stefancic, 2012, p. 5). While this is an interesting perspective, it seems to me that the test of indeterminacy in this instance rests in defining who controls and regulates harm. “By demanding that the victims of hate speech determine the social meaning and harm of hate speech, Critical Race Theorists run into their own indeterminacy problem” (Simon, 1997, p. 303). In this

argument, victims would have to be the arbiters; any non-victim would be considered part of the power structure and, therefore, unable to render a decision. This is the indeterminacy—there is no clear definition of who can claim harm and on what grounds.

All of the above considered, I believe that CRT most closely aligns with my own views on this issue, and also holds the most potential relative to the indeterminacy test. Mari Matsuda (1989) made a strong argument in this arena, for example, by narrowly tailoring the classification of speech, rather than narrowing the range of harm. She set forth three criteria, all of which must be met, in order for speech to be considered hate speech and be prosecuted:

1. The message is of racial inferiority;
2. The message is directed against a historically oppressed group;
3. The message is persecutorial, hateful, and degrading. (Matsuda, 1989, p. 2357)

Again, in Matsuda's suggestion, all three characteristics must exist in order for prosecution to move forward. This type of approach—narrowly tailored, applied equally to all—removes the potential indeterminacy argument outlined above. While I recognize that this is not currently the legal standard, I believe it serves as an example of the ease—relative to the other two theories considered—with which CRT scholars can further refine the theory and, over time, continue on their journey of social justice change.

Critical race theory tenets. To use CRT as my theoretical perspective requires that I identify the tenets that most closely align with my views as a researcher, as well as those that support my area of research. The most basic tenet that I accept wholly, but uneasily, is that racism is a normal, common, and ordinary part of everyday life (Delgado & Stefancic, 2012). Second, I believe that institutional racism serves the dominant power

group, commonly referred to in CRT as interest convergence. Third, I believe that we must understand the differences in the ways oppressed people experience their oppression, ideas known in CRT as essentialism and intersectionality.

Interest convergence theory. Derrick Bell (1980) is famous for positing the interest convergence theory which suggests that “the interest of blacks in achieving racial equality will be accommodated only when it converges with the interests of whites” (p. 523). He supported his theory through his well-known study of the 1954 decision in *Brown v. Board of Education* (Bell, 1980, 2004). However, four years earlier, before he had coined the phrase “interest convergence,” he made a compelling argument for the idea in his examination of three other major historical events: the abolition of slavery, the Emancipation Proclamation, and the Civil War Amendments (Bell, 1976). In my dissertation, it was vital that I pay attention to both the dominant White power structure within academia, as well as to the privilege that the dominant power structure owns and can, in turn, exact on historically underrepresented students on campus, whether knowingly or not. At the same time, the purpose of this dissertation is not to discover “the answer” on how to make campus racial climate “better” for students of color. Instead, my focus is on examining whether the words institutions use in student conduct codes affect campus racial climate. Therefore, CRT and interest convergence were still important factors for me to keep in mind as I progressed in my work.

Essentialism and intersectionality. Essentialism and intersectionality are other areas that resonated with my research. Anecdotally, on many occasions I have borne witness to discussions in classrooms, online or print articles, or research papers that refer to the “experiences of students of color.” This is an example of essentialism; condensing

the experiences of all the sub-categories within the larger umbrella of “students of color” and equating them. While “all oppressed people have something in common—their oppression ... the forms of that oppression may vary from group to group” (Delgado & Stefancic, 2012, p. 62). I envisioned this notion as part of my study and, rather than viewing campus climate data through a binary “White students and non-White students” lens, I separated the data into racial categories to discern between and amongst experiences of those individual groups. Only by doing this could I hope to understand how, for example, African Americans and Asian Americans experience campus climate differently, or not, as the data showed. I believe these are crucial components in answering questions about campus climate.

Positionality Statement

I would be remiss not to make mention of my positionality. It is vital that I reveal my identity as a White woman, as my placement in the dominant power structure on campuses will likely be viewed as an inherent bias. I would imagine that a central criticism of my work will revolve around the idea that employing CRT as a lens requires consideration of the researcher’s experience regarding race and racism (Somekh & Lewin, 2011). Given my relative inexperience with CRT, I cannot be sure that I consistently employed CRT in its traditional form; however, I sought to utilize an offshoot, “critical race realism,” which

seeks to use more quantitatively based research methods to: (1) expose racism where it may be found; (2) identify its effects on individuals and institutions, and (3) put forth a concerted attack against it, in part, via public policy arguments.

(Somekh & Lewin, 2011, p. 80)

I also have concerns around subjectivity and values. Somekh and Lewin (2011) informed that studies utilizing CRT demand attention to race and racism as a part of the researcher's personal and/or professional experience. Again, I feel certain that my being White will raise concerns about my ability to be sensitive to race, and about my personal experiences with race, as they are part of the dominant power structure. In order to assist in this, I employed a mixed methods approach to enhance rigor in my study, as "mixed methods approaches to social inquiry are uniquely able to generate *better understanding* in many contexts than studies bounded by a single methodological tradition" (Somekh & Lewin, 2011, p. 260, emphasis in original). This is particularly true in relation to studying various dimensions of campus climate, where "merging mixed-methods and intersectional analyses can generate deeper and more authentic understandings of students' experiences within the campus climate and its relation to sense of belonging in college" (Maramba & Museus, 2011, p. 94). Where one-dimensional quantitative analyses comparing group perceptions and experiences are often limited to two populations, narrowly defined and categorized by one element (such as race), a mixed methods approach allows for "multiple kinds of data [to] be collected with different strategies and methods in ways that reflect complementary strengths and non-overlapping weaknesses, allowing a mixed methods study to provide insights not possible when only qualitative or quantitative data are collected" (Conrad & Serlin, 2011, p. 151).

Research Questions

As I considered the many aspects of campus racial climate to be explored, the overarching question driving my specific inquiry started as:

- What would student conduct codes look like that help achieve a positive racial climate on college campuses while also recognizing the right to freedom of speech?

By answering this question, I believed I could present a theory that included factors to be considered when institutions are writing or revising student conduct codes that will help them achieve a more positive campus racial climate. Recognizing that I could not show causation, I was interested in exploring shared characteristics, associations, and relationships. As I continued thinking about this broader question, I narrowed my examination to four specific questions:

1. Can institutions use student conduct codes to promote positive campus racial climate, while still allowing for—and even promoting—freedom of speech and, if so, how?
2. What is the relationship between the specific verbiage used in a student conduct code and the perception of campus racial climate on an individual campus?
3. Which institutions are providing a positive campus racial climate to their students?
4. What are the shared characteristics of student conduct codes that promote a positive campus racial climate and freedom of speech?

Definitions

To provide clarity and ensure mutual understanding, this section defines key terms employed throughout this dissertation, including campus climate, the First Amendment, academic freedom, and microaggressions.

Campus Climate

For the purposes of this study, I utilize two complementary explanations of campus climate. The first is provided by Dr. Susan Rankin, Senior Research Associate in the Center for the Study of Higher Education and Professor Emeritus of Education Policy Studies and College Student Affairs at The Pennsylvania State University, and a founding member of Rankin and Associates Consulting.

Rankin's Transformational Tapestry Theory is a comprehensive strategic model of assessment, planning, and intervention "designed to assist campus communities in conducting a comprehensive assessment of their institutional climate to better understand the challenges facing their respective communities" (Rankin & Reason, 2008). In her campus climate work with more than 120 institutions of higher learning, Rankin defined campus climate as "the current attitudes, behaviors and standards of faculty, staff, administrators and students concerning the level of respect for individual needs, abilities and potential" (University of California Office of the President [UCOP], 2014). The second comes from the University of St. Thomas in Minnesota, which provided a definition of campus climate for its population that encompasses the wide range of feelings, perceptions, and interpretations that various campus populations may possess.

Behaviors within a workplace or learning environment, ranging from subtle to cumulative to dramatic, that can influence whether an individual feels personally safe, listened to, valued, and treated fairly and with respect.

The atmosphere or ambience of an organization as perceived by its members. An organization's climate is reflected in its structures, policies, and practices; the demographics of its membership; the attitudes and values of its members and

leaders; and the quality of personal interactions. (University of St. Thomas [UST], 2016)

Each provides an important element of viewpoints about campus racial climate, as the former encompasses more than actual behaviors, to include attitudes and standards as well; whereas, the latter describes the scope, from imperceptible to egregious. The latter also includes discussion of policies and the authentic practice of those policies.

First Amendment Rights

The United States Constitution states that:

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

In interpreting the First Amendment, the Legal Information Institute (n.d.) of Cornell University Law School provides this context:

The most basic component of freedom of expression is the right of freedom of speech. The right to freedom of speech allows individuals to express themselves without interference or constraint by the government. The Supreme Court requires the government to provide substantial justification for the interference with the right of free speech where it attempts to regulate the content of the speech. (p. LII)

In other words, the US considers freedom of speech to be paramount. This emphasis is a likely result of the political struggle for freedom, and the historical desire for truth to emerge from any source.

Academic Freedom

Academic freedom began in the late 19th and early 20th centuries as a central tenet in the “advancement of truth” (AAUP, n.d.a; Tierney & Lechuga, 2005). A difficult and complex concept to define, the American Association of University Professors set forth its basic tenets in its “1940 Statement of Principles on Academic Freedom and Tenure” as:

1. Teachers are entitled to full freedom in research and in the publication of the results, subject to the adequate performance of their other academic duties; but research for pecuniary return should be based upon an understanding with the authorities of the institution.
2. Teachers are entitled to freedom in the classroom in discussing their subject, but they should be careful not to introduce into their teaching controversial matter which has no relation to their subject. Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of the appointment.
3. College and university teachers are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should

show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution. (AAUP, n.d.a)

Within these central tenets lies not only the definition for academic freedom used widely amongst higher education institutions, but also recognition of expected responsibilities of faculty members.

Microaggressions

While there are several good definitions from which to choose, for the purposes of this dissertation, I chose one offered by Dr. Derald Wing Sue (2010), Professor of Psychology and Education at Columbia University. Dr. Sue, an expert in the psychology of racism/antiracism, proffers this definition:

Microaggressions are the everyday verbal, nonverbal, and environmental slights, snubs, or insults, whether intentional or unintentional, which communicate hostile, derogatory, or negative messages to target persons based solely upon their marginalized group membership. In many cases, these hidden messages may invalidate the group identity or experiential reality of target persons, demean them on a personal or group level, communicate they are lesser human beings, suggest they do not belong with the majority group, threaten and intimidate, or relegate them to inferior status and treatment. (Sue, 2010, para. 2)

While there are other interpretations available of each of these concepts—campus climate, the First Amendment, academic freedom, and microaggressions—this common understanding provides transparency for my analysis throughout this study.

CHAPTER 2: LITERATURE REVIEW

To understand the current discussions about campus racial climate and free speech as they relate to student conduct codes, it is important to have some background on the evolution of student protests on campus as well as an understanding of current events. Equally essential is a familiarity with significant legal cases in the areas of First Amendment rights, academic freedom, and legal challenges specific to campus student conduct policies. I also explored campus racial climate through the lenses of persistence, integration, and success; the effect of microaggressions; and the benefits of a diverse student body. Finally, I looked at the historical purpose of student conduct codes on campus.

Student Movements/Protests

Brief History

Student activism on campuses dates back to the Colonial era, but these early protests tended toward singular issues on a particular campus and did not branch out to larger social issues (Broadhurst, 2014). However, advocacy around the issue of slavery, and the onset of war began to change the isolated nature of student protest and move it toward the national arena (Broadhurst, 2014; Rudy, 1996; Wood, 1974).

As the 20th Century arrived, students expressed a desire for more freedoms on campus, and campus activism shifted its focus from strict on-campus policies to larger, national social issues (Broadhurst, 2014; Wood, 1974). This sentiment of social activism remains the norm today in 2020, as students around the country confront issues of racism, sexism, ableism, and LGBTQIA rights (Barnhardt, 2014). As referenced earlier, groups like BLC, along with Black Lives Matter, #CanYouHearUsNow, and other, less

centrally-organized groups have developed from the Occupy Movement, but these groups have a feel that is reminiscent of the turbulent protest era of the 1960s (Wong, 2015).

Many of the student protests around the country since 2014 have adopted national issues but approached them from the standpoint of changing campus policies (Wong, 2015).

Current Events

As mentioned above, institutions such as the University of Missouri, Harvard, Princeton, Brown, and Yale have all experienced protests related to campus racial climate and students' desires to change not only the racial profile of their campuses, but also how the campus racial climate actually feels to the student body (Wong & Green, 2016).

While there have been more incidents than can be outlined in this brief review of literature, the following five events represent the beginning of the campus occurrences, spurred by national episodes of racism and racial tensions.

University of Missouri. In 2014, Michael Brown was shot and killed by police in Ferguson, Missouri (Fuller, 2016). Hours away in Columbia, students joined the chorus of protestors around the nation, and started two activist groups (Wong & Green, 2016). While the University's Chancellor publicly commented that, "racism has deep roots at our university," the students countered with widespread complaints about President Tim Wolfe's handling of racial incidents on campus (Miller, 2015). Several racially-motivated incidents occurred over the next year, and the students responded with a list of demands, including hiring more Black faculty members; requiring diversity training for students, faculty, and staff; and increased funding for diversity programming and outreach on campus (Wong & Green, 2016). After several more instances of overt racism on campus, President Tim Wolfe issued an apology, approximately 18 months

after the protests started. In response, University of Missouri football players pledged to stop all involvement in football-related activities until the president agreed to resign (Miller, 2015). One day later, Missouri legislators called for Wolfe's resignation, citing his inability to "effectively lead" (Miller, 2015). Wolfe resigned the following day.

Harvard University. Students at Harvard joined the national protest movement after Ferguson and presented a list of demands to their administration that December (Wong & Green, 2016). Almost a year after that, with little to no response to said list, racial tensions drew national attention when portraits of Harvard's Black professors were found covered in black tape (Wong & Green, 2016). Scores of students came forward to protest the law school's hostile environment, and the school's dean convened a committee to decide whether the school's seal, which included the family crest of brutal slaveholder Isaac Royall, Jr., should be abandoned (Lartey, 2016). While it took approximately three months for the committee to come to a decision, ultimately, it recommended that the seal be removed.

Princeton University. Students held a nonviolent sit-in at the President's office in November of 2015 (Svrluga, 2015). Included in their call for a more inclusive campus was a demand for a "critical rethinking of Woodrow Wilson's legacy at Princeton," as well as "a diversity distribution requirement for students and compulsory competency training for faculty and staff, and affinity housing and space for Black students" (Svrluga, 2015b, para. 5). Ultimately, the school opted to keep Wilson's name on its School of Public and International Affairs but pledged to increase diversity on campus through a series of initiatives (Wong & Green, 2016).

Brown University. A Dartmouth College student attending a conference on race, gender, and socioeconomic issues in November of 2015 was physically assaulted by a Brown University public safety officer, who then handcuffed the student (Wong & Green, 2016). Prior to the incident, the student in question had openly questioned public safety officers' treatment of minority students attending a party at Brown's Machado house, which is an intentional space for students interested in Latinx language and culture (Maher, 2015). After news of the assault spread across campus, other students came forward to both the administrations at Brown and Dartmouth to express other instances of racial profiling and/or harassment on their respective campuses (Associated Press [AP], 2015). Brown's President announced that she would consider whether officers needed additional training, but students on both campuses quickly mobilized and joined their peers across the nation in protest (AP, 2015). In February 2016, Brown announced a \$165 million diversity program which includes plans to double the number of faculty from historically underrepresented groups by the 2024-2025 academic year, as well as proposals to support curricular and co-curricular diversity initiatives (Brown, 2016).

Yale University. Racial tensions at Yale were elevated during the fall and winter of 2015 due to racially-charged incidents on campus (Wong & Green, 2016). In October, students reported that a fraternity on campus was barring women of color from attending its Halloween party (Svrluga, 2015a). This came on the heels of a campus-wide debate regarding insensitive and/or offensive Halloween costumes, after campus administrators issued a letter urging thoughtfulness on the part of students, and a Yale lecturer responded with a controversial email in which she encouraged students to decide for themselves what to wear on Halloween, even if it might be "a little bit inappropriate or

provocative or, yes, offensive” (Hartocollis, 2015, para. 2). Students on campus had already offered concerns regarding the scarcity of faculty of color, as well as Yale’s historic ties both to slavery and white supremacists (Remnick, 2015). Student outrage resulted in a “March of Resilience,” and Yale’s President even admitted in a private meeting that it had “failed” its students of color (Wong & Green, 2016). Students demanded increased support for campus cultural centers and the resignation of the lecturer who wrote the controversial email (Wong & Green, 2016). The President agreed to the increased support but did not immediately demand the resignation of the lecturer (Wong & Green, 2016). She resigned one month later.

While certainly not an exhaustive list, these examples indicate the levels of frustration students are experiencing in relation to what they see as hostile campus racial climates. Students are protesting everything from statues and building names rooted in slavery and racism, to student and faculty diversity, support for cultural centers, and curricular changes focused on teaching cultural competency. As mentioned earlier, these protests are occurring all over the country, confounding campus leaders as they grapple with the right to freedom of speech “versus” a healthy campus racial climate for all students, faculty, and staff. I believe this is an unnecessary juxtaposition, and my driving question through this process has been about the possibility of a peaceful coexistence of these ideas on US campuses.

Legal Issues and Policy Positions

First Amendment Rights

The First Amendment Center, a subsidiary of the Newseum Institute, encapsulates how deeply the right to freedom of speech is engrained in US society:

... in a sense both deep and wide, “freedom of speech” is a value that has become powerfully internalized by the American polity. Freedom of speech is a core American belief, almost a kind of secular religious tenet, an article of constitutional faith. (Smolla, 2002)

First Amendment rights on US campuses has been an interest of mine for several years. My master’s thesis, *Slurred Speech: Free Speech Rights and Social Media on the College Campus* (Barnes, 2014), explored freedom of expression on college campuses through a brief review of legal precedents, including both higher education cases and public employment cases. This section includes legal case analyses based on my thesis. These cases, and the analyses, offer insight into the views held by the United States Supreme Court in regard to freedom of expression rights on US campuses.

Significant cases. Since the “substantial disruption” standard was set in *Tinker v. Des Moines* (1969), there have been many challenges to freedom of speech, both in the PK-12 setting and in higher education. Time and time again, the United States Supreme Court has indicated that it simply does not wish to grapple with the thorny subject of possible restrictions on speech rights for students in higher education settings. To this day, no case has emerged that has so captivated the Court as to demand its attention in confronting this topic and setting a national standard for speech in the college setting. Throughout its history, the Court has made clear that students on campuses enjoy the same right to freedom of speech as any other citizen (Barnes, 2014). While *Tinker v. Des Moines* (1969) provided a foundation for thinking about the standard that should be used to judge free speech rights in higher education, starting with *Healy v. James* (1972), the Supreme Court established a pattern of differentiating the regulation of speech at the PK-

12 level from that in higher education. Through rulings in five cases, it made clear that it would not impose the same limitations on the two differing populations (Barnes, 2014).

Healy v. James. In this 1972 case, students at Central Connecticut State College were denied the right to form a recognized student chapter of “Students for a Democratic Society.” As a recognized student organization, the chapter could have used college facilities for meetings and would also have had access to the college newspaper. The president of the college denied the group because he feared potential “disruption and violence” on campus (*Healy v. James*, 1972, p. 176). The students sued, and the case made its way through the legal system to the United States Supreme Court. In its decision, the Court noted that the time period in which this case arose, 1969-1970, was one of “unrest” on college campuses, and observed that “there had been widespread civil disobedience” as well (*Healy v. James*, 1972, p. 171). But the Court also pointed out that while “the causes of campus disruption were many and complex, one of the prime consequences of such activities was the denial of the lawful exercise of First Amendment rights to the majority of students by the few” (*Healy v. James*, 1972, p. 171). The Court also stated, “many of the most cherished characteristics long associated with institutions of higher learning appeared to be endangered” (*Healy v. James*, 1972, p. 171). The Court ultimately ruled in favor of the students, noting that “state colleges and universities are not enclaves immune from the sweep of the First Amendment,” and went on to say, “the precedents of this Court leave no room for the view that ... First Amendment protections should apply with less force on college campuses than in the community at large” (*Healy v. James*, 1972, p. 180; Barnes, 2014).

Papish v. Board of Curators of the University of Missouri. On the heels of its decision in *Healy v. James* (1972), another case emerged in 1973, in which the United States Supreme Court once again defended broad First Amendment protection on the college campus. The University of Missouri School of Journalism expelled a graduate student for distributing a student newspaper containing “forms of indecent speech” (*Papish v. Board of Curators of the University of Missouri*, 1973, p. 667). Papish sued in federal district court and lost, and then lost again in the Eighth Circuit (*Papish v. Board of Curators of the University of Missouri*, 1972). The United States Supreme Court issued its decision—in favor of Papish—on March 19, 1973. In this decision, the Court expanded its earlier ruling in *Healy v. James* (1972) by declaring that “the First Amendment leaves no room for the operation of a dual standard in the academic community with respect to the content of speech” (*Papish v. Board of Curators of the University of Missouri*, 1973, p. 671). The University of Missouri was ordered to reinstate Papish, barring any valid academic reason for her dismissal (Barnes, 2014).

Widmar v. Vincent. In the 1981 case of *Widmar v. Vincent*, the United States Supreme Court heard a case concerning use of campus facilities for the purpose of meetings of a registered religious student group. Ultimately, the Court found in favor of the students and—while noting that campuses do differ from more general public fora “such as streets or parks” (*Widmar v. Vincent*, 1981, p. 268)—upheld the notion “that students enjoy First Amendment rights of speech and association on the campus” (*Widmar v. Vincent*, 1981, p. 269). In an insightful footnote, the Court wrote: “University students are, of course, young adults. They are less impressionable than younger students . . .” (*Widmar v. Vincent*, 1981, p. 274; Barnes, 2014).

Rosenberger v. Rector & Visitors of the University of Virginia. This 1995 case of *Rosenberger v. Rector & Visitors of the University of Virginia* once again focused on the aspect of religious speech on campus, when a registered Christian student group at the University of Virginia was denied funding for printing costs because its magazine expressed specific religious beliefs. The case ultimately came before the United States Supreme Court, which found in favor of the student group. The particulars of the case are not nearly as important to this discussion as the opinion of the Court, which wrote: “It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys. Discrimination against speech because of its message is presumed to be unconstitutional” (*Rosenberger v. Rector & Visitors of the University of Virginia*, 1995, p. 828; Barnes, 2014). The Court went on to state:

Vital First Amendment speech principles are at stake here. The first danger to liberty lies in granting the State the power to examine publications to determine whether or not they are based on some ultimate idea and if so for the State to classify them. The second, and corollary, danger is to speech from the chilling of individual thought and expression. That danger is especially real in the University setting, where the State acts against a background and tradition of thought and experiment that operates at the center of our intellectual and philosophic tradition. In ancient Athens, and, as Europe entered into a new period of intellectual awakening, in places like Bologna, Oxford, and Paris, universities began as voluntary and spontaneous assemblages or concourses for students to speak and to write and to learn. The quality and creative power of student intellectual life to this day remains a vital measure of a school’s influence and

attainment. For the University, by regulation, to cast disapproval on particular viewpoints of its students risks the suppression of free speech and creative inquiry in one of the vital centers for the Nation's intellectual life, its college and university campuses. (*Rosenberger v. Rector & Visitors of the University of Virginia*, 1995, p. 835; Barnes, 2014)

Board of Regents of the University of Wisconsin System v. Southworth. Again, in this 2000 case of *Board of Regents of the University of Wisconsin System v. Southworth*, the details of the case are not as important as the opinion of the United States Supreme Court. The case involved students who had ideological objections to student groups that were the recipients of funds generated by mandatory student fees. While the lower courts sided with the three students who filed suit against the University of Wisconsin, the Supreme Court unanimously overturned the decision of the Seventh Circuit. In its decision, the Court wrote:

The speech the University seeks to encourage in the program before us is distinguished not by discernable limits but by its vast, unexplored bounds. To insist upon asking what speech is germane would be contrary to the very goal the University seeks to pursue. It is not for the Court to say what is or is not germane to the ideas to be pursued in an institution of higher learning. (*Board of Regents of the University of Wisconsin System v. Southworth*, 2000, p. 232; Barnes 2014)

Additionally, the Court noted in this case that it made “no distinction between campus activities and the off-campus expressive activities” of groups, specifically pointing out that “[u]niversities, like all of society, are finding that traditional conceptions of territorial boundaries are difficult to insist upon in an age marked by revolutionary changes in

communications, information transfer, and the means of discourse” (*Board of Regents of the University of Wisconsin System v. Southworth*, 2000, p. 234; Barnes, 2014). The Court also observed that its

cases dealing with the right of teaching institutions to limit expressive freedom of students have been confined to high schools ... whose students and their schools’ relation to them are different and at least arguably distinguishable from their counterparts in college education. (*Board of Regents of the University of Wisconsin System v. Southworth*, 2000, p. 239; Barnes, 2014)

These opinions illustrate a clear pattern on the part of the Court of support for freedom of speech on college and university campuses.

To further highlight this, it is worth reviewing Justice Samuel Alito’s concurrence in *Morse v. Frederick* (2007) or, as it is popularly known, the “BONG HiTS 4 JESUS” case. In *Morse v. Frederick*, the U.S. Supreme Court narrowed the *Tinker v. Des Moines* (1969) standard, concluding that public PK-12 schools could limit or censor speech promoting illegal drug use. While Justice Alito clearly agreed with the finding of the Court as far as restricting “speech that a reasonable observer would interpret as advocating illegal drug use,” he went on to argue that *Morse v. Frederick* (2007) does not sanction any other restrictions on speech aside from those already set by Supreme Court precedent (p. 422). Furthermore, he stated,

the opinion of the Court does not endorse the broad argument advanced by petitioners and the United States that the First Amendment permits public school officials to censor any student speech that interferes with a school’s “educational

mission.” This argument can easily be manipulated in dangerous ways, and I would reject it before such abuse occurs. (*Morse v. Frederick*, 2007, p. 422)

Justice Alito thus joined “the opinion of the Court with the understanding that the opinion does not endorse any further extension” (*Morse v. Frederick*, 2007, p. 425). Taken in conjunction with the strong statements by the Court in *Healy v. James* (1972), *Papish v. Board of Curators of the University of Missouri* (1973), *Widmar v. Vincent* (1981), *Rosenberger v. Rector & Visitors of the University of Virginia* (1995), and *Board of Regents of the University of Wisconsin System v. Southworth* (2000), it is clear that the Court considers students on college campuses to hold the same freedom of expression rights as any other citizen over the age of eighteen.

Academic Freedom

Freedom of speech holds a central and notable status in both the education and research missions of higher education institutions. Furthermore, academic institutions maintain a rare, if not unique, standing in US society as the “marketplace of ideas,” a phrase with origins in multiple Supreme Court speech cases dating as far back as 1919 in *Abrams v. United States*. As noted earlier, the AAUP serves as the organization that protects academic freedom. The AAUP regards academic freedom as “the indispensable requisite for unfettered teaching and research in institutions of higher education” (AAUP, n.d.b.). For more than a century, the AAUP has worked to maintain the centrality of academic freedom as the core principle in the teaching profession.

A review of mission statements taken from a random sample of public higher education institutions across the US revealed key words and phrases such as “truth,” “academic freedom,” “knowledge,” and “integrity” (Barnes, 2016). They often

delineated further, explaining that their three-fold mission of research, teaching, and service can be realized only through a free and open exchange of ideas. Some institutions implement additional policies specifically linked to academic freedom, its relationship to various forms of freedom of speech, and its essential place in the core value of pursuit of knowledge. Universities thrive on a sort of contest of ideas, and “the intellectual vitality of a university depends on this competition—something that cannot happen properly when students or faculty members fear punishment for expressing views that might be unpopular with the public at large or disfavored by university administrators” (Campus Rights, 2016). Furthermore, most faculty recognize that “it is critical to present a range of perspectives so students can understand issues and develop frameworks for thinking about ... issues” (Hirshman, 2014).

Significant cases. The application of academic freedom has been challenged through seminal court cases (*Connick v. Myers*, 1983; *Garcetti v. Ceballos*, 2006; *Pickering v. Board of Education*, 1968). The most recent statement of the Supreme Court, in *Garcetti v. Ceballos* (2006), left a problematic gap in the original concept of academic freedom as being “vested in the individual professor” (Tierney & Lechuga, 2005, p. 10). Current scholars are divided on this issue, with some believing that academic freedom rests with institutions, not individuals (Byrne, 1989, 2006; Horwitz, 2005; Rosenthal, 2008); while others assert that academic freedom rests clearly with the individual (Finkin, 1983, 1988; Hiers, 2007; Rabban, 1990). This divide affects both faculty and students on campuses and is related closely to First Amendment rights.

Pickering v. Board of Education. After a contentious school bond vote in his district, a teacher, Marvin Pickering, wrote a letter to the editor of the local paper,

charging that the district had not been honest with voters about how money for the schools was being spent (*Pickering v. Board of Education*, 1968). Pickering signed the letter as “a citizen, taxpayer and voter, not as a teacher, since that freedom has been taken from the teachers by the administration” (*Pickering v. Board of Education*, 1968, p. 578). The district responded by firing Pickering, who then sued, taking the case all the way to the United States Supreme Court. In June 1968, the Court issued its 8-1 decision in his favor. Writing for the majority, Justice Thurgood Marshall noted that the deciding factor was

a balance between the interests of the teacher, as a citizen, in commenting upon matters of public concern and the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees. (*Pickering v. Board of Education*, 1968, p. 568)

The Court determined that Pickering’s right to free speech as a citizen on issues of public interest or importance could not be diminished simply because he made comments that were viewed negatively by his employer. Furthermore, the Court noted that it was “apparent that the threat of dismissal from public employment is nonetheless a potent means of inhibiting speech” (*Pickering v. Board of Education*, 1968, p. 574; Barnes 2014).

Connick v. Myers. In the 1983 case of *Connick v. Myers*, the Supreme Court further established its position that public employees are protected when commenting on matters of public interest, but in doing so it muddied the definition of “public,” creating confusion in the wake of its decision. Sheila Myers was an assistant district attorney working in the office of District Attorney Harry Connick, when she was informed that

she was being transferred to a different section of the criminal court. Upset by this news, Myers challenged the transfer and in addition informed Waldron of her displeasure with certain office procedures (*Connick v. Myers*, 1983). Waldron responded that he did not believe that others in the office shared her opinion. Myers claimed that, at this point, she informed Waldron that she would research his assertion and collect information from others in the office. Myers drafted a questionnaire and distributed it to several other assistant district attorneys in the office. The survey included questions regarding the fairness of transfer policies, the handling of office grievances, office morale, the level of confidence inspired by specifically named co-workers, and whether employees felt pressure to work on political campaigns for candidates supported by the district attorney's office.

Connick fired Myers, claiming that she had refused the transfer, and that the distribution of the questionnaire was an act of insubordination (*Myers v. Connick*, 1981). Myers sued on the grounds that her actions were protected by the First Amendment and won in both federal district court and on appeal. Connick then appealed to the United States Supreme Court, which delivered its decision on April 20, 1983 (*Connick v. Myers*, 1983). The Court found in favor of Connick on the grounds that the majority of the questions on Myers' survey were not matters of public concern and were threatening to the district attorney's authority. In its decision, the Court noted that "the limited First Amendment interest involved here does not require that Connick tolerate action which he reasonably believed would disrupt the office, undermine his authority, and destroy close working relationships. Myers' discharge therefore did not offend the First Amendment" (*Connick v. Myers*, 1983, p. 154; Barnes, 2014).

In the dissent, Justice Brennan, applying principles from other cases, noted that this case did involve matters of public concern because the survey included questions regarding office morale, which would undoubtedly affect job performance (*Connick v. Myers*, 1983). He also observed that “the Court’s adoption of a far narrower conception of what subjects are of public concern” undermines the principle that citizens decide what is in the public interest (*Connick v. Myers*, 1983, p. 163). Finally, the dissent outlined the chilling consequence of upholding the termination of an employee for criticizing her employer. Invoking its prior decision in *Pickering v. Board of Education* (1968), in which the Court found that “the threat of dismissal from public employment is ... a potent means of inhibiting speech” (p. 574), Brennan emphasized the importance of the public to engage in free and open debate, particularly on issues of government. He concluded by observing that the Court’s earlier test in *Tinker v. Des Moines* (1969) should have been utilized to determine whether the speech in question “materially and substantially” disrupted or interfered with the operations of the work environment, as opposed to merely finding it uncomfortable, unpleasant or annoying (Barnes, 2014; *Connick v. Myers*, 1983).

Garcetti v. Ceballos. *Connick v. Myers* (1983) set the stage for *Garcetti v. Ceballos* (2006), the most distressing public employment case to date related to protection of free speech for public employees. Richard Ceballos was a deputy district attorney in Los Angeles, who was working for Gil Garcetti, the district attorney at that time. Ceballos drafted a memo to his superiors in which he outlined serious reservations regarding the validity of a search warrant affidavit. He shared concerns that the information offered to procure the search warrant was inaccurate, and recommended

dismissing the case (*Garcetti v. Ceballos*, 2006). Ceballos met with his superiors and, ultimately, the District Attorney's office decided to pursue prosecution in the case.

Ceballos subsequently opened a grievance, claiming there was retaliation against him for his memo. He asserted that he was reassigned to a new position, transferred to a different courthouse, and denied a promotion. The grievance was denied (*Garcetti v. Ceballos*, 2006).

Ceballos sued in federal district court claiming that the District Attorney's office had violated his First Amendment rights through retaliatory actions as a direct result of his memo (*Ceballos v. Garcetti*, 2004). While his superiors denied those claims, the decision in the case was that Ceballos was not entitled to First Amendment protection in relation to a memo written in the course of executing his job duties. The Ninth Circuit reversed, holding that Ceballos wrote the memo "as a citizen upon matters of public concern" (*Ceballos v. Garcetti*, 2004, p. 52).

In a bitterly divided 5-4 decision, the United States Supreme Court held that the test of rights in this case was whether Ceballos acted as a public employee or a private citizen in writing the memo (*Garcetti v. Ceballos*, 2006). The majority held that Ceballos acted as a public employee and, therefore, remained subject to disciplinary action based on job performance. Essentially, the Court said that public employees have no free speech protection when they make statements critical of their employers. This ruling applies to all government employees, and although the court did not specifically address implications for higher education in the ruling, Justice David Souter warned in his dissent that the decision could affect academic freedom. In response, Justice Kennedy wrote that the Court "need not ... decide whether the analysis we conduct today would apply in the

same manner to a case involving speech related to scholarship or teaching” (*Garcetti v. Ceballos*, 2006, p.425).

In fact, colleges and universities did take notice of the ruling and—recognizing this powerful threat—several took action. At the University of Minnesota, the Faculty Senate changed the Board of Regents policy on Academic Freedom and Responsibility in 2009 to define academic freedom as the “freedom, without institutional discipline or restraint, to discuss all relevant matters in the classroom ... and to speak or write on matters related to professional duties and the functioning of the University” (University of Minnesota Board of Regents [UMBOR], 2014, para. 2; Barnes, 2014). The University of Wisconsin-Madison amended its Faculty Policies and Procedures to include specific language that:

includes the right to speak or write—as a private citizen or within the context of one's activities as an employee of the university—without institutional discipline or restraint on matters of public concern as well as on matters related to professional duties, the functioning of the university, and university positions and policies. (Secretary, n.d, para. 2)

Similar changes occurred at institutions across the country, including in California, Delaware, Florida, and Pennsylvania (Barnes, 2014; Clayton, 2014).

Free Speech Policy Positions and Legal Consequences

Issues of “hate speech,” as it is typically referred to, have existed on campuses well before the current era of events. In 1993, Richard Delgado, a founder of CRT in legal scholarship and the current John J. Sparkman Chair of Law at the University of Alabama School of Law, along with three other authors, wrote the landmark book, *Words*

That Wound: Critical Race Theory, Assaultive Speech, and the First Amendment. Shortly thereafter, the debate around hate speech extended to college and university campuses, and several campuses authorized speech codes as a response (Delgado & Stefancic, 2018). In the vast abyss of legal challenges throughout history, precious few cases emerge regarding explicit challenges to freedom of speech violations on campuses. The most notable of these cases are detailed in Table 1 below.

Table 1

Notable Campus Free Speech Cases

Case Citation	Issue	Holding
<i>Doe v. Michigan</i> , 721 F. Supp. 852 (E.D. Mich 1989)	Constitutionality of campus speech code	In favor of student
<i>UWM Post v. Board of Regents of U. of Wis.</i> , 774 F. Supp. 1163 (E.D. Wis. 1991)	Overbroad or vague campus speech code	In favor of UWM Post
<i>Dambrot v. Central Michigan University</i> , 1995 FED App. 0168P (6th Cir.)	Definition of harassing speech	In favor of student
<i>Robert Corry, et al. v. Leland Stanford Junior University</i> , Case No. 740309 (Cal. Super. Ct. Feb. 27, 1995)	Constitutionality of campus racial harassment policy	In favor of students
<i>Bair v. Shippensburg University</i> , 280 F. Supp.2d 357 (M.D.Pa., 2003)	Constitutionality of campus speech code	In favor of student
<i>Roberts v. Haragan</i> , 346 F. Supp. 2d 853 (N.D. Tex. 2004)	Constitutionality of campus speech code and campus policy regarding free speech zone	In favor of student
<i>McCauley v. University of the Virgin Islands</i> , 618 F.3d 232 (3d Cir. 2010)	Constitutionality of campus speech code	In favor of student
<i>University of Cincinnati Young Americans for Liberty v. Williams</i> , No. 1:12-cv-155 (S.D. Ohio Jun. 12, 2012)	Campus policy regarding free speech zone	In favor of University

It is significant that none of these cases were elevated to the level of the United States Supreme Court. In all these cases, the lower courts ruled against the institutions, usually on the basis of vague or overbroad unconstitutional language utilized in a policy.

In fact, “over 200 campuses and universities had enacted hate speech or student conduct rules forbidding hate speech, yet practically every court that considered one of them struck it down” (Delgado & Stefancic, 2018, p. 178). Furthermore, these cases are not necessarily limited to specific “speech code” violations. In some, prohibitions on speech are veiled through use of semantics, such as “speech zone” policies, “student rights and obligations” policies, “electronic device” policies or “harassment” policies. Several campuses have recently introduced “bias teams,” or “bias incident” reporting systems that, ostensibly, encourage campus community members to report the use of discriminatory or harassing behavior. These systems are used on some campuses to urge their members to report instances when they feel “belittled” or “disrespected,” such as at Central Michigan University (CMU, n.d.), or when campus members experience “any event of intolerance or prejudice, not involving violence or other criminal conduct, intended to threaten, offend or intimidate another,” as at Bates College in Maine (Bates College, n.d.). Moreover, in watershed Supreme Court cases involving campus speech more liberally defined and broadly applied, the Court has repeatedly held that First Amendment protections on college campuses are vital to democracy. Again, my choice to focus on student conduct codes is because of that bridge between student speech and student conduct, where speech becomes actionable.

The Foundation for Individual Rights in Education (FIRE) is an organization with a mission “to defend and sustain individual rights at America’s college and universities” (FIRE, 2016). Its website, thefire.org, monitors and evaluates institutions based on their speech codes, among other criteria, and stores information about hundreds of cases

highlighting the pervasive disconnect between various forms of speech codes on campuses and First Amendment rights.

Currently, FIRE is engaged in a national litigation project entitled, “Stand Up For Speech,” which is “an unprecedented national effort to eliminate unconstitutional speech codes from our nation’s public colleges and universities” (Stand Up, 2019). As described on FIRE’s website, the impetus for this project is the restrictive speech codes—again, separate and discrete from conduct codes—that are employed by “55% of our nation’s public colleges” (Stand Up, 2019). The purpose of this project is to pursue lawsuits at institutions located in each federal circuit court district, forcing legal precedents, thereby pressuring schools to willingly, if reluctantly, amend or eliminate these unnecessary speech codes in order to avoid legal action. As of this writing, there are 15 active cases in 15 different states, covering slightly more than half of the district courts. The Foundation for Individual Rights in Education has been victorious in 13 consecutive cases thus far, affecting the free speech rights of almost 500,000 students across the US, and obtaining more than two million dollars in damages and fees (Stand Up, 2019). It must be noted that FIRE is a controversial organization, with some journalists questioning its ties to more conservative donors, such as the Koch brothers, the Earhart Foundation, and the John Templeton Foundation (Simon, 2016; Sleeper, 2016). Additionally, there have been questions regarding the composition of FIRE’s Board of Directors, which has over the years included conservative political advisors, along with wealthy donors with conservative ties (Sleeper, 2016).

Campus Racial Climate

The same random review of mission statements referenced above from higher education institutions around the United States highlights written commitments related to “diversity,” “academic community,” “respect,” and “interdependence” (Barnes, 2016). This presents the area in which many campuses are currently struggling. The American Council on Education (ACE) conducted an “American College President Study” that points to an extreme racial power differential between those who make policies and those who must abide by them.

Between 1990 and 2009, the share of college students that were racial and ethnic minorities increased from 20 percent to 34 percent. Between 1986 and 2011, the racial makeup of college presidents only increased from 8 percent to 13 percent. Moreover, when comparing data from the two most recent president studies, racial diversity declined from 14 percent in 2006 to 13 percent in 2011. (Cook, 2012, p. 15)

The American Council on Education [ACE] (2019) updated this study in 2017, and the findings revealed that in the five years since the previous study, the percent of college presidents who were racial and ethnic minorities increased only four percentage points, from 13 percent in 2011 to 17 percent in 2016.

Persistence, Integration, and Success

Studies conducted over the last 20 years expose the negative relationship between discrimination and integration into the academic community for students of color and emphasize this as a primary factor in persistence rates for those students (Cabrera et al., 1999). Among the most confounding challenges is the idea of a post-racial society. In

practice, research reveals that White students perceive racism as an obsolete concept, and therefore are less likely to recognize racial tensions on campus (Harper & Hurtado, 2007). Further complicating this conundrum is the differing perceptions of institutional diversity engagement. Both White students and students of color express frustration with their institutions' commitments to diversity; however, White students are more likely to wonder why this obligation is important and are also disposed to value it less (Cabrera et al., 1999; Harper & Hurtado, 2007). Students of color expressed a sense of isolation because of what they referred to as institutional negligence when it comes to diversity, and the consequential feeling that everything on campus felt "White" (Cabrera et al., 1999; Harper & Hurtado, 2007).

The idea that students of color lag behind White students in terms of persistence rates is widely accepted in the academic community; however, often ignored is another side of the issue, which is that "interaction with peers is probably the most pervasive and powerful force in student persistence and degree completion" (Pascarella & Terenzini, 2005, p. 15). How can students of color interact with peers who simply do not exist on their campuses? Further, research shows that White students reap far higher benefits from increased "diversity workshops" than students of color (Pascarella & Terenzini, 2005), also known as Bensimon's (2005) "diversity cognitive" theory. This begs the question: Why are so many campuses committed to diversity? Is it for the benefit of students of color, or is it to further advantage White students who already hold privilege in academia? In attempting to answer these important questions, perhaps it is important to view campuses through an "ecological perspective," in which college effects students

and students have an impact on their colleges, rather than through a model of simplistic “inputs and outputs” (Dey & Hurtado, 1995).

A climate that supports integration for students of color into the campus community is vital to student success (Doan, 2011). Given that most students of color enroll at primarily White institutions, creating an inclusive environment that contributes to their success is an important issue for higher education (Carter & Wilson, 1993; Doan, 2011). Institutions work toward integration through several avenues, including multicultural student centers, designated campus safe spaces, academic diversity requirements, and representation of diverse faculty and staff (Doan, 2011; Hurtado, 1992). However, without gathering information specific to a particular campus, it is difficult to establish the desired strategies and mechanisms for helping students of color succeed.

Furthermore, without an understanding of “the complicated nature of understanding the effects of race and gender on the educational experiences and outcomes of individuals” (Williams, 2014, p. 36), getting to the root of these feelings of disenfranchisement on the part of students of color remains challenging. “Various aspects of identity are not equally experienced across and within groups,” (Williams, 2014, p. 36) and while it is important to disentangle race and gender and understand them as independent factors of oppression, it is equally important to study and “recognize how race and gender can have a cumulative and compounding effect” (Williams, 2014, p. 36) on disenfranchisement. Continued emphasis on one-dimensional assessments, as opposed to intersectional considerations allows the status quo to thrive, further marginalizing these largely disregarded populations of students of color.

As Astin (1984) and Tinto (1993) highlighted, integration and success are closely related to persistence. Put simply, the primary “factors contributing to persistence were associated with students’ involvement in college life, whereas, factors contributing to departure from college were associated with students’ noninvolvement” (Milem & Berger, 1997, p. 387; Kuh & Love, 2000).

Microaggressions

Davis (1989) summed up the effects of microaggressions effectively: “The Black person’s self-esteem suffers because he is constantly receiving an unpleasant image of himself from the behaviors of others to him” (p. 1566). Pierce (1995) added:

Probably the most grievous of offensive mechanisms spewed at victims of racism and sexism are microaggressions. These are subtle, innocuous, preconscious, or unconscious degradations, and putdowns, often kinetic but capable of being verbal and/or kinetic. In and of itself a microaggression may seem harmless, but the cumulative burden of a lifetime of microaggressions can theoretically contribute to diminished mortality, augmented morbidity, and flattened confidence. (p. 281)

Microaggressions cause students of color to feel alienated from their campus environments. This withdrawal limits the interactions they have with White students, which can negate the effects of a diverse student body (Harper & Hurtado, 2007; Solórzano et al., 2000). Research suggests that students of color interpret all negative treatment and/or interactions on their campuses as racist, so any seemingly unfriendly looks or negative comments (whether overtly racist or not) are attributed to racism (Harper & Hurtado, 2007). Microaggressions can cause extreme physical, mental, and

emotional stress, which contributes to the gap in persistence and success rates (Yosso, Smith, Ceja, & Solorzano, 2009). While familiar scholars such as Tinto offered deep insights into how microaggressions affect student development experiences, those earlier models do not consider the ways in which students of color navigate college life differently, seeking out their own safe spaces (Tierney, 1999).

An intersection between microaggressions and critical race theory (CRT) also exists, which I discuss in more detail later in this study. This juncture presents a unique approach to existing modes of scholarship in higher education because they explicitly focus on how the social construct of race shapes university structures, practices, and discourses from the perspectives of those injured by and fighting against institutional racism. (Yosso et al., 2009, p. 663)

Through the lens of CRT, scholars are urged to consider that more subtle microaggressions affect racism today and take into account the cumulative effect (Pierce, 1995). Despite recent attention and national events, relatively little research into how microaggressions affect campus racial climate exists. While some studies show that certain groups reported higher dropout rates due to microaggressions, even that is an area that lacks substantial research (Yosso et al., 2009).

Overall, current research indicates that the apparent progress that has been made in terms of college access and equity for historically underrepresented students is somewhat of an illusion. While institutions are admitting a more diverse student body, the negative racial climates on US campuses are contributing to lower persistence, integration, and success rates for students of color. In addition, the institutional structures in place on college campuses contribute to this persistence gap by continuing a pattern of

diversity for the benefit of White students, rather than dismantling these structures in order to create a truly equitable environment in which students of color can thrive.

Benefits of a Diverse Student Body

Throughout recent legal history, the United States Supreme Court affirmed its commitment to a diverse student body as a core value in education, making it clear that the goal of diversity in the student body is to ensure an enriching educational experience for students, and to provide the US with a citizenship with broad exposure to ideas and experiences both like and unlike their own (*Fisher v. University of Texas*, 2016; *Gratz v. Bollinger*, 2003; *Grutter v. Bollinger*, 2003; *Regents of the University of California v. Bakke*, 1978). The Court recognized that the benefits of a diverse student body are substantial in promoting “cross-racial understanding,” helping to break down racial stereotypes, and enabling students to “better understand persons of different races” (*Grutter v. Bollinger*, 2003, p. 308). Furthermore, the Court depended on the numerous amicus briefs filed in *Grutter v. Bollinger* (2003) that showed “that student body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society, and better prepares them as professionals” (p. 308).

These amicus briefs utilized a “growing body of empirical evidence that establishes how diversity enhances learning outcomes for students” (Milem, Chang, & Antonio, 2005, p. 2). The similarity of findings across this particular body of research borders on astounding. Overall, the studies agreed that the most diverse campuses are also the most educationally stimulating environments. This is attributed to the social interactions that occur on the campuses, and how they are impacted by the specific individuals distributed across those institutions (Chang, 1999). The converse is also true;

institutions that are primarily White provide little opportunity for learning across racial, social, and cultural boundaries (Hurtado, Dey, & Trevino, 1994).

Milem et al. (2005) highlighted that the benefits of a diverse student body are best realized when viewed through “a conception of diversity as a process toward better learning rather than as an outcome” (p. iv). Through this lens, stated institutional values such as diversity, inclusion, and equity become part of the core educational mission, as opposed to a type of extra-curricular activity. They become so embedded in the culture “that to ignore them in everyday practice would jeopardize institutional vitality” (Milem et al., 2005, p. viii).

In short, this body of research shows that increasing campus racial diversity leads directly to a more comprehensive corpus of ideas, opinions, philosophies, and viewpoints within the student population which, in turn, leads to a more democratic society as the population becomes more familiar and comfortable with differing perspectives.

Student Conduct Codes

My investigation into the existing literature on student conduct codes revealed that there is virtually nothing written about how institutions form these codes. History shows that conduct codes are rooted in the “legacy of the student rights movement of the 1960s and 1970s,” (Dannells, 1997, p. 3), and tend toward legalistic, rather than educational, intentions. More recently, university law scholars recommended that institutions avoid unnecessarily legalistic conduct codes in favor of providing students with more developmental guidance that emphasizes “preventing harm, upholding freedom, and fostering community” (Dannells, 1997, p. 3). I located only one study that explored specifically the extent to which the recommendation of removing this legalistic

language has been followed, but it included no information on the actual formation of codes (Martin & Janosik, 2004). The only other studies having to do with student conduct codes fall into four broad categories: 1) studies that explore the use of student conduct codes to discipline online speech; 2) studies that investigated institutional obligations as a matter of contract law and also discussed institutions' willful ignorance of the law in drafting codes; 3) studies that looked at the purpose of engaging in student discipline, including classifying roles and responsibilities of officials; and 4) studies that examined the efficacy of judicial system types.

Student Conduct Codes and Online Speech

While there are several studies that explored the use of student conduct codes in disciplining student speech, the majority focused on the PK-12 public schools. Only a handful either concentrated on or included higher education cases. Each of these studies highlighted recent changes to expand the reach of student conduct codes to include online speech, while also stressing that the law continues to favor upholding students' constitutional rights over preserving the mission of the institution (Beckstrom, 2008; Kiplinger, 2006).

Institutions and Contractual Law

Two studies focused on the student-university relationship as a contract, albeit each one in an entirely unique way. Bach (2003) alleged that the Association for Student Conduct Administration (ASCA), formerly known as the American Society for Judicial Affairs (ASJA), willfully ignores the law altogether when drafting student conduct codes because it values the educational and developmental mission of the university over the individual student's due process. Mawdsley and Cloud (2004) offered a kind of

consensus in that they found the idea of due process on campuses to be fluid, based on the nature of the violation. For example, campuses are inclined to offer a higher degree of due process when dealing with a disciplinary violation as opposed to an academic one. Furthermore, even within the realm of academic violations, a student challenging an allegation of cheating/plagiarism would receive more deference than those challenging a grade in an individual course (Mawdsley & Cloud, 2004).

Purpose, Roles, and Responsibilities

A few studies looked at the purpose of engaging in student discipline, and/or the roles and responsibilities of student judicial officers. Unfortunately, all four studies are somewhat outdated, so their contention of “current practices” no longer applies (Dannells, 1997; Hoekema, 1994; Lancaster, Cooper, & Harman, 1993; Pavela, 1997).

Judicial Systems Efficacy

Two studies examined different types of student judicial systems in order to determine the efficacy of each one. While slightly more recent, these studies are still 15 years old, and offered little in terms of relevance to the question of how student conduct codes are formed (Fitch & Murry, 2001; Stoner & Lowrey, 2004). Palmer, Penney, Gehring, and Neiger (1998) came closest to relevancy in their study of hate speech and behaviors in student conduct codes, which included a model for policies that would encourage freedom of speech but allow room for enhanced penalties for behavior motivated by bias. Their study included a brief analysis of school conduct codes that incorporated language prohibiting hate crimes in order to develop a model for policy language that “would effectively address hate speech and hate behavior on campus within the constraints imposed by the First Amendment” (Palmer et al., 1998, p. 195). The

limitation of this study in terms of relevance to my proposed investigation is that it is now 20 years old, meaning that both laws and conduct codes have changed.

Aside from these broad categories, Edward N. Stoner II (2008) wrote a chapter in a student affairs professionals' guide on the topic of revising an already existing student conduct code. In it, Stoner drew on his own previous research to offer practical steps for the review and revision of campus conduct codes and included a model student conduct code. While Stoner provided an outline for the overall process, which does offer some insight into the formation of these policies, little time was devoted to the actual writing of the codes. In addition, his approach was, while written in "simple English" (Stoner, 2008, p. 54), still quite legalistic and contractual in nature. Furthermore, the model conduct code that was included was generic and sterile (so that it could be broadly adopted by institutions) and included no reference to specific issues such as freedom of speech and diversity or inclusion.

After completing this exhaustive search, I believe that I have identified a gap in the study of student conduct codes, particularly in relation to campus racial climate. There are no studies that examine the potential relationship amongst student conduct codes, freedom of speech, and campus racial climate. Therefore, this study, focused on the relationship amongst student conduct codes that promote freedom of speech and positive campus racial climate, contributes to the literature by determining how public universities can use this information to write student conduct codes that have a positive effect on campus racial climate.

CHAPTER 3: METHODOLOGY AND METHODS

Research Questions and Design

As stated earlier, the ultimate goal of this dissertation was to identify best practices that can be applied across US college campuses to help public universities write student conduct codes that have a positive effect on campus racial climate by answering four questions:

1. Can institutions use student conduct codes to promote positive campus racial climate, while still allowing for—and even promoting—freedom of speech and, if so, how?
2. What is the relationship between the specific verbiage used in a student conduct code and the perception of campus racial climate on an individual campus?
3. Which institutions are providing a positive campus racial climate to their students?
4. What are the shared characteristics of student conduct codes that promote a positive campus racial climate and freedom of speech?

I employed a convergent mixed methods approach to enhance rigor and gain improved insight in my study (Somekh & Lewin, 2011). The term “convergent” describes the type of integration of the two methods, qualitative and quantitative. In a convergent design, the two types of data are collected and analyzed concurrently. Additionally, and perhaps more importantly, this concurrent collection and analysis can potentially lead to changes in either data collection or data analysis, or both. In this way, convergent designs differ from parallel designs, in which the data are typically collected concurrently, but the

integration of data takes place later, often after separate analyses of the two types of data have been completed (Fetters, Curry, & Creswell, 2013).

Mixed methods studies have become more prevalent because “researchers felt that the biases inherent in any single method could neutralize or cancel the biases of other methods” (Creswell, 2009, p. 14). This study used 2016 and 2017 survey result data provided by the Student Experience in the Research University (SERU) Consortium for quantitative analysis, and student conduct codes from the institutions that participated in the SERU survey for qualitative content analysis. This convergent design comprised independent analysis of each data strand, with integration at the point of interpretation, allowing “stronger inferences from the findings” (Guetterman, Babchuk, Howell Smith, & Stevens, 2019, p. 3). Together, this mixed method approach provided the best methodological tactic to answer my research questions.

Framework

Given that the purpose of my study was to determine what, if any, type of relationship exists amongst student conduct codes that promote freedom of speech and positive campus racial climate, a grounded theory methodology that allowed me to discover and develop inductively a theory grounded in data seemed the most logical approach (Glaser & Strauss, 1967). To that end, the data collection and data analysis phases of my study proceeded simultaneously in an ongoing cycle. I drew on the data to develop new conceptual categories for the relationship amongst student conduct codes that promote freedom of speech and positive campus racial climate (Charmaz, 2006). While my previous literature review may seem contrary to a grounded theory approach, I used the literature review only as a means to identify and refine my area of inquiry, and

to help form my research questions (Dunne, 2011; McGhee, Marland, & Atkinson, 2007; Walls, Parahoo, & Fleming, 2010). As mentioned earlier, I utilized prior reading in the areas of critical legal theory and critical race theory to inform my theoretical perspective, most especially in comparative coding, but grounded theory served as my framework. Glaser and Strauss (1967) recognized that no researcher can erase completely all previously known and understood literature and theory prior to starting research; however, there are steps carefully outlined in grounded theory that will assist me in minimizing the influence of previous assumptions.

The literature review was not used to inform my data collection, nor analysis, in that there is no previous literature in my specific area of inquiry. I do not believe the literature review contributed to any potential bias on my part; however, to ensure this, I reviewed my initial coding in the discourse analysis to ensure that my codes were not linked directly and meaningfully to concepts discussed in previous literature. I also referred to the previous literature throughout the constant comparison process. By using grounded theory, I anticipated producing a meaningful and substantive theory on the relationship amongst student conduct codes that promote freedom of speech and positive campus racial climate. I also expected to discover how institutions could better inform the processes they use to enact student conduct codes at public universities that allow for freedom of speech and positive campus racial climate to complement and even enhance each other.

Grounded Theory and Mixed Methods

At first glance, grounded theory may seem an unlikely approach to a mixed methods study, as it is considered largely a qualitative approach; however, those credited

with the introduction of this method envisioned no such delineation, having gone so far as to say that, “there is no fundamental clash between the purposes and capacities of qualitative and quantitative methods or data ... we believe that *each form of data is useful for both verification and generation of theory*, whatever the primacy of emphasis” (Glaser & Strauss, 1967, pp. 17–18, emphasis in original). Additionally, they clearly stated that despite the emphasis on qualitative research in their writings, “the process of generating theory is independent of the kind of data used” (Glaser & Strauss, 1967, p. 18). Since I had no theory, nor hypothesis, in mind as I formed my research questions, I needed an approach rooted in “a field of study or a research question, [so that] what is relevant to this question is allowed to emerge during the research process” (Bitsch, 2005, p. 77).

Furthermore, a comprehensive study of mixed methods-grounded theory (MM-GT) research published in 2017 found that there are several advantages to using MM-GT, including that “grounded theory was originally conceptualized to be used with both quantitative and qualitative data ... [and] provides an opportunity to more fully realize the benefits of grounded theory methods” (Guetterman et al., 2017, p. 12). Combining a grounded theory methodology with CRT as my theoretical lens allowed me to examine the existing power structures in higher education while permitting other themes present in the data to emerge organically.

Data Collection

In this convergent mixed methods study, data collection comprised quantitative survey data from 2016 and 2017 from the Student Engagement in the Research University Consortium (SERU), and document analysis of student conduct codes from

the corresponding participating institutions. Although not initially planned as part of the research design, after running quantitative analysis of the SERU data and completing content analysis on the student conduct codes, I also retrieved mission statements from the participating institutions. SERU is

a group of leading research-intensive universities, policy researchers, and scholars, who collaborate in the ... generation of institutional, comparative, and longitudinal data on the student experience in research universities, including administration of on-line census SERU Undergraduate and Graduate Surveys.

(Center for Studies in Higher Education [CSHE], 2020)

Any Carnegie-classified research intensive (R1) university is eligible to participate, as are invited international campuses.

Currently, there are 29 member institutions (including several in the University of California system) in the US, and 19 international member campuses (CSHE, 2018). My study included only US institutions, as laws, social mores, and cultural norms can be vastly different outside the US, and I analyzed data only from the SERU Undergraduate Survey (ugSERU) because perceptions of environment differ significantly between undergraduate and graduate students. I requested data from both 2016 and 2017 to capture as many survey responses as possible because most schools do not administer the ugSERU every year. Eighteen US SERU institutions participated in the undergraduate survey in 2016 and eight participated in 2017. Three schools administered the survey in both years; in those three cases, I used data from whichever year had a higher response rate. Altogether, I used data from 23 unique US institutions.

The ugSERU is “designed as census and online survey that offers a systematic environmental scan of the student experience within major research-intensive universities” (CSHE, 2018). As part of the ugSERU, students are asked about “Campus Climate and Diversity,” as well as questions about background, including race. It was of utmost importance to protect any data supplied to me by SERU by storing it on a password protected device, but all other information is public, thereby reducing the threat of releasing private information.

I employed a third party to deliver to me student conduct codes from the corresponding participating ugSERU institutions. The student conduct codes were presented to me without identifying information, to minimize any bias as I conducted a qualitative content analysis on those student conduct codes.

Data Analysis

Qualitative Analysis

I conducted a content analysis on the 23 participating US institution student conduct codes using a constant comparative analysis process (Glaser & Strauss, 1967). The coding process included initial sentence-by-sentence open coding, in which I developed a preliminary broad set of categories, with the possibility of several categories overlapping across conduct codes until I reached saturation (Strauss & Corbin, 1990). I then moved into axial coding, examining the relationships between categories, based on my initial round of coding. Finally, I performed selective coding to identify my major themes (see Appendix A, Table A1) and construct my theory, as discussed by Corbin and Strauss (2015). Throughout the coding process, I used memoing to reflect on my codes and noted any ideas that arose about my evolving theory. The memo process allowed me

to contemplate my raw data and begin to delineate concepts that represented that data (Charmaz & Bryant, 2008). Prior to coding, I anticipated that I would be grouping conduct codes according to categories such as “high rate of inclusion of key words/concepts/phrases like diversity, inclusion, commitment, value, etc,” and “low rate of inclusion of key words/concepts/phrases like diversity, inclusion, commitment, value, etc.” It became clear very quickly that these groupings would prove not terribly insightful, as 16 of the 23 institutions did not include the word “diversity” or “diverse” at all.

Quantitative Analysis

In order to compare campus racial climate at different institutions, I first needed to verify the racial climate factor by conducting a confirmatory factor analysis (CFA). My suspicion was that campus racial climate is a factor in the ugSERU survey results. My initial review of available ugSERU variables indicated potential use of a number of variables, as listed in Table 2.

Table 2

ugSERU Variables

Variable Code	Variable Description	Variable Type
R16_RUCMYRACE	Agree or disagree - Students of my race/ethnicity are respected on this campus	Scale
R18_RUCCLIMATE	Level of agreement - Overall, I feel comfortable with the climate for diversity and inclusiveness at RU	Scale
R18_RUCWELCOME	Level of agreement - The RU is a welcoming campus	Scale
R47_RUCAGREEINDVAL	Agree or disagree - I feel valued as an individual at this campus	Scale
R47_RUCAGREEBELONG	Agree or disagree- I feel that I belong at RU	Scale
D2_DUCFACRACE	Faculty/instructors express negative views - Race/ethnicity	Scale
D4_DUCSTDNTRACE	Students express negative views - Race/ethnicity	Scale
D6_DUCDVRSIMPRTCPS	Level of agreement - Diversity is important at this campus	Scale
D6_DUCDVRSIMPRTME	Level of agreement - Diversity is important to me	Scale
R72_RUCGENDER	What is your current gender identity	Scale
GENDER	Gender	Nominal
NONRESIDENT	International Students	Nominal
HISPANIC	Hispanic or Latino	Nominal

AMERINDIAN	American Indian or Alaskan Native	Nominal
ASIAN	Asian	Nominal
AFRICANAMERICAN	Black or African American	Nominal
PACIFICISLANDER	Native Hawaiian or Pacific Islander	Nominal
WHITE	White	Nominal
DECLINETOSTATE	Decline to State Ethnicity	Nominal
SOC_flag	SOC=AmericanIndian, AfricanAmerican, Hispanic, Asian, PacificIslander, Multiracial	Nominal

A preliminary review of the SERU data revealed the possibility of needing to “clean” the data to account for missing responses. Using SPSS, I reviewed descriptive statistics for the first nine variables listed above in Table 2. Of those, the last four variables showed low response rates (when compared with the other variables) of roughly 10 percent. This is likely because the first five variables (those with an “R” delineator) are part of the “Core” module of the survey, while the last four variables (those with a “D” delineator) are part of the “Student Life and Development” module of the survey. Core questions are administered to every student who takes the ugSERU, while the other five modules, including “Student Life and Development” are assigned randomly, meaning that not every student is assigned every additional unique module. Given the high response rates (almost 90 percent) for the “Core” variables, and with the knowledge that only some students are assigned randomly to respond to the additional “Student Life and Development” module, I decided to exclude those last four variables from my

analysis. This left five remaining variables for my CFA. Table 3 provides the five remaining variables below.

Table 3

SERU Variables for CFA

Variable Code	Variable Description	Variable Type
R16_RUCMYRACE	Agree or disagree - Students of my race/ethnicity are respected on this campus	Scale
R18_RUCCLIMATE	Level of agreement - Overall, I feel comfortable with the climate for diversity and inclusiveness at RU	Scale
R18_RUCWELCOME	Level of agreement - The RU is a welcoming campus	Scale
R47_RUCAGREEINDVAL	Agree or disagree - I feel valued as an individual at this campus	Scale
R47_RUCAGREEBELONG	Agree or disagree- I feel that I belong at RU	Scale

Once I determined that these five variables would be part of the CFA, I determined whether to use all responses from all students, or whether I should include only responses in which students responded to all five items. To do this, I conducted a factor count, reproduced in Table 4.

Table 4

Counts for Total Number of the Five Core ugSERU Campus Climate Items to Which Students Responded

Total Number of Items	Frequency	Percent	Cumulative Percent
0	7109	7.0	7.0
1	287	0.3	7.3
2	183	0.2	7.5
3	4906	4.8	12.3
4	420	0.4	12.7
5	88,375	87.3	100
Total	101,280	100	100

The factor count indicated a robust number of participants responded to all five variables, while the combined percentage responding to four items or fewer was only 12.7 percent. For this reason, I decided to include only those students who responded to all five variables. I then completed a listwise deletion in R, which allowed me to exclude all students from my dataset who did not respond to all five variables. Once all of this was completed, I imported into R my final dataset of 88,375 student responses to all five variables to conduct the CFA to confirm whether campus racial climate is a factor that can be assigned a measurement for basis of comparison. The CFA results indicated:

CFI (Comparative Fit Index) of 0.968

TLI (Tucker Lewis Index) of 0.937

RMSEA (Root Mean Square Error of Approximation) of 0.228

While there are several different fit statistics available to assess confirmatory factor analyses (CFA), CFI, TLI, and RMSEA are three popular methods of structural equation modeling (Lai & Green, 2016). Ideally, results indicate a CFI that is greater than or equal to 0.90, a TLI that is greater than or equal to 0.95, and an RMSEA that is below 0.08. Additionally, my factor loadings all indicate that each item accounts for a large enough amount of variance in the latent trait to state that each item is a measure of the latent trait (e.g., loadings are all 0.4 or higher).

Table 5

Factor Loadings of the Five Core ugSERU Campus Climate Items to Which Students Responded

2016	
RUCMYRACE	0.563
RUCCLIMATE	0.799
RUCWELCOME	0.825
RUCAGREEINDVAL	0.774
RUCAGREEBELONG	0.782
2017	
RUCMYRACE	0.526
RUCCLIMATE	0.812
RUCWELCOME	0.856
RUCAGREEINDVAL	0.769
RUCAGREEBELONG	0.792

In the case of my CFA, my CFI is excellent and my TLI is very good, but my RMSEA of 0.228 is well above the recommended cutoff of 0.08. Given that “there is little empirical support for the use of .05 or any other value as universal cutoff values to determine adequate model fit,” (Chen, Curran, Bollen, Kirby, & Paxton, 2008, p. 462),

and that even those known for first presenting and popularizing the RMSEA method offered caution that .05 and .08 were only subjective and arbitrary measures chosen based on their own personal experiences (Browne & Cudeck, 1993; Steiger, 1989), I accepted the CFI and TLI results of the CFA. There is research to support the idea that “any effort to identify universal cutoff points for the RMSEA is not supported and should not be pursued as a single way of assessing model fit” (Chen et al., 2008, p. 490). As one study noted, “when cutoffs were first suggested, scholars who proposed them emphasized without exception that these values were simply crude aids for interpretation rather than strict thresholds and were based on experience and intuition rather than mathematical derivation” (Lai & Green, 2016, p. 220). That said, I felt it was important to report my RMSEA result, as, too often, researchers report only “the fit indices that reflect positively on [their] model” (Lai & Green, 2016, p. 221).

Further adding to the complexity of my RMSEA result is that we simply do not know what an appropriate cutoff should be for a factor of campus racial climate, as there is currently very little literature dealing with RMSEA results and non-cognitive factors (such as reading scores, writing scores, etc.). Additionally, I explored the data at the institutional level, not at the student level. In other words, while I investigated student-level perceptions by using individual responses to the ugSERU survey, I averaged together those responses. I might have been more concerned about the RMSEA result were I making inferences at the student level but, as I was not, this lessened my apprehension even further (Geldhof, Preacher, & Zyphur, 2014).

Convergent Analysis

While it could be argued that even convergent approaches are somewhat sequential, in that one or the other inevitably must come first, my approach was to merge my quantitative and qualitative analyses as much as possible, going back and forth between them, for purposes of comparison. I started with the quantitative analysis, primarily because of the need to verify the racial climate factor through CFA. Without that confirmation, my entire design would have been invalid, so this was the logical and necessary first step. Once the CFA was complete and I accepted the results, I then moved to the content analysis of the blind conduct codes. I performed the initial sentence-by-sentence open coding first, which determined the 40+ preliminary codes. I then moved to axial coding, examining the preliminary codes to see where relationships might exist amongst them, to establish a final set of 34 codes (Appendix A, Table A1). At that point, I began the process of selective coding to identify my five major themes (Appendix A, Table A1). This was a lengthy process that involved careful consideration of the 34 axial codes. During my analysis of the axial codes, I returned to my quantitative analysis and began my thinking about how to determine a basis of comparison for the institutions through the survey responses. Ultimately, I determined that I needed to operationalize campus racial climate with a quantitative value that I could then use as a campus racial climate “score.” This process is explained fully in Chapter 4. Throughout my analysis, I was constantly working on analysis of both the student conduct codes and the ugSERU data, and I finished them at roughly the same time.

Summary

This convergent mixed methods design allowed me to collect and analyze the quantitative and qualitative data concurrently and guided me to integrate my analyses and interpretations from the beginning. Using this approach, I could respond quickly to one data strand by changing my thinking based on another. For example, when I discovered that the majority of the institutions did not include the word “diversity” or “diverse” anywhere in their student conduct codes, I was able to think differently about how to approach analysis of the quantitative data which, in turn, informed my thinking about the coding process, and so on. By using this approach, I discovered that my content analysis was incomplete without also reviewing mission statements from the participating ugSERU institutions, which I discuss in further detail in Chapter 4.

CHAPTER 4: FINDINGS

The purpose of this study was to investigate campus racial climate data and existing campus speech codes to answer the following questions:

1. Can institutions use student conduct codes to promote positive campus racial climate, while still allowing for—and even promoting—freedom of speech and, if so, how?
2. What is the relationship between the specific verbiage used in a student conduct code and the perception of campus racial climate on an individual campus?
3. Which institutions are providing a positive campus racial climate to their students?
4. What are the shared characteristics of student conduct codes that promote a positive campus racial climate and freedom of speech?

To answer these questions, I designed a convergent mixed methods study in which I collected and analyzed quantitative survey data from the 2016 and 2017 ugSERU and also collected and conducted qualitative analysis of student conduct codes from the corresponding participating institutions. I also reviewed mission statements from those same participating institutions. In this chapter, I present my separate qualitative and quantitative analyses, and then synthesize them to produce overall findings of my study and to generate my theory regarding the relationship between the specific verbiage used in a student conduct code and the perception of campus racial climate on an individual campus.

Qualitative Findings

Key Themes

As outlined earlier, through open and axial coding of student conduct codes, I established 37 axial codes (see Appendix A: Table A1). Through the selective coding process, I then identified my five key themes. The five key themes that arose were: (1) diversity and race, (2) academic emphasis, (3) disciplinary emphasis, (4) legal emphasis, and (5) university interests and expectations. Below, I discuss each theme and highlight excerpts that define them taken directly from the student conduct codes.

Diversity and race. Open and axial coding resulted in seven codes, related to either the absence or the presence of diversity and race: (a) diversity mentioned in meaningful ways, (b) diversity of hearing panel, (c) diversity reference is to OED or other office, (d) inclusion, (e) no mention of diversity in conduct code, (f) racial bias, and (g) racial harassment. Excerpts related to this key theme accounted for 56 code applications. Next to each code is the number of excerpts assigned to it. Examples presented herein utilize wording quoted directly from the student conduct codes analyzed.

- a) Diversity mentioned in meaningful ways (8): This code denotes statements on diversity that express some institutional value, such as: (a) students will stretch to embrace diversity, (b) understanding diverse points of view, (c) diversity as an institutional value and/or commitment, (d) students celebrating diverse backgrounds, and (e) exchange of diverse ideas.
- b) Diversity of hearing panel (2): This code was applied only twice, to the same school. In making appointments to hearing panels, the conduct code notes that the chair should strive to assemble a panel whose diversity reflects the

student body. This school had the second-lowest campus racial climate score as explained in the following section on quantitative analysis and has a student population that is 18% underrepresented minority.

- c) Diversity reference is to OED or other office (2): This code again was applied only twice, to the same school. In this instance, the code referred specifically to the vice president for the Office of Equity and Diversity, but the context was in relation to complaints of sexual assault/violence and had nothing to do with race.
- d) Inclusion (2): This code was used twice with two separate schools. The first school describes its conduct code regulations as a means to create and maintain a safe, supportive, and inclusive campus community. The second school encourages students to be their authentic selves and to embrace inclusion through discovery, dialogue, and development as they celebrate diverse backgrounds.
- e) No mention of diversity in conduct code (15): Self-explanatory in nature, this code represents the 15 institutions with student conduct codes that make no mention of diversity.
- f) Racial bias (7): This code refers to mentions of racial bias, including (a) enhanced sanctions for violations motivated by race, and (b) bias-free academic evaluations.
- g) Racial harassment (20): This code denotes discussion of racial harassment, including (a) enhanced sanctions for harassment based on race; (b) definitions of harassment specifically motivated by race; (c) explanations that harassment

signifies behavior beyond expression of views, words, symbols, or thoughts that some person finds offensive; (d) explanations that conduct must be sufficiently serious to deny or limit a student's ability to participate in or benefit from the educational program and/or experience.

As mentioned briefly earlier, the words "diverse" or "diversity" were used in only 7 of the 23 student conduct codes analyzed. In three of those cases, it was used either to reference a diversity office or officer on campus, or in relation to student conduct disciplinary committee composition. The other five usages (one school used it twice) referred to diversity as an institutional value or commitment or talked about pride in diversity or an exchange of diverse ideas; however, none of these uses exceeded more than one sentence. The overwhelming use of the words "race" or "racial" concerned racial bias or harassment but, even there, five schools mentioned neither.

An earlier research project, in which I examined mission statements from a random assortment of higher education institutions to see if they mentioned "diversity" in those statements, revealed quickly that most US institutions do discuss diversity as a core part of institutional mission (Barnes, 2016). That preliminary assessment made me realize that my student conduct code analysis was incomplete without a review of mission statements from the institutions included in my study. It is a widely-held belief that mission statements serve a fundamental "direction-establishing role that facilitates strategy formulation" (Sidhu, 2003, p. 439). Accepting that as true, the logical conclusion is that an institution's mission statement should serve as the foundational document from which all policies on its campus are formed. Given how few schools mentioned diversity in their student conduct codes, I examined the 23 corresponding

mission statements to see how many mentioned diversity. Nineteen of the mission statements mentioned diversity in some way, with the majority offering “significant commitment” through rhetoric, with language such as being called to embrace diversity, take pride in the wealth of diversity and/or in the exchange of diverse ideas, or an overall institutional commitment to diversity, as example. Of the four schools that make no mention of diversity in their mission statements, three scored in the bottom half of campus racial climate scores, as explained in my later section on quantitative analysis.

Academic emphasis. Unsurprising was an emphasis on academics in all of the student conduct codes. This included codes related to: (a) academic excellence, (b) academic freedom, (c) academic honesty, (d) academic misconduct, and (e) cheating/fabrication/plagiarism. Excerpts related to this key theme accounted for 121 code applications. Next to each code is the number of excerpts assigned to it. Examples presented herein utilize wording quoted directly from the student conduct codes analyzed.

- a) Academic excellence (9): This code includes mentions of excellence of university faculty, university academic goals, and/or individual student academic: (a) excellence, (b) achievement, (c) success, and/or (d) integrity.
- b) Academic freedom (13): This code refers to statements describing: (a) an environment that preserves the freedom to learn; (b) policies that support intellectual inquiry; (c) a community of scholars committed to an open exchange of ideas; (d) freedom to raise relevant issues in classroom discussion, including offering reasonable doubts and alternative opinions; and (e) to speak, write, or print freely on any subject.

- c) Academic honesty (8): This code denotes discussions of: (a) academic integrity, (b) respect for intellectual property of others, and (c) ethical and honest behavior in conducting academic work.
- d) Academic misconduct (39): This code represents statements about: (a) unacceptable behavior in academic work, (b) academically dishonest work, and (c) violation of university policy involving academic integrity. This code is related closely to the final code in this category, cheating/fabrication/plagiarism, but includes any and all forms of academic dishonesty, even those not expressly outlined in the student conduct codes.
- e) Cheating/fabrication/plagiarism (52): This code signifies explicit references to any of these three stated forms of academic misconduct.

One would logically expect that an institution of higher education would stress the importance of academics in its student conduct code, particularly as relates to cheating/fabrication/plagiarism. Common sense might even inform that academics would and should take precedence over university interests and expectations; however, that was not the case. As is evident from the numbers of code applications outlined above, within the key theme of academics, those codes most closely aligned with academic violations outweighed codes representing excellence, freedom, and honesty by a 3:1 ratio. This emphasis on academic abuses supports the previously-mentioned use of student conduct codes as legalistic documents, as opposed to educational guides (Dannells, 1997). It also highlights the issue of major research universities ignoring law scholars' advice to avoid legalistic conduct codes in favor of developmental guidance that fosters community.

Disciplinary emphasis. At first blush, disciplinary emphasis might seem to fit within the legal emphasis theme; however, I chose to keep it as its own separate and discrete key theme because there are important differences between the two categories. In this case, disciplinary emphasis covers those areas that fall outside of a legalistic approach. Rather than being punitive in nature, they seek to provide students with opportunities to learn from their mistakes and educate themselves about behaviors that may not fall within social norms. Disciplinary emphasis includes a narrow range of codes, including: (a) developmental discipline, (b) educational discipline, (c) restorative discipline, and (d) student development. Excerpts related to this key theme accounted for 82 code applications. Next to each code is the number of excerpts assigned to it. Examples presented herein utilize wording quoted directly from the student conduct codes analyzed.

- a) Developmental discipline (17): This code refers to conduct code sections dealing with projects or programs designed to: (a) help students understand why a behavior was inappropriate; (b) assist them with personal, ethical, and social development; and/or (c) help them manage a behavior, such as through a treatment or awareness program, or community service.
- b) Educational discipline (30): This code represents discipline of an academic nature, such as: (a) academic assignments, (b) reflection papers, (c) educational programs, (d) research projects, or (e) facilitated dialogues.
- c) Restorative discipline (12): This code denotes use of rehabilitative efforts that encourage repairing harm that was caused, including: (a) mediation, (b)

facilitated dialogue, (c) restorative justice circles, (d) letters of apology, and (e) peer review boards.

- d) Student development (23): This code, while seemingly an umbrella term for all the above codes, signifies explicit mention of: (a) personal growth; (b) promotion of physical, intellectual, social, or emotional well-being of students; or (c) opportunities for acquisition of skills to help future decision-making.

Interestingly, not all schools provide these outlets for student learning. Four schools make no mention of any of the above alternatives in their conduct codes, and one school mentions student development and developmental discipline as a primary goal of its office of student conduct, but then never outlines any developmental discipline alternatives for code violations. Overall, of the 23 ugSERU institutions included in this review, 17 schools mention a developmental disciplinary approach between zero and three times in their student conduct codes, and only six schools mention it more than five times. Again, this seems to point to an ongoing use of student conduct codes as legalistic, rather than developmental, documents.

Legal emphasis. Legal emphasis includes a broader range of codes, including: (a) attorney not allowed; (b) free speech zones; (c) freedom of expression; (d) legalistic language use; (e) obstruction or disruption discussion; (f) student rights; (g) time, place, and manner restrictions; (h) United States Constitution reference; and (i) unprotected speech. Excerpts related to this key theme accounted for 337 code applications. Next to each code is the number of excerpts assigned to it. Examples presented herein utilize wording quoted directly from the student conduct codes analyzed.

- a) Attorney not allowed (7): Only three schools used this code; however, I felt it was significant. It outlines the specific requirement that students at those institutions are barred from having a licensed attorney—practicing or not—or an individual who has passed a state bar examination serve in any advisory capacity to an accused student or be present at a disciplinary hearing.
- b) Free speech zones (7): This is another code with limited use; in fact, only one school explicitly included use of free speech zones in its student conduct code. Interestingly, this same school is also one of the three that does not allow an attorney to serve in any advisory capacity to an accused student or be present at a disciplinary hearing, as outlined above.
- c) Freedom of expression (40): This code represents specific mentions of: (a) all expressive rights protected by the First Amendment, (b) free inquiry, (c) free exchange of ideas, (d) freedom to associate with other individuals, (e) discussion of responsibilities related to expressive rights, (f) discussion of behavior that disrupts or interferes with the freedom of expression of others, and (g) freedom of thought.
- d) Legalistic language (96): This code refers to the use of legal language in student conduct codes and was the most-applied code across all the documents. It highlights the use of legal terms to describe student conduct disciplinary actions. Examples of this language include, but are not limited to: “hearing,” “respondent,” “complainant,” “standard of proof,” “preponderance of the evidence,” “due process,” “cross examination,” and “burden of proof.” Only three schools used no legalistic language anywhere in their student

conduct codes. Two schools employed this type of language more than 10 times in their student conduct codes.

- e) Obstruction or disruption (89): This is the second most-applied code. This code signifies discussion of the precedent set in *Tinker v. Des Moines* (1969), discussed earlier, in which the United States Supreme Court found that conduct must “materially and substantially interfere” with the normal operations of a school to be suppressed legally. *Tinker v. Des Moines* and its progeny set the standard for what is considered legally obstructive or disruptive, and this code covers both positive and negative discussions of that standard, including: (a) lawful measures that may be taken by university representatives to halt disruptive student activity; (b) description, or lack of description, of obstructive student activities; (c) behavior which disrupts or interferes with the freedom of expression of others; (d) description, or lack of description, of disruptive student activities; (e) conduct (e.g. harassment) that effectively obstructs equal access to institutional resources or opportunities; (f) maintenance of entrance to and egress from institutional buildings and offices even during times of lawful protest; (g) description, or lack of description, of institutional venues that could be obstructed or disrupted (e.g. classes, lectures, meetings, etc.); and, (h) obstruction or disruption of student conduct procedures or proceedings.
- f) Student rights (48): This code refers to explicit discussion of students’ rights, as opposed to vague references to general rights afforded to all citizens, including: (a) specific rights afforded to students in the student conduct

procedural process; (b) reference to rights extended to students by the institution beyond those guaranteed by the Constitution; (c) specific outlining of all student rights, whether they be granted by institution or the Constitution; and (d) discussions of students as members of both the institutional community and the larger society, and the rights and responsibilities that accompany those roles.

- g) Time, place, and manner (TPM) restrictions (9): Initially, I was not going to code these references separately; however, given the recent use of TPM restrictions to confine visiting speakers to specific venues on campuses, I thought it would be interesting to see how many institutions mention explicitly TPM restrictions in their student conduct codes. There were nine applications of the code amongst four institutions, with one institution mentioning TPM six times. It is the same school that discusses free speech zones.
- h) United States Constitution (29): This code denotes explicit mention of the United States Constitution or the First Amendment and corresponding rights therein guaranteed to all students as citizens.
- i) Excessive length (12): This code was used only to determine how many of the 23 student conduct codes analyzed exceeded a length of 25 pages, a number chosen solely by this researcher. While I do not presume to know any proper or appropriate length for a student conduct code, I was curious to see if there was any correlation between use of legalistic language and seemingly excessive length of student conduct codes. Twelve of the student conduct

codes were more than 25 pages. Of those, half had the highest usage of legalistic language of all the conduct codes, defined as six or more separate and discrete uses of legal terminology. Three of those schools included ten or more uses. In contrast, of the 11 student conduct codes that did not exceed 25 pages, all contained five or fewer uses, and five of the schools used legalistic language either one time or not at all. While certainly not definitive, it offers an indication that use of legalistic language may well have the unintended consequence of an excessively lengthy student conduct code.

As discussed earlier, student conduct codes are rooted in student rights movements of the 1960s and 1970s protest era, and are typically written as legal documents, as opposed to educational guides (Dannells, 1997). As such, it was no surprise to find an almost overwhelming legal emphasis in the student conduct codes I reviewed. While not specifically related to legal emphasis, I also coded each student conduct code according to document length under this key theme. University law scholars who have argued for the removal of legalistic language from student conduct codes have also indicated that the overuse of such language results in excessively and unnecessarily lengthy documents (Dannells, 1997).

University interests and expectations. It is logical that interests and expectations are a part of any university documents. It was somewhat unexpected, though, that university interests would so far outweigh academic considerations and student rights in a student conduct code. At 257, this key theme was second only to legal emphasis in code applications, outnumbering academic emphasis by more than double.

This theme covers a broad range of codes, from campus safety to an institutional right to express its values. Again, next to each code is the number of excerpts assigned to it.

- a) Campus safety (62): This code encompasses all discussions of campus safety, including of people and of property, and mentions of behaviors that may be harmful or threatening to people, property, and/or to other university interests, not specifically defined.
- b) Citizenship (9): This code refers to specific comments regarding: (a) the student conduct process role in strengthening citizenship, (b) ideals of responsible citizenship, (c) the responsibility of the individual both as a student at the institution and as a citizen of the country, (d) the institutional role in preparing students to contribute to society as ethical citizens, and (e) global citizenship.
- c) Educational interests of the institution (12): This code represents discussions of: (a) conduct that may have an adverse impact on or be detrimental to the pursuit of educational interests of the institution; (b) behavior that is incompatible with, or willfully disrupts, the educational interests or mission of the institution; (c) a sanction that is unduly punitive when considered in the context of the university interests in a student's participation in the campus community; (d) university authority and discipline as a tool to serve the educational mission and interest. Of note is (c), in which one institution appears to imply that there may be student conduct cases where the interests of the university outweigh conduct deemed detrimental to the university community.

- d) Fair treatment (14): This code denotes specific use of the words “fair” or “fairness” in relation to the institutional disciplinary process.
- e) Integrity (42): This code includes: (a) mentions of integrity as a primary value of the institution or a community standard; (b) discussion of integrity as an institutional concept requiring a higher standard of conduct by students than is required in society in general; (c) upholding academic and/or institutional integrity; and (d) the importance of personal integrity.
- f) Off-campus activities (42): This code is used to determine the scope of a university’s jurisdiction. Only two institutions make no explicit mention of off-campus activities as part of the scope of jurisdiction for student conduct.
- g) Respect (36): This code refers to statements about: (a) respect for one another as a core value of members of the campus community, (b) maintenance of a respectful environment, (c) respect for the student conduct code itself and/or for the student conduct process, (d) respect for people and property, and (e) respect for rights of others.
- h) Responsibility (35): This code is used to denote discussion of: (a) rights and responsibilities, (b) responsible membership of the campus community, (c) individual responsibility for academic work, and (d) responsibility for behavior/conduct and for consequences of behavior/conduct.
- i) Institutional expression of values (5): This code refers to explicit mention of the institution’s right to express its community values. It was used five times, by only three institutions.

Of particular note in this theme is the third bullet point, “educational interests of the institution.” One school, in its section entitled, “sanctions,” outlined “guiding principles” for applying sanctions, and then highlighted four “relevant factors” in this process. The last of the four factors listed was “other compelling circumstances,” in which the conduct code stated:

In some cases, it is appropriate for the Honor Court to consider other factors that would render a sanction unduly punitive, including, but not limited to, extraordinary personal circumstances of the student; the educational goals of the University; and University interests in a student’s participation in the campus community.

The last of these, “University interests in a student’s participation in the campus community,” stood out to me in light of the many well-known student conduct cases involving student-athletes who are protected, despite in some cases committing egregiously violent acts, because they are deemed too “valuable” to the university community. This institution appears to send the message that some students are “worth” more to the university community and, therefore, should not suffer an unduly punitive sanction. This entire section contains vague and ambiguous language; so much so that it could be interpreted in any number of ways to fit any number of situations and resulting outcomes. In other words, it allows this institution broad discretionary power when it comes to applying sanctions—or not—to any student on campus. It is hard to imagine that this section of their student conduct code could withstand a legal challenge.

Quantitative Findings

Campus Racial Climate Scores

Once the CFA was complete and I determined that campus racial climate is a factor in the ugSERU survey results, I determined a “score” for each student within an institution for the campus racial climate factor. To do this, I operationalized campus racial climate with a quantitative value by using an item response theory (IRT)-based score on a theta scale where 0 represents the average level, a -1 represents one standard deviation below average, and a 1 indicates one standard deviation above average. Once I had those scores, I used an average for all students in an institution to compare campus racial climate across the SERU institutions. This score allowed me to group or rank the institutions by level of perceived positive campus racial climate, and then compare those results with the groupings from my qualitative content analysis to see if there was any correlation between the two. Table 6 displays these campus racial climates scores in numerical order from lowest to highest, the year of the survey data used, the score determined through the process outlined above, the number of students who responded to every survey item described above, and whether and how the word diversity (or diverse) was used in that specific student conduct code. In that column, a “no” means that diversity was not mentioned at all in the student conduct code, a “yes” means that diversity was mentioned in a meaningful way as outlined in the qualitative analysis, and a “mid” means that diversity was mentioned only in reference to a diversity office or to a committee assignment.

Table 6

Campus Racial Climate Scores in Numerical Rank Order

School rank	Survey year	Climate score	Sample size	Diversity
23	2016	-0.21213	6556	No
22	2016	-0.17355	7601	No
21	2017	-0.110525	3383	No
20	2016	-0.09938	5534	No
19	2017	-0.083596	5295	No
18	2017	-0.072815	6542	Yes
17	2016	-0.0532	6289	Yes
16	2016	-0.02876	1690	Mid
15	2016	-0.02792	3479	No
14	2017	-0.021007	10954	No
13	2016	-0.00984	6337	No
12	2016	0.008671	3747	Yes
11	2016	0.011147	8626	No
10	2016	0.014752	8159	No
9	2017	0.033985	6466	No
8	2017	0.056073	5340	Mid
7	2016	0.070054	6162	No
6	2016	0.114482	4438	No
5	2016	0.126861	2875	No
4	2016	0.137511	3811	Yes
3	2016	0.141655	4178	Yes
2	2017	0.166044	5666	Yes
1	2016	0.262119	2179	No

While causation certainly cannot be shown, the table offers evidence of association. Of the 23 schools analyzed, among the five institutions with the highest mean climate scores, three mention diversity. The five schools receiving the lowest mean climate scores do not mention diversity at all. Table 7 shows individual campus racial climate scores for each of the 17 institutions that participated in the 2016 ugSERU survey, divided into the mean climate score for respondents who self-identified as White

or Nonwhite. Schools are identified by alphabetical letters, and the order in which they are listed purposely does not correlate to any other table in this dissertation to maintain school anonymity. The school with the highest campus racial climate score does not mention diversity at all; however, at this school, White students are a small minority, under 15 percent, and almost half of the students identify as Hispanic.

Table 7

2016 Campus Racial Climate Scores by Campus, White v. Nonwhite

School	W or NW	Climate score	Sample size
A	W	-0.094729437	2544
	NW	-0.213208139	5057
B	W	0.071794274	2975
	NW	-0.020781239	5651
C	W	0.027553692	1446
	NW	0.011993889	6713
D	W	0.02414909	1909
	NW	-0.086911503	4380
E	W	0.192058232	327
	NW	0.274489	1852
F	W	-0.185935986	1647
	NW	-0.220922124	4909
G	W	0.186534346	2320
	NW	-0.000284445	3842
H	W	-0.030614246	2178
	NW	-0.14400778	3356
I	W	0.155213197	737

	NW	0.106369901	3701
J	W	0.047542882	2922
	NW	-0.058938628	3415
K	W	0.011473044	2507
	NW	-0.12951305	972
L	W	0.18712061	3210
	NW	-0.00911483	968
M	W	0.090479273	717
	NW	-0.116628359	973
N	W	0.080161121	2531
	NW	-0.140129378	1216
O	W	0.171401316	3196
	NW	-0.038609764	615
P	W	0.177183945	2312
	NW	-0.079795388	563
Q	W	-0.042665968	961
	NW	-0.129736611	653

The code column indicates W for White (or no race selected) and NW for Nonwhite, as self-selected by students. In each case except for the highlighted one, the score for White students is higher than the score for Nonwhite students. The one school where the Nonwhite score is higher is a school in which White students are in the minority, at 13 percent, and almost half of the students identify as Hispanic.

Table 8 shows individual campus racial climate scores for each of the six institutions that participated in the 2017 ugSERU survey, divided into two self-reported

categories, White and Nonwhite. Again, schools are identified by alphabetical letters, and the order in which they are listed purposely does not correlate to any other table in this dissertation to maintain school anonymity.

Table 8

2017 Campus Racial Climate Scores by Campus, White v. Nonwhite

School	W or NW	Climate score	Sample size
R	W	-0.030186055	4421
	NW	-0.161670648	2121
S	W	0.022733746	8044
	NW	-0.141918078	2910
T	W	-0.032224818	2615
	NW	-0.133721362	2680
U	W	0.103924381	3906
	NW	-0.072726014	2560
V	W	0.11336624	3597
	NW	-0.062161354	1743
W	W	0.241162149	3929
	NW	-0.003870678	1737

As with the previous table, the code column indicates W for White and NW for Nonwhite, as self-selected by students. In each case, the score for White students is higher than the score for Nonwhite students. Taken together, these two tables suggest that, overwhelmingly, White students' perceptions of campus racial climate are more positive than Nonwhite.

However, as discussed earlier, I wanted to look more closely at the potential differences between racial categories in students' perceptions of campus racial climate. Table B1, displayed in its entirety in Appendix B, presents individual campus racial climate scores for each of the institutions that participated in the 2016 ugSERU survey, divided into eight self-reported racial identity categories. The race column indicates the racial category as self-selected by students. Again, schools are identified by alphabetical letters, and the order in which they are listed purposely does not correlate to any other table in this dissertation to maintain school anonymity.

Table B1 reveals that White students have the highest score for perception of campus racial climate in 9 of the 17 schools. In eight instances where a racial category other than White had the highest score, six had ugSERU respondent sample sizes of fewer than 50, and two were institutions at which White students are in the minority overall. In the six cases with smaller respondent sample sizes reporting the highest score, White students reported the second-highest score. This table also reveals that African American and American Indian students consistently reported the lowest scores. While the table reveals two instances of lower scores from Pacific Islander students, in those cases the sample sizes were one and two, respectively, and the second-lowest score was either from African American or American Indian students.

Table B1 also reveals instances where differences amongst "students of color" can be dramatic when disaggregated. An example of this is exhibited in Table 9.

Table 9

2016 Campus Racial Climate Scores by Campus, Disaggregated by Race: School B

School	Race	Climate score	Sample size
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B	No race selected	-0.061664793	287
	African American	-0.345970172	181
	American Indian	0.020631513	14
	Asian American	0.008286207	3147
	Hispanic	-0.072955193	1042
	Pacific Islander	0.09035998	46
	White	0.08604381	2688
	Multiple Race	-0.0076306	1221

Table 9 shows that African American students scored a -0.3459, American Indian students scored 0.0206, Asian American students scored 0.0082, Hispanic students scored -0.0729, and Pacific Islanders scored 0.0903. The overall Nonwhite score for this campus averages out to -0.0207, but when disaggregated we see that this score is buoyed by high numbers of positive perceptions by Asian American students. The obvious negative perceptions held by African American students on this campus are veiled when grouped with other students of color but become clear when the data is disaggregated. This exposes the need for campuses to disaggregate information so they can better understand and respond to all the different racial identities on their campuses.

Similar to Table B1, Table B2, displayed in its entirety in Appendix B, presents individual campus racial climate scores for each of the institutions that participated in the 2017 ugSERU survey, divided into eight self-reported racial identity categories. The race column indicates the racial category as self-selected by students. Again, schools are identified by alphabetical letters, and the order in which they are listed purposely does not correlate to any other table in this dissertation to maintain school anonymity. Table B2 reveals that, with few exceptions, White students consistently have the highest score

for perception of campus racial climate, and African American and American Indian students consistently reported the lowest scores.

Limitations

A primary limitation of my study involves the use of online data, namely student conduct codes. As opposed to printed data, such as a “student handbook,” online data can be altered or removed from the time of initial viewing to the point of publication. Additionally, while my goal was to identify themes or patterns in student conduct codes that can be applied across US public campuses, qualitative studies are not typically generalizable, nor are they predictive.

Disappointingly, as mentioned earlier, I had to exclude four ugSERU variables that I felt were important indicators of campus racial climate from my analysis due to low response rates. The five variables I used are part of the “Core” module of the survey, while these four variables are part of the “Student Life and Development” module of the survey. Every student who takes the ugSERU receives the “Core” questions; but the “Student Life and Development” module of the survey is assigned randomly, meaning that not every student answers these questions. The four variables are show below in Table 10.

Table 10

Excluded ugSERU Variables

Variable Code	Variable Description	Variable Type
D2_DUCFACRACE	Faculty/instructors express negative views - Race/ethnicity	Scale
D4_DUCSTDNTRACE	Students express negative views -	Scale

	Race/ethnicity	
D6_DUCDVRSIMPRTCPS	Level of agreement - Diversity is important at this campus	Scale
D6_DUCDVRSIMPRTME	Level of agreement - Diversity is important to me	Scale

These variables pertain to students' perceptions of faculty and students' expressions of negative views, as well as their own views on the importance of diversity at their respective campuses, and to them. It was frustrating that I could not use these variables due to low response rates, and I find it to be a limitation of the ugSERU itself that these questions are not part of the "Core" module, particularly given the attention that campus racial climate incidents have received over the last decade.

Similarly, another quantitative limitation of this study that was not in my control is the lack of questions on the ugSERU regarding freedom of expression. With the number of high-profile incidents on campuses around the country over the past several years, I believe that ugSERU should follow the direction of organizations such as the Pew Research Center and include questions regarding students' perceptions of freedom of expression rights on their campuses. Even two or three questions on students' perceptions of freedom of expression would provide institutions with additional insights into how to address the complex issue of balancing freedom of expression with a positive campus racial climate.

SERU needs to adjust in both of these areas--revising which questions are part of the ugSERU "core" module, and adding questions related to students' perceptions of freedom of expression—if it wants to remain relevant as a tool to gauge the student

experience. A majority of college students believe that protecting free speech rights is important to our democracy (Gallup, 2018). Additionally, SERU needs to consider what it means by “student experience.” The questions asked on the ugSERU simply do not go deep enough to provide meaningful insights about students’ perceptions of racial equity; they are shallow questions that ask whether students feel “welcomed” or “respected.” These are vague and subjective questions that cannot answer the queries that institutions have regarding racial equity on their campuses. In contrast, the previously referenced Gallup/Knight Foundation poll offers specific questions, such as:

- If you had to choose, do you think it is more important for colleges to create a positive learning environment for all students by prohibiting certain speech or expression of viewpoints that are offensive or biased against certain groups of people, or to create an open learning environment where students are exposed to all types of speech and viewpoints, even if it means allowing speech that is offensive or biased against certain groups of people?
- Thinking about how students of different races interact and treat one another, how would you rate the overall racial climate on your college’s campus—as excellent, good, only fair, or poor?

Ahmed (2015) made a cogent argument regarding the difference between issues of racial equity and equality, and those of racial diversity by pointing out that “the shift from the language of equality to the language of diversity becomes linked to a shift from a confrontational to a collaborative working model, to sharing rather than enforcing values” (p. 64). In this way, diversity work is seen as “softer” work that is more appealing in the institutional setting, but often does not address issues of racial equity on

campus (Ahmed, 2015). These “soft” questions on the ugSERU are a primary reason that my dissertation studied specifically issues related to diversity and not equity.

Mediating variables is a final primary quantitative limitation of this study. There is simply no way, without spending many years and writing hundreds more pages, to account for all the possible mediating variables when it comes to interpreting data regarding students’ perceptions. While many of the observations I made in this study appear linear, they cannot be; however, the careful design of this study allowed for correlative conclusions.

Limitations in each area, qualitative and quantitative, drove my desire to engage in a convergent mixed methods study design. While no single method is without limitations, mixed methods designs can provide additional information that mitigate those limitations and provide more balanced findings. In my study, using mixed methods allowed me to identify themes in student conduct codes and to see how the use of those themes affected students’ perceptions of campus racial climate. This cross-validation made it possible for me to identify a theory that could be generalized across US public campuses.

Finally, neither qualitative nor quantitative in nature, time was also a key limitation of this study; while this topic is prevalent right now, it is also a rapidly moving target. Institutions are changing conduct codes, forming bias response teams, and responding to students’ demands in other ways.

Summary

Initial conclusions from the separate and discrete analyses indicated that there is a correlation between the words used in a student conduct code and the racial climate

experienced by students on a campus. In the qualitative analysis, the data showed that, despite recommendations that student conduct codes should provide guidance and be developmental in nature, these codes remain focused on punishment. This was evidenced throughout the key themes. When discussing diversity and race, most of the student conduct codes reviewed placed heaviest emphasis on issues of racial bias and/or harassment, and punitive consequences for such behaviors. This same pattern held true with academic matters as well, with the most discussion centering around punishments for academic dishonesty. Finally, student conduct codes that did include more developmental forms of discipline, such as educational approaches or restorative justice programs still placed heavy emphasis on punishment as opposed to student development.

Additionally, contrary to advice from the legal community to remove legalistic language from student conduct codes, the data showed that this language abounds in student conduct codes. The “legal emphasis” key theme contained the highest number of code applications, at 337. Furthermore, while titled “student conduct codes,” the data showed that more emphasis was placed on university interests than on student development and guidance.

The quantitative analysis examined student responses to five different prompts:

- Students of my race/ethnicity are respected on this campus
- Overall, I feel comfortable with the climate for diversity and inclusiveness at RU
- The RU is a welcoming campus
- I feel valued as an individual at this campus
- I feel that I belong at RU

Assigning a campus racial climate score to each campus allowed me to compare the racial climate perceptions of students based on their responses to the five prompts. The results indicated that there is a correlation between even the slightest mention of “diversity” and a more positive campus racial climate, as well as a correlation between no mention of “diversity” and a more negative campus racial climate as perceived by students.

CHAPTER 5: DISCUSSION

As discussed above, the initial conclusions from my analyses indicated that student conduct codes remain focused on punishment, even those that included more developmental forms of discipline. Additionally, the data showed that legalistic language dominates student conduct codes, despite recommendations to remove it. Finally, I found that student conduct codes vary greatly in emphasis from their corresponding mission statements; most importantly, when it comes to discussion of diversity. In this chapter, I discuss in detail my convergent analysis findings; introduce and outline my theory based on the findings; and examine the contributions of this study through policy, practice, and future research implications.

Convergent Analysis

While the design of this study is convergent, meaning that I analyzed and interpreted the qualitative and quantitative data sets concurrently, when combining them, something naturally must come “first.” It is impossible to literally review two sets of data simultaneously, so I began with the quantitative data. The first item I scrutinized

was the ranking of campus racial climate scores. During my quantitative analysis, I ordered the schools numerically based on their campus racial climate scores, and then grouped them into three categories: 1) high, 2) middle, and 3) low. Once the schools were ordered numerically, I referred to the qualitative analysis to review which schools mentioned diversity and which did not.

This first small step provided interesting results, as it revealed that the five schools with the lowest scores did not mention diversity at all, and of the five schools with the highest scores, three of them did discuss diversity. I continued my analysis in this manner, going back and forth between the two data sets, and this process of convergent analysis revealed four major findings to help answer my research questions:

- Student conduct codes remain focused on punishment, not student development;
- Student conduct codes contain largely legalistic language;
- Student conduct codes do not reflect mission statements;
- Absence/presence of diversity in student conduct codes shares a relationship with student perceptions of campus racial climate.

I explain below how these findings support the conclusion that student conduct codes could be better utilized to promote positive campus racial climate on campuses, and help inform the relationship between the specific verbiage and themes used in a student conduct code and students' perceptions of campus racial climate on an individual campus. Unfortunately, the absence of diversity discussion in the majority of the student conduct codes, combined with the complete lack of ugSERU questions regarding students' perceptions of freedom of expression, does not allow for much meaningful

insight into the relationship amongst student conduct codes that promote a positive campus racial climate and freedom of speech; however, I address that topic as well.

Continuing Focus on Punishment, Not Development

As noted earlier, the “disciplinary emphasis” key code was applied only 82 times during the coding process, as compared with 377 applications of the “legal emphasis” key code. The primary reason for keeping these two categories separate and discrete was to distinguish amongst instances of developmental, educational, and restorative discipline methods that employ a broader student development approach; and tactics that mirror the legal system, in which the focus is on discipline through punishment.

Returning to the mission statements that are supposed to be both foundational for and instructive to all offices and their documents on a campus, virtually all mention the importance of student development and/or growth. In contrast, 20 of the student conduct codes discuss “sanctions,” “discipline,” “violations,” or other words to describe punishments. Only three student conduct codes do not make any mention of specific sanctions for conduct code violations. Clearly, despite recommendations from the legal community (Dannells, 1997; Martin & Janosik, 2004; Mawdsley & Cloud, 2008), universities continue to utilize legalistic language and approaches in their student conduct codes.

One code, in particular, is titled, “Code of Student Conduct: Grounds for Discipline and Sanctions.” The punishments outlined in this student conduct code include:

- oral admonition,
- written reprimand,

- academic sanction,
- community service,
- probation,
- order of no contact,
- monetary restitution,
- required counseling,
- loss of housing, parking, and/or computing resource privileges,
- grade reduction,
- suspension (either for a designated period of time or until a set of conditions are met),
- dismissal from a specific section or course, or from a specific academic unit,
- expulsion,
- withholding of diploma/degree,
- revocation of admission/degree,
- enhanced sanctions in cases where conduct was motivated by an individual's membership in a protected class.

In the case of another school, the section titled, "Sanctions," outlines the institution's commitment to educational sanctions as the primary form of discipline, and notes that every effort is made to ensure utilization of an educational sanction designed to help students make better choices in the future. This opening is followed by a list of all possible sanctions, the first of which is expulsion, followed by suspension. Potential educational sanctions are not outlined until number 8 on a list of 11 possible sanctions.

Another school highlights its extensive disciplinary hearing process, including two pages outlining student rights and responsibilities, and encourages any member of the institution's community to engage in the process. Later, in its six-page appendix outlining potential sanctions, it notes specifically that sanctions may be imposed outside of the encouraged conduct process. Yet another school used almost one third of its lengthy 40-page student conduct code to document potential violation sanctions. Lastly, all schools that list specific sanctions include vague and ambiguous umbrella language to cover circumstances not mentioned specifically in their documents, such as "other sanctions as deemed appropriate under the circumstances."

Excessive Legalistic Language

In 1961, *Dixon v. Alabama* effectively ended the doctrine of *in loco parentis*, or "in the place of a parent," on US campuses. For years, administrators had used *in loco parentis* to write vague student conduct codes that allowed them to exercise broad discretionary powers in disciplining students (Martin & Janosik, 2004). However, prior to this landmark case, older college students, flooding campuses after World War II and the introduction of the Servicemen's Readjustment Act of 1944 (the "G.I. Bill"), were already challenging the parental disciplinary methods in place on campuses (Dannells, 1997). The resulting consequence of this paradigm shift from *in loco parentis* to the newer "student as consumer" relationship that followed was widespread revision of student conduct codes (Bickel & Lake, 1999; Dannells, 1997). These new codes included legalistic language intended to mirror the US judicial system with the intention of providing students with constitutional protections, presumably in response to a number of legal challenges brought by students over the preceding years (Dannells, 1997; Martin &

Janosik, 2004). In the aftermath of this change, administrators found themselves in the unfortunate position of trying to explain the educational nature of student discipline, which was now obviously lacking in their newly-written student conduct codes (Martin & Janosik, 2004). Some legal scholars argued that, in emulating the judicial system, any educational purposes for student conduct codes were effectively removed and replaced with an adversarial document intended to punish (Gehring, 2001).

Experts on campus judicial systems recommended removing legalistic language from student conduct codes and returning to educational and developmental verbiage, but studies show that approximately 80 percent of the student conduct codes in use today still contain legal terminology (Gehring, 2001; Martin & Janosik, 2004; Pavela, 1979; Stoner & Cerminara, 1990). It is important to note that the number of studies focusing on verbiage used in student conduct is exceptionally small, making generalizations impossible; however, my own content analysis supports the view that legalistic language is still prevalent in student conduct codes. Analysis revealed three schools that used no legalistic language anywhere in their student conduct codes. Two of these three schools scored in the top five campus racial climate scores. Of those two, only one mentioned diversity in its student conduct code; that school received a higher campus racial climate score. Additionally, two schools employed legalistic language more than 10 times in their student conduct codes. These two schools ranked 20th and 21st out of the 23 institutions, among the lowest scores received. Neither school mentions diversity in its student conduct code.

Again, while this study cannot claim any causal link, this information indicates that there could be some compelling relationship amongst use of legalistic language,

mention of diversity in student conduct codes, and student perceptions of campus racial climate. The data could be interpreted in such a way to indicate that the combination of excessive use of legalistic language and lack of diversity language in student conduct codes could share a relationship with a much lower campus racial climate score. Current student conduct code models benefit the dominant power structure and disfavor students of color because they mirror the very judicial systems that benefit the dominant power structure. The history of racism in the US has allowed legal and other governmental systems to benefit the dominant power structure, and to not only oppress historically marginalized people but, essentially, to also attempt to make them an afterthought at best and invisible at worst (Solórzano, 1998). The process of dismantling this power differential necessitates starting by removing both the legalistic language and the legalistic approach to student conduct issues that is contained within that language.

This is an area where CRT and the key tenet of interest convergence show promise for improving systems for students of color, as the interests of Black students converge with the interests of White students (Bell, 1980). Current student conduct codes already benefit White students. Removing or reducing greatly the use of legalistic language in student conduct codes and replacing it with developmental guidance would increase the benefit to White students, as developmental student conduct codes focus on “preventing harm, upholding freedom, and fostering community” (Dannells, 1997, p. 3). It would also allow students of color to progress, since theirs is the population less likely to succeed in a student conduct hearing based on an inherently-biased judicial system (Ferguson, 2000; Karp & Sacks, 2014; King, 2012; Skiba et al., 2011; Wallace et al., 2008). Transitioning to a more developmental model of conduct based in social justice

and that recognizes existing power differentials provides a more equitable environment for all students, including for students of color. This type of model is exemplified through Schrage and Thompson's (2009) "social justice analysis of conflict resolution" (p. 74), and provides a spectrum of conflict resolution options, from formal to informal. While traditional student conduct hearings are found on the formal end of the spectrum, the informal end would include restorative justice practices that include counter narratives, which resonate with historically marginalized students. More discussion of this type of model is included later in this study, as part of the discussion on theory.

Mission Statement Incongruity

A brief review of criteria for accreditation on the Higher Learning Commission's website reveals that the first criterion for accreditation in its 19-state region is a mission that is "clear and articulated publicly [and] guides the institution's operations" (HLC, 2019). Most accreditation agencies require mission statements from their respective institutions, and most of those institutions report that articulating a shared purpose is fundamental to their success (Morphew & Hartley, 2006). Mission statements are rooted in corporate America, but "inevitably found their way into the academy" (Morphew & Hartley, 2006, p. 457).

Much of the literature on mission statements has argued that they are vital in the strategic planning process, an essential tool in determining an institution's vision for the future, instructional regarding institutional priorities, and motivational to students, faculty, and staff and provide them with a shared set of values to communicate both internally and externally (Hartley, 2002; Keller, 1983; Martin, 1985; Nanus, 1992). Other scholars noted that mission statements are merely "a collection of stock phrases

that are either excessively vague or unrealistically aspirational or both” (Morphew & Hartley, 2006, p. 457). They argued that, rather than providing a directional framework, language used in mission statements is so general and overbroad that they are rendered virtually useless. The aspirational tone implied that “nothing is beyond the reach of the organization, [but] they ignore institutional limitations and side-step any effort at prioritizing current activities or future initiatives” (Morphew & Hartley, 2006, p. 458). One study I reviewed concluded that public institution mission statements are more similar to one another, regardless of institutional attributes, than they are to private institutions that are of comparable type, even including those that share similar institutional characteristics and foci. In other words, public institutions’ mission statements resemble one another, regardless of the individual values and norms that might be unique to each campus. One could conclude from this that mission statements are, in fact, used more as “symbolic artifacts . . . to signal key external constituencies that the institution in question shares these groups’ values and goals” (Morphew & Hartley, 2006, p. 466).

As mentioned earlier, 19 of the 23 schools examined in this study mentioned diversity in their mission statements, while only four schools reference diversity in their student conduct codes. This reinforces the notion that institutions use mission statements as more of a representational indication of shared values, (particularly to external constituencies, such as parents, lawmakers, and donors), and less as a foundational document to provide direction for both current and future policymaking. This has an effect both on campus culture and climate, in that the culture of an institution—its shared beliefs and values—are carried out through the climate of an institution—the policies,

practices, and perceptions—in everyday life (Schein 2016; Schneider, Ehrhart, & Macey, 2013; Starnski & Hing, 2015). To change the climate on campus, the shared beliefs and values must permeate those policies, practices, and perceptions (Schneider et al., 2013). Therefore, if diversity is mentioned as a value in the mission statement, it must appear as a written value in other policies (including student conduct codes), and it must be demonstrated as a value in campus practices, so it may be felt in students' perceptions of campus racial climate. In turn, if diversity is not mentioned as a value in the mission statement, it should come as no surprise that it is not included in other policies, not demonstrated in practices, and reflected as negative student perceptions of campus racial climate.

Absence/Presence of Diversity in Student Conduct Codes and Effect on Campus Racial Climate

As mentioned earlier, 19 of the 23 participating institutions' mission statements mentioned diversity in some significant way, while only 4 of the 23 participating institutions' student conduct codes followed suit. Looking at this opposition through the lens of CRT, interest convergence is one plausible explanation.

Ahmed's work (2012) suggested that, "diversity has a commercial value and can be used as a way not only of marketing the university but of making the university into a marketplace" (p. 53). Deem and Ozga (1997) posited that the very use of the word "diversity" in campus literature, such as a mission statement, signaled difference on campuses, but did not necessarily reflect any action, nor any change in systematic inequality present on campuses. Ahmed (2012) described this type of use of diversity as public display and marketing as a means for non-performative diversity work. Austin

(1975) conceived of performative rhetoric as, “the issuing of the utterance is the performing of an action” (p. 6). Butler (1993) added to this idea by stating that, “performativity must be understood not as a singular of deliberate ‘act,’ but, rather, as the reiterative and citational practice by which discourse produces the effects that it names” (p. 2). Most of the schools in this study do make mention of diversity in their primary foundational documents, their mission statements. In essence, “diversity is incorporated as an official term insofar as it is made consistent with the organization’s goals” (Ahmed, 2012, p. 57). In this context, the goal is securing as many students as possible to enroll and, even better, students who can afford to pay the tuition without subsidies directly from the institution.

Again, this is an area where interest convergence shows promise. In this instance, diversity is viewed as a commodity for public relations; however, to exploit that commodity, campuses need to avoid racial bias incidents. This provides the opportunity for interest convergence through a better campus racial climate. As stated earlier, White students benefit the most from a diverse environment (Bensimon, 2005; Pascarella & Terenzini, 2005). The presence of a diversity office/officer to address racial bias incidents allows White students to “feel better” about the campus racial environment. At the same time, students of color truly need a better racial environment to succeed (Cabrera et al., 1999; Doan, 2011). This presence of existing diversity office/officers to address racial bias incidents should, in theory, allow students of color to benefit from an improved campus racial environment. This example of interest convergence (positive public relations and a lack of campus racial bias incidents) provides the impetus for campuses to pursue, more vigorously, an improved racial climate through prevention of

racial bias incidents. While this improvement cannot address issues of racial equity on campus, it can address the sense of belonging and integration into the community for students of color on a campus which, in turn, can contribute to student success (Cabrera et al., 1999; Doan, 2011; Pascarella & Terenzini, 2005). Interest convergence is achieved through the public relations interest of the institution, the learning benefit for White students, and the potential for an improved campus racial climate for students of color.

The data show that there is a relationship between the absence of diversity in a student conduct code and a lower campus racial climate score. The five lowest-scoring schools do not mention diversity in their student conduct codes. The data also show that there is a relationship between the presence of diversity in a student conduct code and a higher campus racial climate score. Of the five highest-scoring schools, three mention diversity in their student conduct codes.

It is also worth noting here that the overall highest-scoring school is not a “primarily White institution” (PWI), with only 11 percent of the population self-reporting as White, so perhaps it is only logical that it would score a full tenth higher than the next four schools on the list, which are all PWIs, with percentages of students self-reporting as White at 63 percent, 73 percent, 68 percent, and 70 percent, respectively. Also, of note here is that, of the three high-scoring schools that mention diversity in their student conduct codes, all discuss diversity in a meaningful way, including:

- an institutional commitment to diversity,
- students called to embrace diversity,
- institutions valuing equality of opportunity, diversity, and inclusion.

All of the above go beyond a mere mention of some type of diversity office or officer, or a brief reference to diversity makeup of student disciplinary committees. Again, this points to a convincing relationship between the absence or presence of diversity in student conduct codes and the effect on students' perceptions of campus racial climate. In these three instances, this may indicate that these institutions are moving beyond mere rhetoric about diversity—transforming the values that permeate their institutional culture into practices that contribute to their institutional climate.

Freedom of Speech

The overwhelming absence of diversity in student conduct codes combined with a lack of questions on the ugSERU regarding students' perceptions of freedom of expression, makes it difficult to comment on any relationship amongst student conduct codes that promote a positive campus racial climate and freedom of speech. In and of itself, this is problematic. The Student Engagement in the Research University institutions rely on the data received from the SERU surveys for insights into students' experiences on their individual campuses. While other organizations, such as the Pew Research Center, Gallup, the Knight Foundation, (Gallup, 2016, 2018), and the American Council on Education (2019), are surveying college students across the US regarding issues such as freedom of expression, these surveys are not disaggregated by campus, so the data is not meaningful in terms of informing individual campus responses. What we do know from these various surveys is that students think that freedom of speech is a key issue on their campuses, and that their views seem to be shifting regarding the balance between freedom of speech and campus racial climate. Given that freedom of expression and campus racial climate on campuses has moved to the forefront over the last six years,

SERU should be responding to assist campuses by including questions about these topics (ACE, 2019; Gallup, 2016, 2018; Delgado & Stefancic, 2018).

Reviewing the 12 schools that received campus racial climate scores greater than zero, the data revealed that 11 of the schools (92 percent) referenced specifically “student rights,” or “freedom of expression” in their student conduct codes. In looking at the schools that scored lower than zero, 7 of the 10 (70 percent) make those same references. In most cases, this was either a single reference to one or the other, or a single reference to each. Examining cases where there was either more than one reference to one or the other, or more than one reference to each, again, 92 percent of the schools that received campus racial climate scores greater than zero were included, while the percentage of schools that scored lower than zero dropped to 60 percent. A review of instances in which five or more combined references were made revealed an almost even split between schools that scored greater than zero and those that scored lower than zero. At best, the data reveal that referencing specifically “student rights,” or “freedom of expression” in student conduct codes may positively influence student perceptions of campus racial climate; however, in this researcher’s opinion, that correlation is weak and provides little to no insight as to whether student conduct codes can promote a positive campus racial climate and promote students’ right to freedom of speech.

Grounded Theory: Returning to the Research Questions

The purpose of this study was to allow me to generate a theory from my data analysis, as opposed to speculating a hypothesis in advance. As this analysis was for a dissertation, my research questions were foremost in my mind throughout the entire process and served as a tool through which my theory could evolve. By examining the

words used in student conduct codes, I determined that there is a correlative relationship between those words and student perception of campus racial climate. Using my research questions as the basis for my theory, I can answer thoroughly two of the questions and provide some insight to a third; however, the data did not present any tangible answer to the fourth.

Research Question One

My first research question asked: Can institutions use student conduct codes to promote positive campus racial climate, while still allowing for—and even promoting—freedom of speech and, if so, how? The data show clearly that institutions can utilize their student conduct codes to promote a positive campus racial climate. The first step in this process is to ensure that schools use their mission statements as a foundational influence when revising student conduct codes, as opposed to exploiting them as purely emblematic displays of aspirational (at best) or false (at worst) values for public mollification. To use this study as example, since 19 of the 23 schools examined mentioned diversity in their mission statements, then those same 19 schools should, at the very least, reference diversity in their student conduct codes. As mentioned earlier, only four schools did so. While the data did not show anything definitive regarding the freedom of speech aspect of the question, I believe that is a shortcoming in the ugSERU survey itself. While other current issues are part of the survey, such as food and housing insecurity; and other current political issues are included, such as climate change and equal rights, there are no questions related to freedom of speech. Considering the intense national spotlight on this issue for the past several years, it seems an oversight that

ugSERU has not adapted to include any questions about students' perceptions of freedom of speech issues on their campuses.

Research Question Two

Research question two asked: What is the relationship between the specific verbiage used in a student conduct code and the perception of campus racial climate on an individual campus? As mentioned above, the results indicate that there is a correlative relationship between the verbiage used in a student conduct code and the perception of campus racial climate on an individual campus. The institutions with the five lowest campus racial climate scores do not mention diversity at all; of the institutions with the five highest campus racial climate scores, three mention diversity in a meaningful way, as described earlier (commitment to diversity, embracing diversity, valuing diversity). This is an indication that the specific verbiage used in student conduct codes shares some relationship students' perceptions of campus racial climate. While it is certainly likely that there are mediating variables at work here as well, I believe the data show an undeniable correlative relationship between the use of meaningful verbiage about diversity and better student perceptions of campus racial climate, and the absence of diversity language and lower student perceptions of campus racial climate.

Research Question Three

My third research question asked: Which institutions are providing a positive campus racial climate to their students? The answer to this question, of course, must remain somewhat vague, as I cannot name the specific campuses that are providing a positive campus racial climate to their students according to this study. Furthermore, I realized as I was working on my data analysis that I framed this question incorrectly. In

fact, more than half of the schools included in this study are providing a positive campus racial climate to their students; the question I should have asked is how many are providing it to students who are not a part of the majority power structure. To attempt to answer this question, I looked at the data (provided in tables 5-9) broken down into both “White” and “Nonwhite,” and by individual self-selected racial categories for the three PWIs with the highest campus racial climate scores.

Information for the highest scoring PVI, which I will refer to as “school A,” is found below in Table 11.

Table 11

School A: Highest Scoring PVI Racially Disaggregated Data

Race	Climate score	Sample size
W	0.241162149	3696
NW	-0.003870678	1737
African American	-0.334597911	167
American Indian	0.477827888	4
Asian American	-0.068487172	336
Hispanic	0.057171512	1225
Pacific Islander	0.043951718	5

School A received an overall campus racial climate score of 0.166044. Broken down, White students assigned a score of 0.241162, and Nonwhite students assigned a score of -0.003877. Clearly, White students have a much better perception of campus racial climate than Nonwhite students, which makes sense at a PVI. However, the score for Nonwhite students is relatively good, indicating that at least some students of color have a more positive perception. In looking at the scores for the individual self-selected racial categories, I found that three of the racial groups—American Indians, Hispanics, and

Pacific Islanders—all reported positive scores of 0.477828, 0.057172, and 0.043951, respectively. The negative scores of -0.334598 and -0.068487 came from African Americans and Asian Americans, respectively.

Information for the second-highest scoring PWI, which I will refer to as “school B,” is found below in Table 12.

Table 12

School B: Second-Highest Scoring PWI Racially Disaggregated Data

Race	Climate score	Sample size
W	0.18712061	3167
NW	-0.00911483	733
African American	-0.186485461	182
American Indian	-0.234349787	2
Asian American	0.022310416	529
Hispanic	0.074036463	19
Pacific Islander	0.006455056	1

School B received an overall campus racial climate score of 0.141655. Broken down, White students assigned a score of 0.187121, and Nonwhite students assigned a score of -0.009115. Again, White students have a much better perception of campus racial climate than Nonwhite students at this PWI. However, again, the score for Nonwhite students is relatively good, indicating that at least some students of color have a more positive perception. In looking at the scores for the individual self-selected racial categories, I found that three of the racial groups—Asian Americans, Hispanics, and Pacific Islanders—all reported positive scores of 0.022310, 0.074036, and 0.006455,

respectively. The negative scores of -0.186486 and -0.234350 came from African Americans and American Indians, respectively.

Information for the third-highest scoring PWI, which I will refer to as “school C,” is found below in Table 13.

Table 13

School C: Third-Highest Scoring PWI Racially Disaggregated Data

Race	Climate score	Sample size
W	0.171401316	2813
NW	-0.038609764	513
African American	-0.200234923	92
American Indian	0.131057245	6
Asian American	-0.130150275	137
Hispanic	0.036780916	276
Pacific Islander	-0.233974876	2

School C received an overall campus racial climate score of 0.137511. Broken down, White students assigned a score of 0.171401, and Nonwhite students assigned a score of -0.038610. Again, White students have a much better perception of campus racial climate than Nonwhite students at this PWI. However, again, the score for Nonwhite students is relatively good, indicating that at least some students of color have a more positive perception. In looking at the scores for the individual self-selected racial categories, I found that two of the racial groups, American Indians and Hispanics, reported positive scores of 0.131057 and 0.036781, respectively. The negative scores of -

0.200235, -0.130150, and -0.233975, came from African Americans, Asian Americans, and Pacific Islanders, respectively.

Looking at the disaggregated data paints a very different picture than the overall campus racial climate score provides. It reveals that, while there is an undeniable relationship between specific verbiage used in student conduct codes and students' perceptions of campus racial climate, the most positive effects of those words influence perceptions of those who are already part of the dominant power structure, while the most negative effects influence perceptions of those who are already marginalized. In each case outlined above (Schools A, B, and C), African American students held negative perceptions despite the fact that the rhetoric around diversity and inclusion on campuses is often purportedly directed toward the African American population (Bell, 1976, 1980, 2004). In short, the data show that, despite all the diversity offices, officers, programs, and other efforts, US higher education continues to fail its African American student population in terms of feeling respected, comfortable with the racial climate, welcomed, valued, and having a sense of belonging on their chosen campuses. Furthermore, this held true regardless of the number of students who self-selected African American as their racial identity.

While African American was not the second-largest population in any of the three cases above, it was also never the smallest population on each respective campus. In the case of School A, the 167 African American students responding to the survey overwhelmingly had the least positive perception of campus racial climate, regardless of the fact that there are only four students who identify as American Indian and five students who identify as Pacific Islander. One might presume that the relatively small

numbers of each of these categories of students might naturally make those students feel an even lesser sense of belonging, but both categories reported positive scores. This could indicate that these students, being part of such a small population, receive a higher level of personalized services to help them feel more comfortable and valued than their African American peers. Of course, it is important to keep in mind that, with a low response rate such as this, inferences cannot be made. It could be that those who responded to the survey are deeply invested in the institution and the opportunities that encourage their participation, while those who did not respond feel differently about the campus racial climate.

Research Question Four

The fourth research question was: What are the shared characteristics of student conduct codes that promote a positive campus racial climate and freedom of speech? Unfortunately, as mentioned earlier, I do not believe the data revealed any significant findings regarding a relationship amongst student conduct codes that promote a positive campus racial climate and freedom of speech. As referenced above, the absence of diversity in student conduct codes combined with a lack of questions on the ugSERU regarding students' perceptions of freedom of expression, makes it virtually impossible to comment on even a negligible relationship amongst student conduct codes that promote a positive campus racial climate and freedom of speech. While it is possible to interpret the data in a way that indicates that referencing specifically "student rights," or "freedom of expression" in student conduct codes may positively affect student perceptions of campus racial climate, I maintain that the correlation is weak and provides little to no

insight as to whether student conduct codes can promote a positive campus racial climate and promote students' right to freedom of speech.

Theory

The goal of this dissertation was to use a mixed methods grounded theory (MM-GT) approach to identify best practices that US college campuses can apply to help public universities write student conduct codes that have a positive effect on campus racial climate. The data revealed (as have other studies) that perceptions of campus racial climate differ dramatically amongst racial groups. These perceptions are related to language used in student conduct codes and, most likely, other campus policies. I believe that there are important lessons that colleges and universities can take from this study when considering revisions to outdated student conduct codes. Based on the answers to my research questions, outlined above, I am calling the theory that emerged the "MIND" theory:

- M – Mission
- I – Individual
- N – Non Legal
- D – Developmental

Mission

Campuses should use mission statements to inform all policies, especially student conduct codes, and if diversity is a stated value in the mission statement, it should appear as such in the student conduct code. In Chapter 1, I provided a definition of campus climate from the University of St. Thomas: "An organization's climate is reflected in its structures, policies, and practices; the demographics of its membership; the attitudes and

values of its members and leaders; and the quality of personal interactions” (UST, 2016).

In other words, your stated values must permeate every aspect of your campus, from the administration to the students, from the organizational structure and written policies to the daily execution and practice of those policies.

Individual

The data clearly showed that looking at disaggregated ugSERU survey results is more informative than grouping the “students of color” experience. United States higher education does a disservice to historically underrepresented and minoritized students when it continues engaging in this type of essentialism. Institutions must recognize that condensing the experiences of students into the larger “students of color” umbrella is not just disrespectful, it is damaging. It is my recommendation that, before embarking on any revisions to existing student conduct codes, institutions review carefully and authentically their disaggregated ugSERU results, and engage with existing literature and campus racial climate experts to take substantive steps toward genuine and helpful change.

Non-Legal

Institutions should listen to experts and remove legalistic language from their student codes. While it can be argued that we live in a litigious society, colleges and universities have an obligation to their primary mission of educating through teaching, research, and service. Some students will make mistakes during their collegiate careers, but their time in college may be the last time in their lives where they are surrounded by people whose primary goal is to educate them, as opposed to judge and punish them.

This gives institutions the rare opportunity to change lives for the better through the process of educating holistically their students.

It is vital that institutions recognize the legal system views the role of discipline of students, except in cases of irrevocable expulsion, as part of the educational process, and hold that the “process is not equivalent to the criminal law processes of federal or state criminal law” (*Esteban v. Central Missouri State College*, 1968, p. 628). Furthermore, in cases of irrevocable expulsion, they view discipline of students as “not punitive or deterrent in the criminal law sense, but ... rather the determination that the student is unqualified to continue as a member of the educational community” (*Esteban v. Central Missouri State College*, 1968, p. 628). Moreover, while *Goss v. Lopez* (1975) ensured public school students due process under the law by requiring a hearing prior to suspension, it did not dictate the form that hearing must take, nor did it prescribe a student disciplinary process that resembled the legal system.

Developmental

Student conduct codes should include far more developmental guidance that emphasizes “preventing harm, upholding freedom, and fostering community” (Dannells, 1997, p. 3). While there are many different arguments to be made regarding the purpose of education, one line of reasoning is that education prepares people to be responsible, contributing citizens in their community. A well-functioning university disciplinary process involves more than guiding students toward making good decisions or redirecting energies from poor choices to conclusions that will lead them toward success. At the most basic level, each student must be considered and approached holistically, by respecting and making every effort to understand physical, biological, intellectual,

mental, emotional, social, cultural, and spiritual considerations. The behavior of each unique student must be contextualized in the campus environment—which must provide a balance of challenge and support—and through their own unique identity development (Bonner & Bailey, 2006; Sanford, 1967; Williams, 2004; Wood & Palmer, 2015). It must also assist them as they continue their evolution through the hierarchical and sequential stages from children to adults and begin developing the coping skills they need to be successful, happy, and healthy citizens. A strong part of that development is identifying one’s own definition of character and integrity and setting about the process of continuing to define those attributes through actions and deeds. This approach is about helping students understand why they make mistakes and, often, preventing them from making those mistakes from the start.

Keeping in mind the physical, biological, intellectual, mental, emotional, social, cultural, and spiritual considerations mentioned above, using student conduct codes as a developmental tool designed for student learning, rather than a punitive device whose only goal is to admonish and discipline, institutions can reframe current discussions around “acceptable speech,” or even behavior. It no longer has to be a binary conversation where those who do “right” are welcome on campus, and those who do “wrong” are reviled, condemned, and considered beyond help. Higher education professionals should be mindful of the abundance of research proving that brain development is ongoing until approximately 25 years old (Aamodt & Wang, 2012). This settled science proves that the prefrontal cortex, the part of the brain that helps individuals inhibit impulses and plan behavior, is not developed fully in 18 to 22-year olds. Furthermore, the brain’s “reward system” is also highly active during these same

years, causing an increased sensitivity to peer pressure and encouraging an interest in uncertain and/or risky situations (Aamodt & Wang, 2012).

The US legal system recognizes that 18-year olds, while legally considered adults, are not necessarily ready to accept all adult responsibilities by setting the legal drinking age at 21. Even rental car companies recognize the research around young adults and brain development (as related to judgement) and set minimum age requirements for car rental at 25. While college is a microcosm of US society, it is a specific one, with specific educational purposes. It should not contain a miniature court system; the US already has a court system that can deal with extreme failures of judgement. Instead, institutions should remove legalistic language from their student conduct codes, replace it with developmental language, and focus on the mission of educating holistically.

Replacing legalistic language with developmental guidance does not mean that a student conduct code becomes a non-disciplinary tool; it means only that the legalistic voice is diminished and replaced with language grounded in policy that is reflective of the unique institutional values of each campus. In this way, it becomes an adaptable tool for education, rather than a static punitive document. I am also not advocating for a “model” student conduct code because the codes should reflect the values on an individual campus and, therefore, be unique to that campus. Certainly, student conduct codes will share characteristics, but each campus needs to determine what will work for its specific population. Instead, I am recommending a process for creating or revising student conduct codes that centers the mission of the institution and includes a social justice approach with an equity lens.

While not an exhaustive list, here are a few examples of questions for campuses to consider as a guide when reviewing and revising student conduct codes:

- Does your student conduct code reflect your mission statement and state clearly your unique campus values?
- Does your student conduct code contain its own mission or philosophy statement, explaining the goal of student conduct at your institution?
- Do you know the goal of student conduct at your institution?
- Does your student conduct code contain plain language, that any member of campus could read and comprehend?
- Does your student conduct code place an emphasis on education through conflict resolution, as opposed to punishment alone?
- How often do you re-visit and revise your student conduct code?
- Do you have the data and information you need to make good decisions?
 - Does your revision process provide ample opportunity for students to provide input?
 - Does your revision process use an equity lens to discover if the racial composition of students involved in your hearings is proportional to your student body?
 - How do you know that your student conduct process is working? Do you have expected outcomes for the process? How do you assess the efficacy of your process?

- Do you have data regarding the outcomes of your student conduct process and whether marginalized students are disproportionately reported, adjudicated, and/or sanctioned? Are sanctions for marginalized students disproportionately punitive?
- Do you ask students what they learned from participating (willingly or not) in your student conduct process? More importantly, do you ask them what would have helped them learn more?
- Do you have a process to ensure that representation on conduct panels is equitable?

These types of questions can help campuses determine whether their current conduct codes reflect an adversarial type of relationship with their students (one which is likely focused on the punishment of exhibited behaviors) or a developmental relationship (one which is more concerned with the encouragement of expected behaviors). One brief example of this is what Dannells (1997) calls the “caring confrontation,” wherein behavior is examined critically in a supportive counseling environment, with the goal of helping the student learn from the situation, and little focus is placed on determining guilt or assigning punishment. This could manifest itself in an individual counseling session, or in a mediation that is inclusive of all parties involved but, again, with an educational goal. As stated above, a developmental relationship remains focused on prevention and community. In this sense, developmental guidance encourages a sense of responsibility and “commitment to the community” (Dannells, 1997, p. 4), and is a proactive effort of the entire campus community, rather than a reactive position taken by the administration.

In summary, the MIND theory advises US campuses to write mission statements that reflect shared values and use those statements to inform all policies and practices. Institutions must also review disaggregated ugSERU survey data instead of condensing and grouping said data. Additionally, colleges and universities must remove legalistic language from their student conduct codes, either by revising existing codes or by writing completely new codes. Finally, colleges and universities must embrace the inclusion of developmental guidance in student conduct codes as a tool for student learning.

Future Implications

As stated earlier, I identified a gap in the study of the potential relationship amongst student conduct codes, freedom of speech, and campus racial climate. While this study is largely unable to comment on the freedom of speech aspect of the relationship, it contributes to the literature by determining how public universities can write student conduct codes that have a positive effect on campus racial climate. It also highlights the need for campuses to obtain more information from students about how freedom of speech may or may not affect their perceptions of campus racial climate, either from SERU or another source that can provide information specific to each campus. Finally, it underscores the need for updates to the ugSERU, particularly around the topics of freedom of speech and campus racial climate.

Context

This study is particularly important when viewed in the context of the current literature around the specific challenges faced by Students of Color. For example, the plight of African American men on US campuses has produced volumes of scholarly work in recent years (Bonner, 2014; Cuyjet, 2006; Wood & Palmer, 2015). African

American men have made little progress in “accessing and succeeding in postsecondary education” (Wood & Palmer, 2015, p. 1). Despite the many academic papers, “the condition of African American men in higher education seems to have received less attention than some other topics,” (Cuyjet, 2006, p. 4) and “the interventions based upon them have yet to substantially shift outcomes” (Williams, 2014, p. 1). At the same time, “Latino, AAPI, and Native American undergraduate men combined have received less attention” (Williams, 2014, p. 117).

While this study highlights the need for further research, it also emphasizes the need for academia to better utilize the existing literature. Knowing that disaggregating the data reveals more about the experiences of individual groups of students than considering the data in the context of “students of color,” it is vitally important that institutions not only understand, but also act. As Cuyjet (2006) explained, campuses need to employ policy tactics focused on “impacting the social climate, enhancing the academic environment, increasing leadership opportunities, reducing incidences of racism and prejudice, or all of these” (p. 19).

Policy

Policies are the informative foundation for the daily execution of institutional practices by faculty, staff, and students. Viewed through the lens of CRT, most US college and university policies originate within the dominant power structure and further marginalize historically underrepresented students through inequity and/or inequitable application (Solórzano & Ornelas, 2002; Solórzano & Villalpando, 1998; Wood & Palmer, 2015). Wood and Palmer (2015) highlighted one of the most obvious examples of this when “an institution seeking to increase their rankings ... revise[s] their admission

policies to require higher levels of precollege academic preparation ... [benefitting] students and families who have greater access to resources” (pp. 59-60). These types of policies, in turn, “disadvantage historically underrepresented and underserved communities” (Wood & Palmer, 2015, p. 60).

This study shows that the presence of meaningful diversity discussion in student conduct codes shares a positive relationship with campus racial climate, and the absence of meaningful diversity discussion in student conduct codes shares a negative relationship with campus racial climate. This information reveals that meaningful discussion of diversity must occur on all levels, and must permeate all written policies, including student conduct codes. Furthermore, institutions have an obligation to ensure that their policies “produce racial parity and ... institutionalize the critical distribution of resources to programs serving the most disadvantaged students” (Wood & Palmer, 2015, p. 60). Institutions have a responsibility in their student conduct codes to recognize the importance of diversity, and state clearly and plainly their commitment to diversity as a core value, but they must go even further than that. They must acknowledge the largely legalistic nature of these codes and how the inherent power structure differentially affects students who are not a part of the dominant power structure. They must recognize that current models for student conduct codes which mirror the judicial system

overtax[es] the administrative system; moderate[s] the significance and attention given the most serious reports; keep[s] students from alternative, viable resolution pathways; and inaccurately model[s] adjudication as the best and only means of resolution. (Giacomini, 2009, p. 183)

As stated earlier, student conduct codes in this study that did include more developmental forms of discipline, such as educational approaches or restorative justice programs, still placed heavy emphasis on punishment as opposed to student development and guidance.

The MIND theory informs us that policies must be mission centered; however, this can be challenging when aspects of the mission statement seem contradictory, as in the example I first presented, the revision of admissions policies. There are those on campuses who would claim that these revisions are necessary to attract high-caliber students who can engage critically and creatively with intellectual material at the collegiate level. Unfortunately, these decisions often have less to do with these lofty academic endeavors, and more to do with raising the profile of the institutions in rankings. Historically underrepresented students' academic reports appear to detract from this goal and so diversity as part of the educational mission is subjugated to increasing rankings.

Even as college completion rates continue to rise, “students of color ... are more underrepresented at selective colleges today than they were 35 years ago” (Maxwell & Garcia, 2019, para. 4). Further, there exists a disparity in Black student enrollment at 45 of the 50 state flagship institutions, “meaning that the percentage of undergraduates who are black is lower than the percentage of high school graduates in that state who are black” (Maxwell & Garcia, 2019, para. 4). In Chapter 2, I presented evidence that both scholars and the Supreme Court recognize that the benefits of a diverse student body are substantial, and that diversity not only enhances learning but also helps better prepare students to enter the professional world. Unfortunately, institutions are choosing public relations over their primary mission of commitment to diversity.

Practice

Diversity work involves everyone. To date, most institutional efforts around diversity work have been “launched in stand-alone and fragmented ways; they have not emerged from substantive, collaborative conversations and planning among cabinet-level leaders, academic deans and faculty, student affairs professionals, coaches and athletics administrators, and ... students and alumni” (Williams, 2014, p. 126). Diversity work is the work of everyone on campus. Considering that almost 80 percent of higher education faculty are White, and 43 percent of those identify as male (NCES, 2015), institutions must accept the awesome task of ensuring that faculty, staff, and administrators work together to “address structural and institutional forces that undermine ... student academic achievement, sense of belonging, and psychological development” (Williams, 2014, p. 127). All too often, diversity work falls on the shoulders of diversity officers, or heads of multicultural student centers. Developmental policies with meaningful discussion of diversity must then inform campus practices that include substantive institutional changes (Williams, 2014). In terms of revising existing student conduct codes or, better yet, throwing them out and starting over, practice means casting a wide net of involvement, ensuring that diversity officers, historically underrepresented students, student affairs professionals familiar with student development theory, advisors, and others who work closely with minoritized students are a part of the process.

Practice is formal and informal. In this context, “practice” encompasses many meanings. It is not only the “formal and informal operations on campus” (Wood & Palmer, 2015, p. 60), but also the academic and co-curricular programming offered on campus, and the physical and compositional structures of campus. Institutions must

identify and dismantle the dominant power structures within these various contexts of practice on their campuses. In the case of student conduct codes, institutions must ensure that, especially where those codes follow an adjudicatory model, the composition of the panel hearing a student case is diverse and more reflective of the student's racial identity than that of the dominant power structure on campus.

Students should never be made to feel like a “guest” on their campus, and certainly not while they are engaged in a conduct process (Turner, 1994). Institutions must be mindful of where their student conduct cases are heard, ensuring that historically underrepresented students are not surrounded by “pictures, paintings, statues” (Wood & Palmer, 2015, p. 62) that immediately and consistently reinforce the idea that they are the “other.”

Like students of color in the university climate, guests have no history in the house they occupy. There are no photographs on the wall that reflect their image. Their paraphernalia, paintings, scents, and sounds do not appear in the house. There are many barriers for students who constantly occupy a guest status that keep them from doing their best work. (Turner, 1994, p. 356)

Interest convergence. There are different paths to achieve the goal of persuading institutions to revise student conduct codes. One compelling argument is the interest convergence of diversity and economics. Thus far, most arguments around diversity, equity, and inclusion on US campuses have been based on the noble commitment to diversity as a core value in US education (*Fisher v. University of Texas*, 2016; *Gratz v. Bollinger*, 2003; *Grutter v. Bollinger*, 2003; *Regents of the University of California v. Bakke*, 1978); however, the stark truth is that higher education institutions cannot afford

to be seen as hostile to students of color. As discussed earlier, competition for tuition dollars is fierce, and our current political climate has led to a steep decline in international applicants, particularly those of color (AACRAO, 2017).

Viewed through the context of interest convergence, institutions could make substantive changes to current policies that are weak on diversity and inclusion by using economic incentives that benefit White students and faculty; for example, revising faculty tenure and promotion policies to require a demonstrable commitment to diversity and inclusion, or making clear to White students that employers will hire and pay higher salaries to graduates who understand their roles in inclusive workplaces. Another approach is to develop an audit similar to the “Self-assessment rubric for the institutionalization of service-learning in higher education,” developed by Furco (1999), or the Equity Audit, developed by Beloved Community (n.d.). An in-depth auditing tool such as this warrants future research, as campuses could use it not only for revising student conduct codes, but as a way to measure all equity, diversity, and inclusion policies and practices.

Responses to unprotected speech. Another important consideration when it comes to formal operations on campus is how administrators respond to instances of unprotected speech on campuses. Over the past decade, there have been many occurrences of confusion regarding administrative response to what is commonly referred to as “hate speech.” My contention is that higher education institutions have become reluctant to take any actions that may result in litigation. Simply put, schools do not want to get sued. Now, this seems entirely logical—who would want to get sued? However, my point is that there is precedent for disallowing unprotected speech.

In *Words That Wound*, Richard Delgado (1993) contended in his chapter that “an independent tort action for racial insults is both permissible and necessary” (p. 90). The following cases were advanced in that chapter as evidence that legal precedent for this tort action exists. In the first case he discussed, the Washington Supreme Court ruled that “racial epithets which were once part of the common usage may not now be looked upon as ‘mere insulting language’” (*Contreras v. Crown Zellerbach, Inc.*, 1977, p. 741). In this case, the plaintiff contended that he was subject to “humiliation and embarrassment by reason of racial jokes, slurs and comments” (*Contreras v. Crown Zellerbach, Inc.*, 1977, p. 736). This case is now 43 years old and is not the only example of legal precedent for protection from racial insult, as outlined by Delgado (1993).

- *Fisher v. Carrousel Motor Hotel, Inc.* (1967)

In this case, the Texas Supreme Court decided in favor of the plaintiff on the grounds that “the essence of the plaintiff’s grievance consists in the offense to the dignity involved in the unpermitted and intentional invasion of the inviolability of his person” (p. 629) and because “personal indignity is the essence of an action for battery; and consequently the defendant is liable not only for contacts which do actual physical harm, but also for those which are offensive and insulting” (p. 630).

- *Alcorn v. Anbro Engineering, Inc.* (1970)

The Supreme Court of California decided in favor of the plaintiff, stating that “the courts of this state have also acknowledged the right to recover damages for emotional distress alone, without consequent physical injuries, in cases involving extreme and outrageous intentional invasions of one’s mental and

emotional tranquility” (p. 498). In this case, the defendant demeaned and insulted the plaintiff through the use of racial epithets, and then threatened to fire him because of his race, which the court found as intentional infliction of emotional distress.

- *Wiggs v. Courshon* (1973)

In this case, the plaintiffs sued for assault as well as mental anguish and emotional distress. The plaintiffs suffered an argument with a waitress in which she used racial epithets and threatened to kill the plaintiffs. The jury found in favor of the plaintiffs, despite the fact that the evidence did not support the theory that the plaintiffs were ever in physical danger. The federal district court upheld the jury’s verdict based on precedent from *Slocum v. Food Fair Stores of Florida, Inc.* (1958), in which that court noted that “a broader rule has been developed” for “offense reasonably suffered by a patron from insult by a servant or employee of a carrier, hotel, theater, ... [or] telegraph office” (p. 398). In other words, had the plaintiffs become embroiled with another customer in the restaurant, they would have had no legal basis for damages; however, because the court viewed the public humiliation inflicted by the waitress as a greater injury under the law, recovery was possible (pp. 98-99).

- *Harris v. Harvey* (1976)

This case involved a White judge who engaged in a “racially motivated campaign to discredit and damage” a Black police officer and, ultimately, have him fired (p. 330). The Seventh Circuit Court of Appeals affirmed the

jury's verdict in favor of the officer, and their award of \$260,000 in damages.

The Court stated that, "such an intentional tort inspired by racial animus and perpetrated under color of state law constitutes a denial of equal protection," under the 14th Amendment of the Constitution (p. 338; U.S. Const. amend. XIV).

Of course, for every case listed here, there are many more in which plaintiffs were not successful in their legal actions; however, this sampling demonstrates that legal precedent exists for the idea that racial epithets are not "mere insulting language," (*Contreras v. Crown Zellerbach, Inc*, 1977, p. 741) but are, in fact, "extreme and outrageous conduct" (*Pakos v. Clark*, 1969, p. 113). Delgado affirmed the position from *Words That Wound* (1993) in a 2018 article in which he stated that, "courts, legislators, institutions, and ordinary citizens strike the balance between the two sets of values (equal protection and free speech) at play in the hate speech controversy in light of current social needs" (Delgado & Stefancic, 2018, p. 181). He argued that the two often competing values of equal protection and free speech, both guaranteed in the Constitution, must both be taken seriously but must also be prioritized within the context of current events.

Finally, as mentioned earlier, I believe that time, place, and manner (TPM) restrictions will become an increasingly popular tool of practice in managing on-campus visits from controversial speakers and groups, and this area is ripe for research that will help universities deal with this complex issue. In 1927, United States Supreme Court Justice Louis Brandeis wrote in his concurrence in the case *Whitney v. California*, "If there be time to expose through discussion the falsehood and fallacies, to avert the evil by

the processes of education, the remedy to be applied is more speech, not enforced silence” (p. 377).

The sentiment Brandeis expressed is an extension of ideas put forth by John Stuart Mill (1859) nearly 70 years earlier, in his essay, “On Liberty,” in which Mill posited his philosophy about the relationship between personal liberty and authority. In both cases, the men in question were arguing against suppression of free speech and, in fact, made eloquent cases for the necessity of what some might call “bad” speech. Mill believed that ideas and opinions should not be suppressed under any circumstances, because all types of speech, whether true or false, serve the common good. He wrote that even bad ideas have a place in society because: a) they may be partly true, in which case they add value to an already known truth, or b) whether true or false, when debated, they may provide further evidence of an already known truth, allowing it to become a rational belief rather than risking a label of prejudice without evidence (Mill, 1859). Over the years, this idea of “answer speech with more speech” has become a kind of colloquialism in US society when faced with challenges around offensive, distasteful, or hateful speech. People use the phrase, but often do not understand fully the sentiment behind it, nor the racial complexities buried within it, particularly in the current political climate. However, despite these complexities, I believe this phrase may hold some small remedy in terms of finding a coexistence for freedom of speech and a positive racial climate on US public college campuses, through the use of existing time, place, and manner restrictions.

Time, place, and manner restrictions. To be sure, a university must be able to control certain student speech. Students cannot, for example, be permitted to stand and

recite poetry in the middle of a chemistry professor's lecture. Similarly, student protests must not prevent other students from accessing their classes. These sorts of concerns can be addressed through narrowly tailored—and constitutional— time, place, and manner (TPM) restrictions.

The purpose of TPM restrictions is to protect individual freedom of expression while also ensuring the safety of the public. The United States Supreme Court, through several court cases, has established TPM restrictions. The Court established four tests in *Ward v. Rock Against Racism* (1989) to safeguard the constitutionality of TPM restrictions:

- They must be content neutral,
- They must be narrowly tailored,
- They must serve a significant governmental interest, and
- They must leave open ample alternative channels of communication.

Examples of TPM restrictions are:

- Time: No one may “insist upon a street meeting in the middle of Times Square at the rush hour as a form of freedom of speech” (*Cox v. Louisiana*, 1965, p. 554).
- Place: The government may limit where individuals are free to express themselves, based on the forum for expression. There are three categories of fora: 1) traditional public, such as parks and sidewalks, 2) limited public, such as Capitol grounds, courthouses and grounds, and public universities, and 3) non-public, which is private property or public property dedicated to a

primary mission other than individual expression, such as military bases or county jails. The government has the most authority to limit expression on non-public property.

- **Manner:** These restrictions relate to the type of speech employed. A common example is flag burning, which is a form of symbolic speech protected under the law. An example of manner restriction comes from the 1984 case *Clark v. Community for Creative Non-Violence*. The Supreme Court found in favor of the National Park Service and denied protestors' request to sleep in parks not specifically designated for overnight camping, arguing that allowing such behavior would be "inimical" to the mission of keeping "the parks in the heart of the Capital in an attractive and intact condition" (*Clark v. Community for Creative Non-Violence*, 1984, p. 296).

University of Florida and Richard Spencer. In recent months and years, the US has seen numerous examples of protests on campuses, some of which are outlined in Chapter 2. One of the most recent is the curious case of Richard Spencer and the University of Florida (UF). This case is notable because Spencer was not invited to speak at the campus, and because of the way the campus approached the visit and handled it once he arrived (Levenson, 2017). It serves as a shining example of how universities could use existing TPM restrictions to their benefit in these highly publicized, politicized, and controversial events. Spencer's August 16th request to speak at the University of Florida on September 12th was initially denied after violence erupted in nearby Charlottesville at an August 12th white nationalist demonstration (Levenson, 2017). The University of Florida claimed that having Spencer speak so soon after the

Charlottesville event, which resulted in the governor declaring a state of emergency, would cause a public safety issue for its campus (Levenson, 2017). Whether true or simply a ploy to garner extra time to exhaust all legal options, UF demonstrated a legal use of TPM restrictions, to delay Spencer's speech until the events in Charlottesville had calmed, and the university could work with the governor and local sheriff to declare a state of emergency and employ multiple law enforcement agencies to provide security (Sarkissian, 2017). The university also offered Spencer a space on the western edge of its sprawling campus, in a building that sits away from most classrooms (Sarkissian, 2017). These two TPM restrictions are legal because they can reasonably be seen as allowing the speaker's right to free speech while simultaneously employing narrowly tailored restrictions in the interests of public safety.

Unfortunately, having Spencer speak on the UF campus cost the school roughly \$500,000, of which UF could only recoup about \$10,000 from Spencer (Hartocollis, 2017). Charging him anything further for the additional security is unconstitutional, stemming from the 1992 United States Supreme Court case *Forsyth County v. Nationalist Movement*. In the majority opinion, Justice Blackburn wrote, "Speech cannot be financially burdened, any more than it can be punished or banned, simply because it might offend a hostile mob" (*Forsyth County v. Nationalist Movement*, 1992, p. 134). This raises a thorny issue for public schools around the country, many reeling from legislative cuts made to their budgets over the years, and begs the question of whether a case will come forward to the United States Supreme Court to question whether there is a point at which the financial cost of free speech becomes unreasonable for a public campus.

University of Florida campus administration made open statements denouncing Spencer's visit as contrary to campus values related to diversity, with President W. Kent Fuchs publishing a personal message in which he made it clear that Spencer was not invited to campus, and that the University of Florida and President Fuchs denounce "hate speech and racism, and in particular the racist speech and white-nationalist values of Mr. Spencer" (University of Florida [UF], 2017). He closed his statement by describing Spencer's visit as a "threat to our university and our values" (UF, 2017). President Fuchs is in the minority in making such public statements about a controversial event involving issues of race on campus. Unfortunately, most of the incidents around the country have garnered either very weak statements or no statement at all from university presidents.

Ensuring that institutional practices lead to substantive changes requires the involvement of everyone on campus, and necessitates engaging every facet of campus, including formal and informal operations. Furthermore, institutions must understand that there is a legal precedent for prohibiting unprotected speech on campus, and that they can use TPM restrictions to manage visits from controversial speakers and groups.

Summary

This study highlights that student conduct codes and other written policies on US campuses must include significant and meaningful discussion of diversity that, in turn, inform campus practices that produce racial parity. Institutions must also recognize the legalistic nature of student conduct codes and develop alternatives for resolution. By casting a wide net of involvement, colleges and universities can revise both formal and informal campus operations, including academic and co-curricular programming, and physical and compositional structures of campus. Using this approach, institutions can

identify and dismantle the dominant power structures within these various contexts of practice on their campuses.

Future Research

This dissertation contributes to the field both in terms of knowledge on the topics of student conduct codes and campus racial climate data; and in relation to the approaches that can be taken to understand complex and intersectional challenges facing higher education. Using a convergent mixed methods grounded theory (MM-GT) methodology, I was able to more thoroughly answer my research questions, and allow a theory to evolve from the data. This approach could be used to examine other types of multifaceted policies and perceptions on US campuses to give administrators a deeper understanding not only of what students, faculty, and staff think and feel about challenging issues, but also help them understand why they feel that way, and how to achieve the remedies they seek.

Campuses need to better utilize the existing research, including the ugSERU data, by disaggregating the data to understand experiences of all students on campus. One area for future research that emerged early in this study was the ugSERU survey instrument itself. It is understandable that no survey can cover every topic and question possible without turning into an onerous device that few will want to complete. However, given that there is a module entitled, “Civic and Community Engagement” within the survey, it seems that some questions—even one or two—regarding freedom of expression would offer valuable insights about students’ perceptions of their civil rights on campus. Currently, the questions on the survey are geared more toward community service and students’ actions, such as voter participation, level of political involvement, and feelings

about important issues. There are very few questions related to the student perception of institutional responsibilities regarding citizenship preparation. There are no questions related to Constitutional rights. It may be time, after nearly 20 years of use, to consider a redesign of the survey instrument, and contemplate whether some questions currently housed in randomly-assigned modules need to be moved to the core. Additionally, while in no way do I wish to cast aspersions on those who developed and have been an integral part of the history of the SERU survey, it is worth noting that all the designers mentioned on the SERU website are White men. Of course, it is possible that the demographics of the survey designers and re-designers have no discernible effect on the questions that are included or excluded on the survey, nor on the way in which those questions are asked. However, it is equally possible that it has great effect. I hope that, over time, those working most closely on the overall design on the SERU surveys have sought to diversify their ranks in order to have a more inclusive methodology.

Conclusion

My interest in the topics of freedom of speech and student conduct codes started several years ago, when I was working on my master's degree. At that time, I held a very different view when discussing the First Amendment, as is evidenced from these passages from my thesis (2014):

We must allow space once again for dissent, discussion, and even argument. We must serve as examples of balance between rights and responsibilities, and teach those concepts, rather than force submission to policies that limit our most basic freedoms. My conclusion aligns with that of the Supreme Court: "The First Amendment leaves no room for the operation of a dual standard in the academic

community with respect to the content of speech” (*Papish v. Board of Curators of the University of Missouri*, 1973, p. 671).

Now, my understanding of these topics is informed by the complexities of intersections with race, sex, gender identity, sexual identity, national origin, and religion. While it can be argued that the Constitution itself does not contain classifications of human beings according to the list outlined above, our history is riddled with attempts, some successful and some unsuccessful, to use the document as a tool to accomplish oppression, marginalization, and discrimination. Where these attempts have failed at the federal level, state governments have sometimes stepped in and tried to accomplish the same. The consequences have been severe for many of those who are outside the dominant White power structure, even in the “marketplace of ideas,” colleges campuses (*Abrams v. United States*, 1919). It is well past time for US higher education to acknowledge its history of oppression and take steps to dismantle the dominant power structure.

Recent court cases indicate that diversity is less about a particular number and more about obtaining educational benefits; however, this issue continues to confound many campuses, so further research would be useful in terms of either developing or buttressing admissions policies. Given that the number of White students enrolled in public PK-12 schools will drop from 51 percent (currently) to 46 percent, while the number of total students of color will increase from 49 percent to 54 percent (NCES, 2015a), US society will undoubtedly see greater emphasis placed on diversity initiatives. These shifting demographics have been trending since the late 1970s, and that has resulted in dramatic changes in the campus student population. From 1976 to 2012, the percentage of White students enrolled in college dropped significantly, from 84 percent

to 60 percent. During that same time period, the percentage of Black students increased from 10 percent to 15 percent, and Hispanic students rose from 4 percent to 15 percent (NCES. (2015b). Taken as a whole, I believe these issues and the tension between them will only continue to move to the forefront in academia. For the overall well-being of US campuses, it is incumbent on administrators, faculty, staff, and students to strive for the balance desired by students (Gallup, 2016). Administrators and faculty need to recognize the importance of expanding and integrating diversity into the fabric of their institutions, rather than viewing it as some sort of “add on” to the academic mission. It must become *a part of* the academic mission.

... we must take care to discern what is uppermost in the scale of human and societal need at a given time. This is especially so for values, such as free speech and equality which are sometimes opposed. Otherwise, we may fall into the dangerous trap of succumbing to the loudest voice when, sometimes, it is the softer one that most deserves our attention. (Delgado & Stefancic, 2018, p. 184).

It will take a concerted effort to achieve equilibrium between campus climate and freedom of speech; however, if institutions truthfully and genuinely value the commitment to diversity emphasized in their mission statements, it is time for them to invest both human and financial resources toward these pledges. Student conduct codes and other student-facing campus policies may hold some promise in helping to achieve this goal.

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APPENDICES

Appendix A: Table A1

Table A1

Qualitative Codes

SELECTIVE CODING	AXIAL CODING	NUMBER OF EXCERPTS
Diversity and race	Diversity mentioned in meaningful way	8
	Diversity of hearing panel	2
	Diversity reference is to OED or other office	2
	Inclusion	2
	No mention of diversity in conduct code	15
	Racial bias	7
	Racial harassment discussion	20
	TOTAL	56
Academic Emphasis	Academic Excellence	9
	Academic Freedom	13
	Academic Honesty	8
	Academic Misconduct	39
	Cheating/Fabrication/Plagiarism	52
	TOTAL	121
Disciplinary emphasis	Developmental discipline	17
	Educational discipline	30
	Restorative discipline	12
	Student development	23
	TOTAL	82
Legal Emphasis	Attorney not allowed	7
	Free speech zones	7
	Freedom of expression	40
	Legalistic language	96
	Obstruction or disruption	89
	Student rights	48
	TPM restrictions	9

	US Constitution	29
	Excessive length (more than 25 pages)	12
	<hr/> TOTAL	<hr/> 337
University Interests and Expectations	Campus safety	62
	Citizenship	9
	Educational interests of the institution	12
	Fair treatment	14
	Integrity	42
	Off-campus activities	42
	Respect	36
	Responsibility	35
	Institutional expression of values	5
	<hr/> TOTAL	<hr/> 257

Appendix B: Table B1 & B2

Table B1

2016 Campus Racial Climate Scores by Campus, Disaggregated by Race

School	Race	Climate score	Sample size
A	No race selected	-0.186625888	468
	African American	-0.478657611	135
	American Indian	-0.596106301	11
	Asian American	-0.157604779	3284
	Hispanic	-0.422637739	640
	Pacific Islander	-0.250076619	23
	White	-0.074012896	2076
	Multiple Race	-0.221165565	964
B	No race selected	-0.061664793	287
	African American	-0.345970172	181
	American Indian	0.020631513	14
	Asian American	0.008286207	3147
	Hispanic	-0.072955193	1042
	Pacific Islander	0.09035998	46
	White	0.08604381	2688
	Multiple Race	-0.0076306	1221
C	No race selected	-0.055770885	189
	African American	-0.309796598	134
	American Indian	0.149746376	6
	Asian American	0.036762262	4039
	Hispanic	-0.007847109	1440
	Pacific Islander	0.017851907	36
	White	0.040082208	1257
	Multiple Race	-0.015781062	1058
D	No race selected	-0.140957045	210
	African American	-0.367456693	165

	American Indian	-0.420712809	6
	Asian American	-0.035975779	2490
	Hispanic	-0.184710429	825
	Pacific Islander	-0.218077385	13
	White	0.044556558	1699
	Multiple Race	-0.082539108	881
E	No race selected	0.024291672	72
	African American	0.09415168	95
	American Indian	0.326118137	7
	Asian American	0.196025446	496
	Hispanic	0.355543946	862
	Pacific Islander	0.174971235	18
	White	0.239427613	255
	Multiple Race	0.241362052	374
F	No race selected	-0.225922047	174
	African American	-0.558172436	92
	American Indian	-0.334052403	11
	Asian American	-0.172536187	3316
	Hispanic	-0.419805716	601
	Pacific Islander	-0.214874313	18
	White	-0.181212582	1473
	Multiple Race	-0.230975079	871
G	No race selected	-0.016408486	123
	African American	-0.191967414	117
	American Indian	0.202076233	10
	Asian American	-0.023185035	1583
	Hispanic	-0.031306632	1001
	Pacific Islander	0.30482495	18
	White	0.197896188	2197
	Multiple Race	0.073584535	1113
H	No race selected	-0.135257198	164
	African American	-0.376087717	108
	American Indian	-0.441778961	10
	Asian American	-0.119323315	1216
	Hispanic	-0.143747089	1032

	Pacific Islander	-0.191808195	28
	White	-0.022093171	2014
	Multiple Race	-0.144948099	962
I	No race selected	0.063461397	123
	African American	-0.027154646	173
	American Indian	-0.040109978	6
	Asian American	0.033120719	1649
	Hispanic	0.216217789	1091
	Pacific Islander	0.086467052	13
	White	0.173593443	614
	Multiple Race	0.13911531	769
J	No race selected	-0.0293866	336
	African American	-0.151460528	442
	American Indian	-0.198743066	3
	Asian American	-0.067899292	2056
	Hispanic	0.010026554	889
	Pacific Islander	-0.151628344	23
	White	0.05753836	2586
	Multiple Race	0.220579306	2
K	No race selected	-0.042636315	242
	African American	-0.348172013	53
	American Indian	-0.017767514	15
	Asian American	-0.145187247	333
	Hispanic	-0.2953332	98
	Pacific Islander	0.021383732	10
	White	0.017254265	2265
	Multiple Race	-0.064991114	463
L	No race selected	0.193452982	43
	African American	-0.186485461	182
	American Indian	-0.234349787	2
	Asian American	0.022310416	529
	Hispanic	0.074036463	19
	Pacific Islander	0.006455056	1
	White	0.187034632	3167
	Multiple Race	0.052640595	235

M	No race selected	0.152398023	24
	African American	-0.315932626	66
	American Indian	0.874223212	1
	Asian American	-0.14688917	517
	Hispanic	-0.126858166	103
	Pacific Islander	-1.298569827	1
	White	0.0883349	693
	Multiple Race	-0.011211935	285
N	No race selected	-0.02918559	237
	African American	-0.333079294	196
	American Indian	-0.130787596	2
	Asian American	-0.131111434	591
	Hispanic	-0.217754054	41
	Pacific Islander	0.580623508	1
	White	0.091458057	2294
	Multiple Race	-0.049397551	385
O	No race selected	0.031538863	383
	African American	-0.200234923	92
	American Indian	0.131057245	6
	Asian American	-0.130150275	137
	Hispanic	0.036780916	276
	Pacific Islander	-0.233974876	2
	White	0.190444089	2813
	Multiple Race	0.019973229	102
P	No race selected	0.130007949	106
	African American	-0.219052107	79
	American Indian	-0.17230476	11
	Asian American	-0.097057622	155
	Hispanic	-0.141940221	39
	Pacific Islander	0.082114838	1
	White	0.179450788	2206
	Multiple Race	-0.018801616	278
Q	No race selected	-0.056989284	142
	African American	-0.191342453	31

American Indian	-0.11671367	5
Asian American	-0.114920264	389
Hispanic	-0.173353436	40
Pacific Islander	-0.068948349	4
White	-0.040182561	819
Multiple Race	-0.142874504	184

Table B2

2017 Campus Racial Climate Scores by Campus, Disaggregated by Race

School	Race	Climate score	Sample size
A	No race selected	-0.167332061	334
	African American	-0.471675038	279
	American Indian	-0.10059784	16
	Asian American	-0.108906015	1169
	Hispanic	-0.171110898	83
	Pacific Islander	-0.254833928	2
	White	-0.018978136	4087
	Multiple Race	-0.118310382	572
B	No race selected	-0.118066055	68
	African American	-0.377252531	339
	American Indian	-0.330732863	22
	Asian American	-0.093579326	1675
	Hispanic	-0.29603787	145
	Pacific Islander	-0.097137904	14
	White	0.023934146	7976
	Multiple Race	-0.107393123	715
C	No race selected	-0.090793641	277
	African American	-0.467424762	183
	American Indian	-0.0789614	4
	Asian American	-0.141119862	1049
	Hispanic	-0.135622905	312
	Pacific Islander	-0.101867902	9
	White	-0.02528574	2338
	Multiple Race	-0.072353323	1123

D	No race selected	-0.004527535	276
	African American	-0.2933981	402
	American Indian	-0.06126427	17
	Asian American	-0.15994381	517
	Hispanic	0.050420914	354
	Pacific Islander	-0.171123266	43
	White	0.112170312	3630
	Multiple Race	0.004082461	1227
E	No race selected	0.002357166	221
	African American	-0.232645511	332
	American Indian	-0.04892337	22
	Asian American	-0.038729751	745
	Hispanic	-0.082906943	117
	Pacific Islander	-0.792508777	3
	White	0.120633125	3376
	Multiple Race	0.02079902	524
F	No race selected	0.130037036	233
	African American	-0.334597911	167
	American Indian	0.477827888	4
	Asian American	-0.068487172	336
	Hispanic	0.057171512	1225
	Pacific Islander	0.043951718	5
	White	0.248167601	3696
